

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 28, 2025

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 25MD-002

MAUI

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to The Association of Apartment Owners The Pikake for Portions of Seawall, Concrete Steps with Metal Railing, and Rock Revetments Kaanapali, Maui, Tax Map Key: (2) 4-3-006: seaward of 063.

APPLICANT:

The Association of Apartment Owners The Pikake, a domestic nonprofit corporation.

LEGAL REFERENCE:

Sections 171-53 and 55, Hawaii Revised Statutes (HRS), as amended. Section 13-222-19, Hawaii Administrative Rules (HAR), as amended.

LOCATION:

Portion of State land located in Kaanapali, Maui, identified as TMK: (2) 4-3-006: seaward of 063, as shown on **Exhibits A-1 and A-2**.

AREA:

425 square feet, approximately, to be reviewed and approved by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Conservation
Maui County Zoning District:	A-2 Apartment (for abutting private property)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to use, maintain, and repair existing concrete rubble masonry (CRM) seawall, concrete steps and metal railing, and rock revetments over, under, and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market value, subject to review and approval by the Chairperson.

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission and pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount of \$193.00 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson. **(Exhibit B)**

REMOVAL BOND:

Applicant shall be required to post a removal bond in the amount of \$33,941.00, as determined by Land Division in consultation with Engineering Division, subject to approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, which applies to "[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Specifically, the subject request is exempt under Part 1, Item 39, which exempts the "[c]reation or termination of easement, covenants, or other rights in structures or land." The subject request is a de minimis action that is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>x</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>__</u>

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
2. Pay for an appraisal to determine one-time payment in consideration of the easement; and
3. Obtain the prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition presented to the Board in this matter is an orderly process that uses a series of permits structured to allow for immediate use and occupancy and proceed on a direct course to a to a long-term easement, subject to conditions that benefit the State. The land disposition requested in the present submittal is a three-stage process encompassing:

1. Issuance of a right-of-entry permit for a period of up to six months. This allows the Applicant to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the shoreline protection structure without undue delay and without cost to the State, and begin preparations for the Applicant's obligations under future land dispositions.¹ The right-of-entry permit includes requirements for payment of monthly rent, provision to the Department of a removal bond or equivalent securitized funds, indemnification of the State, and provision of liability insurance by the Applicant. The purpose of the removal bond is to ensure that there are funds available to remove the encroachment from State land in the event that the Legislature or Governor does not approve the easement authorized by the Board.
2. Issuance of a revocable permit for no longer than one year. This allows Land Division time to complete the administrative processes that underlie the grant of easement including approval of the easement contract by the Department of the Attorney General, completion of the appraisal (at the Applicant's cost) to determine the lump-sum payment for value of the easement, and approval of the Legislature and Governor of the easement while the Applicant maintains the same obligations for rent payments, removal costs, indemnification, and provision of liability insurance.
3. Issuance of an easement. This final step cannot be executed without prior completion of the prerequisites stated above. Therefore, the interim disposition through revocable permit is necessary.

The interim revocable permit step is limited in its duration and essential in its utility. While the revocable permit is in effect, the Applicant assumes the costs of maintaining the subject parcel of State land and the liability for any damages caused on or by the Applicant's use of the land during the often-lengthy process of consummating the easement.

¹ The Applicant's obligations under a right-of-entry and revocable permit include obtaining a survey to confirm the size of the disposition area, obtaining a cost estimate for removing the shoreline protection structure which determines the amount of the removal bond, and procurement through Land Division of an appraisal to determine the lump-sum value of the easement.

REMARKS:

The Applicant is the association representing the owners of the various units within The Pikake condominium development located in in Kaanapali, Maui. The subject parcel contains a CRM seawall that includes a central set of concrete steps with metal railings as well as lateral rock revetments at both the North and South ends and along the length seawall's West (makai) face. The seawall is undermined along the entire West-facing portion and the makai face of the North lateral portion. The steps with railing, revetments, and undermined portions of the seawall constitute encroachments onto State submerged lands. **(Exhibits C1 and C2)** The Applicant is seeking an easement disposition to resolve the encroachments for the purpose of seeking a certified shoreline.

