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

March 11, 2010

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

PSF#07MD-169

Maui

Removal of Unauthorized Encroachments on State Beach Reserve Land by Ms. Barbara Harrison at Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key:(2) 3-9-009:011.

PURPOSE:

Removal of unauthorized encroachments (e.g. underground irrigation, landscaping) installed by adjacent property owner Ms. Barbara Harrison

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended

LOCATION:

Portion of Government lands at Waiohuli-Keokea Beach Homesteads situated at Kihei, Wailuku, Maui identified by Tax Map Key:(2) 3-9-009:011, as shown on the attached map labeled Exhibit (A) and the attached GIS overview photo labeled Exhibit (B).

AREA:

13,000 sq. ft. more or less

Land Ownership:

The State Beach Reserve, further identified as TMK: (2) 3-9-009:011 is owned by the State of Hawaii. This beach reserve is seaward of Ms. Harrison's private property.

According to the County of Maui real property tax records, Ms. Barbara Harrison's property is situated a[redacted]hei, Hawaii, further identified as TMK (2) 3-9-009:025.

BACKGROUND:

On August 27, 2007, an initial site inspection was conducted of the State Beach Reserve lands seaward of the privately owned properties along Halama Street. Maui District Land Office (MDLO) staff was attempting to identify all unauthorized improvements and encroachments that extend out into the beach reserve from the adjacent privately owned properties.

Pursuant to the inspection of the State beach reserve area at the back portion of Barbara Harrison's property at the following unauthorized improvements and encroachments were identified as being located on the subject State land:

1) Underground irrigation system with multiple pop-up sprinkler heads;

2) Trees and vegetation extending out beyond both the north and south back property pins into the beach reserve;

3) Seashore Paspalum Sod grass was planted within the beach reserve after Ms. Harrison was advised that only native plantings such as Aki Aki grass or Pahui hui (Morning Glory) ground cover would be allowed.

On August 28, 2007, District Land Agent Daniel Ornellas and Land Agent Larry Pacheco met with Ms. Harrison at the beach reserve behind her residence to discuss all identified encroachments and unauthorized uses of the subject State land. During this meeting she was advised that all irrigation lines and sprinkler heads needed to be capped at her seaward property boundary and removed from within the reserve area. Ms. Harrison was also directed to remove all vegetation that had been planted beyond her property pins to cause a natural fence or barrier to prevent lateral access through the beach reserve. Finally, she was directed to remove the large section of newly laid out Seashore Paspalum sod grass that had been planted within the beach reserve.

Ms. Harrison was informed via letter dated February 25, 2008 of an upcoming Kihei Community Association meeting to discuss the unauthorized uses of the subject beach reserve. The Maui District Land Office staff conducted this public presentation regarding the Kihei Beach Reserve and South Maui Coastline on March 18, 2008. This meeting was held at the Kihei Community Center.

On June 10, 2008, Mrs. Michelle Cockett of Betsill Brothers Construction Inc. came to the Maui District Land Office. She informed Land Agent Larry Pacheco that she had been hired by Ms. Harrison to rectify all encroachments and remove the unauthorized improvements from within the beach reserve.

On June 17, 2008, a follow up check of the area was conducted. At this time, it was noted that the Harrison property had been surveyed as new property pins were in place at the property's four corners.

A follow up site inspection followed on August 6, 2008. All of the previously identified encroachments and unauthorized improvements had been properly removed from the beach reserve as requested. On August 7, 2008 Ms. Harrison was notified (via letter), of this finding.

Upon receiving the written notification from the Maui District Land Office, Ms. Harrison was able to obtain the required permits from the County of Maui to complete renovation work on her residence. Since completion of this home renovation, Ms. Harrison has reinstalled a new unauthorized underground irrigation system within the restricted beach reserve area. The new irrigation system was discovered on April 23, 2009, during a walk through of the beach reserve. (Exhibit B) Coastal & Shoreline Planner Thorne Abbott of the County of Maui had verified that Ms. Harrison was explicitly told she could not make improvements for personal use to the adjacent State lands.

On October 7, 2009 staff conducted a follow-up inspection. During this inspection, the unauthorized irrigation system still remained on the State beach reserve. Ms. Harrison was sent a certified letter dated October 15, 2009, informing her of the unauthorized irrigation system encroaching on the State beach reserve and it had to be removed. As of this writing, the Maui District Land Office has not received a response from Ms. Harrison and her encroachment still remains on the State beach reserve.

ENVIRONMENTAL AND CULTURAL IMPACTS:

The Maui District Land Office staff received consultation from various State and County agencies regarding the sensitivity of the Kihei Beach Reserve area, and special considerations required with regards to the surrounding natural habitat.

The area is noted for sea turtle nesting and should remain in its natural state with no additional shoreline hardening from landscaped and/or irrigated lawns in order to minimize adverse impacts to potential turtle and seabird nesting sites. It was also noted that recent studies presented by the Division of Aquatic Resources have documented higher than normal nutrient levels along the South Maui coastline, which have been contributing to the increased spread of invasive algae that results in continued adverse impacts to healthy coral reef systems in the area. It is our understanding that fertilization and irrigation of near shore properties do contribute to high nutrient levels along the shoreline. Furthermore, due to water shortages throughout Maui County, the Department of Water Supply has requested

voluntary cutbacks in use of the Central Maui water system. The subject area is a user of this system and suspension of irrigation activities on public lands is consistent with the County's request for cutbacks of water use. Finally, it has come to our attention that beach users have been prevented from using public lands at the subject location due to untimely irrigation schedules that force the public to relocate.

DISCUSSION:

Briefly, at the 2008 Legislature, the Department proposed House Bill 3178 to amend Section 171-6, HRS. The State has a public trust obligation to protect Hawaii's natural resources for the benefit of all of its residents and future generations. There has been an increase in the intentional violation of and blatant disregard for state natural resources laws. Consequently, the Department has been under considerable strain in fulfilling that obligation, due to ineffective enforcement tools, limited resources, and a shortage of enforcement personnel. Existing civil penalties for most violations are nominal ($500) and do not appear to be a serious deterrent for such behavior. Examples of such behavior include the operation of unpermitted surf schools and other unauthorized commercial activities on public beaches, operation of all-terrain vehicles on unencumbered or other restricted public lands, damage to archeological, historical, or geologic features, and destruction, defacing, or removal of natural features or natural resources on public lands. Increasing penalties for civil violations of the State's natural resources laws is