The shoreline for the subject parcel was certified in 1993 (file number MA-128). The 1993 shoreline was artificially fixed by a then-existing concrete block seawall and the shoreline was certified at the makai foot of that concrete block seawall. **(Exhibit D)** In 1995, the Applicant removed the old concrete block seawall and constructed the currently existing CRM seawall, steps, and revetments mauka of the prior seawall pursuant to a Special Management Area permit (SM194009) and Shoreline Setback Variance (SSV94004) issued by the County of Maui. It appears that the exiting CRM seawall was originally designed as a cap wall backing the sloping revetment. In 1995, the CRM seawall, steps, and revetment were located within the private property boundary and within the Special Management Area. Due to mauka shoreline migration and undermining by wave action, the 1995 structures now fix the shoreline and portions of the 1995 structures are located on State shoreline lands.

A 2021 shoreline application (file number MA-758) was processed and rejected pursuant to section 13-222-19, HAR, due to the presence of the same unresolved shoreline encroachments that are the subject of the present submittal. Staff is not aware of why the Applicant did not resolve the known encroachments at the time of the 2021 shoreline application. However, the Applicant did submit a Shoreline Encroachment Information Sheet and supporting documents to the Office of Conservation and Coastal Lands (OCCL) in 2022. OCCL issued a response to the Applicant on December 29, 2022, finding that the encroaching structures were outside of the Conservation District at the time of their construction and are, therefore, considered to be non-conforming and eligible for resolution through easement. **(Exhibit E)**

The Applicant submitted a new application for shoreline certification on August 13, 2024. The State Land Surveyor and Land Division Staff conducted a site visit on September 5, 2024, and discovered the continued presence of shoreline encroachments. The Applicant was informed that the shoreline can not be certified

until the encroachments are resolved. The Applicant agreed to do so, prompting the current submittal.

At the September 5, 2024, site visit, the shoreline location was confirmed at the top of the makai face of the existing CRM wall and the top of the concrete steps, therefore placing the lateral revetments, undermined portions of the seawall, and steps with railings on State shoreline land. (**Exhibit E**)

The Applicant has not had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and §§11-200.1-15 and -16, HAR, this project is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. Assess a fine of \$500 for the unauthorized encroachment pursuant to the criteria adopted by the Board at its meeting of June 28, 2002, under agenda item D-17.
3. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcels described as Tax Map Key: (2) 4-3-006:063, provided that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Authorize the issuance of a right-of-entry permit to The Association of Apartment Owners The Pikake covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the right-of-

- entry permit;
- C. Removal of the subject encroachments, if required, within the period determined by the Chairperson;
 - D. Commencement of the right-of-entry on the Board date, for a term of one year or until the issuance of the revocable permit described in recommendation 5 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance to The Association of Apartment Owners The Pikake of a revocable permit covering the subject area for encroachment purposes, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the revocable permit;
 - C. Removal of the subject encroachments, if required, within the period determined by the Chairperson;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance to The Association of Apartment Owners The Pikake of a 25-year term, non-exclusive easement covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-3-006:063, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the State, as Grantor, of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.;
- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Rebecca L. Anderson
Shoreline Specialist

APPROVED FOR SUBMITTAL:



Dawn S. N. Chang, Chairperson



Tax Map Key: (2) 4-3-006: seaward of 063



Tax Map Key: (2) 4-3-006: seaward of 063



JOSH GREEN, M.D.
GOVERNOR | HE NIA'ĀINA
SYLVIA LUKE
VICETENANT GOVERNOR | KA LI'OLI'OE I KA 'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 821
HONOLULU, HAWAII 96809


DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES
ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVE COMMUNITY
LAND
STATE PARKS

To: Dawn N. S. Chang, Chairperson
Through: Russell Y. Tsuji, Administrator
From: Land Division, Appraisal Section
Date: March 3, 2025
Subject: Shoreline Revocable Permit for The Association of Apartment Owners The Pikake

A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 25MD-002
Applicant: Association of Apartment Owners The Pikake
TMK: (2) 4-3-006: seaward of 063
Area: 425 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: **\$193 per month**

The undersigned finds that the valuation was completed in accordance with the assignment.



Dawn N. S. Chang, Chairperson

Mar 3, 2025

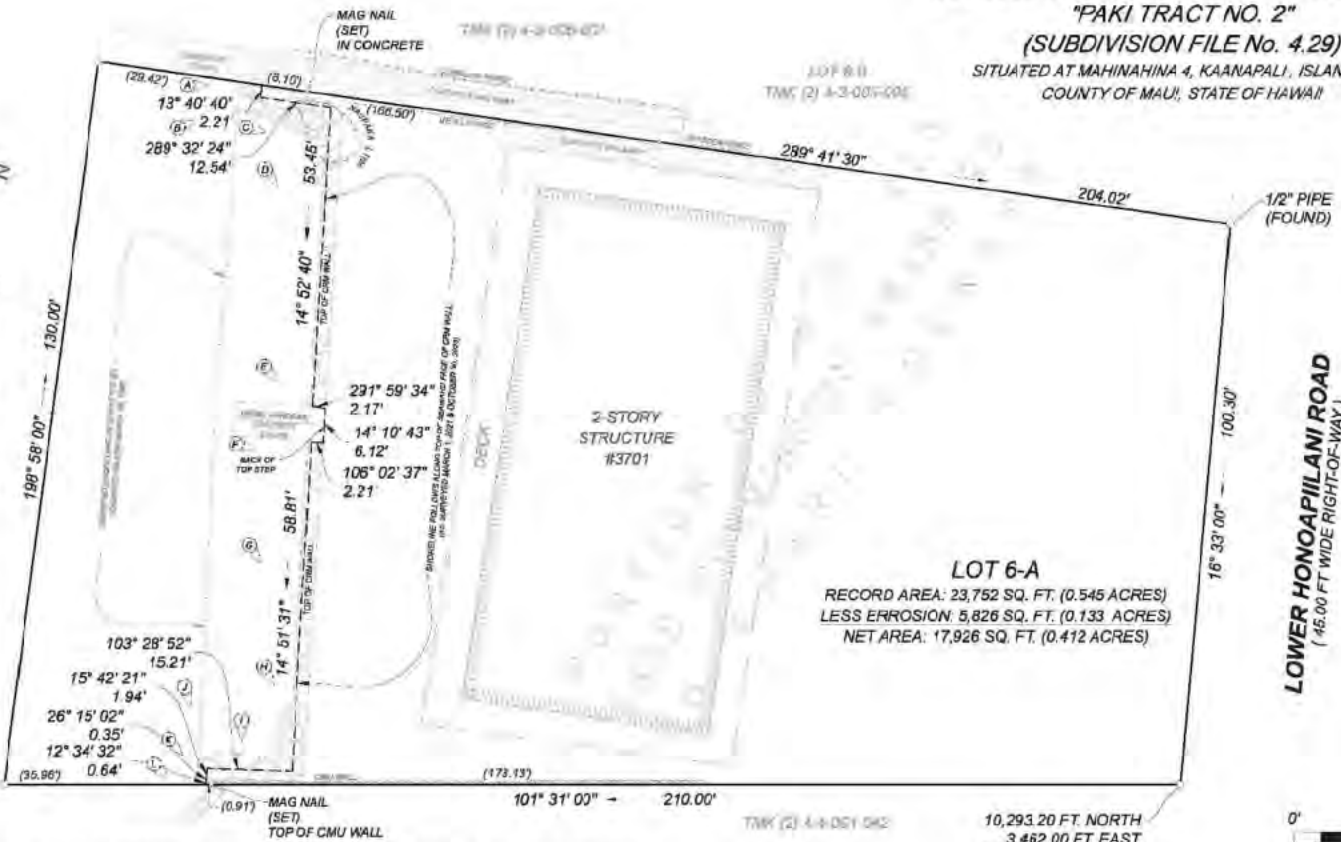
Date

TMK	(2) 4-3-006:seaward of 063		
Assessed Land Value (\$)	\$	6,460,900	
Land Area (sf)		23,752	
Unit Rate Land Value (\$/sf)	\$	272.01	
50% Off For Submerged Lands	\$	136.01	
Encroachment Area (sf)		425	
Encroachment Land Value (\$)	\$	57,803	
Annual Rent @ 4 to 8%	\$	2,312.13	0.04
Recommended Annual Value			
Monthly rent	\$	192.68	193 rounded

DATE: 10/18/2024
REVISED: 02/12/2025

SHORELINE SURVEY OF LOT 6-A

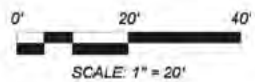
"PAKI TRACT NO. 2"
(SUBDIVISION FILE No. 4.29)
SITUATED AT MAHINAHINA 4, KAA NAPALI, ISLAND AND
COUNTY OF MAUI, STATE OF HAWAII



LOT 6-A
RECORD AREA: 23,752 SQ. FT. (0.545 ACRES)
LESS ERROSION: 5,826 SQ. FT. (0.133 ACRES)
NET AREA: 17,926 SQ. FT. (0.412 ACRES)



LOWER HONOAPIILANI ROAD
(16.00 FT WIDE RIGHT-OF-WAY)



- NOTES:**
1. THIS MAP IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED ON MARCH 1, 2021 AND OCTOBER 30 2023.
 2. 1/2" PIPES WERE FOUND AT ALL BOUNDARY CORNERS UNLESS NOTED OTHERWISE.
 3. AZIMUTHS AND COORDINATES REFERENCED TO GOVERNMENT TRIANGULATION STATION "KEKAA".
 4. FIGURES SHOWN THUS INDICATE THE LETTER OF THE PHOTOGRAPH AND THE POSITION AND DIRECTION IN WICH IT WAS TAKEN.
 5. OWNERS OF ADJOINING LAND PARCELS TAKEN FROM COUNTY OF MAUI REAL PROPERTY MAPPING BRANCH

10,293.20 FT. NORTH
3,462.00 FT. EAST
"KEKAA" (RECORD)
3/4" PIPE (FOUND)



THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION

LOREN "ERICH" SLENTZ
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NUMBER LS19826
LICENSE EXPIRATION DATE: 30 APRIL 2026

PREPARED FOR :
THE PIKAKE AOAO
3701 LOWER HONOAPIILANI ROAD
LAHAINA, HI 96761

MAUI LAND SURVEYORS LLC
P.O. BOX 880709 PUKALANI, HI 96778
OFFICE: (808) 2C5-5291
INFO@MAUILANDSURVEYORS.COM
WWW.MAUILANDSURVEYORS.COM



13 (REV. 3)

TMK (2) 4-3-006: 063

11" X 17"

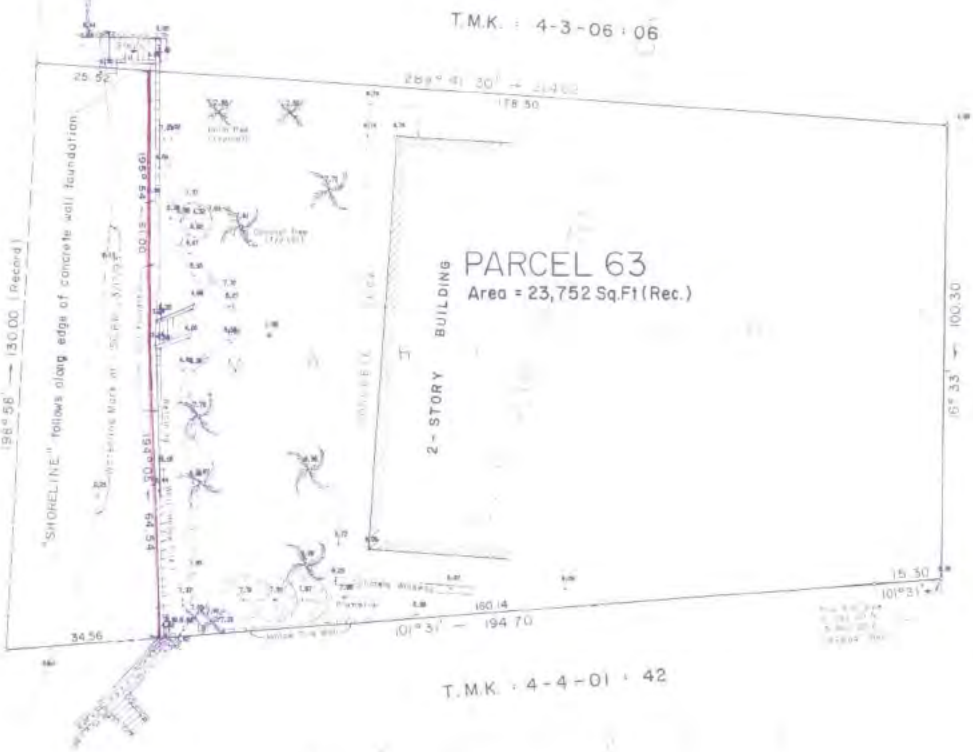
EXHIBIT C-1







P a c i f i c O c e a n



LOWER HONOAPIILANI ROAD

NOTES:

The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of **7/3/20**

John W. Kappel
 Chairman, Board of Land and Natural Resources

Shoreline Verification

(For Shoreline Setback Purposes)

PIKAKE CONDOMINIUM

Portion of Royal Patent 415, Land Commission Award 75 to Charles Cockett

MAHINAHINA 4, KAAPALI, LAHAINA, MAUI, HAWAII

OWNERS:

JOHN B. WHITFIELD ANDREW TRUST ESTATE

SHORELINE OFFICE COPY

This work was prepared by me under the direction of VALERA, INC.

John Valera March 29, 1993

1000 3rd St. #240
Honolulu, HI 96813
Tel: 808-531-5000

EXHIBIT D

JOSH GREEN, M.D.
GOVERNOR | KE HA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | IKA HOPE | HA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
P. O. BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment MA 23-05

Dec 29, 2022

Nicole Olafson
The Pikake – Condo Master
[REDACTED]
Edinburg, ND 58227

SUBJECT: Request to Resolve State Land Encroachments at [REDACTED]
[REDACTED] Lahaina, Maui; Tax Map Key (TMK): (2) 4-3-006:seaward of 063

Dear Ms. Olafson,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), has reviewed your Shoreline Encroachment Information Questionnaire and supporting documents regarding the subject matter. Based on staff review of the information you provided it seems that at the time of construction, Pikake Association of Apartment Owner's revetment was built mauka of the shoreline, and not in the Conservation District. The photographs (see **Exhibit 1**) you submitted of the 1995 revetment construction shows the original intact seawall (the shoreline being certified in 1993 at the makai face of the seawall) and the revetment being built mauka of the seawall (outside of the Conservation District). The OCCL has determined that since the revetment was not built in the Conservation District, the revetment is considered a non-conforming structure.

It is OCCL's understanding that with the removal of the original seawall portions of the revetment now lie within the shoreline and are encroaching on State unencumbered submerged lands. Since the revetment is determined to be a non-conforming structure, it does not require a Conservation District Use Permit (CDUP) from our office, but please be advised that any future proposed work and/or repair to the structure may require a review and possibly authorization from the Department or the Board of Land and Natural Resources. If you have any questions about the rules and regulations of the Conservation District, please read the Hawaii Administrative Rules, Chapter 13-5, which can be found on our website at <https://dlnr.hawaii.gov/occl/files/2013/08/HAR-13-5-2021.pdf>.

The Pikake – Condo Master
December 22, 2022

Although a CDUP is not required for the revetment, a land disposition may be needed to resolve the encroaching portions. Please contact the Land Division to pursue a disposition to resolve the revetment encroachment.

Should you have any questions regarding this correspondence, contact Cal Miyahara of our Office at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

S. Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: Chairperson
MDLO and ODLO
Maui County Planning Department

The Pikake – Condo Master
December 22, 2022



Note: Original seawall intact at left side of photo. Trenching for new revetment being done mauka of the seawall.

Exhibit 1

The Pikake – Condo Master
December 22, 2022



Note: In-line photo of original seawall with trenching for new revetment to be built mauka of the seawall.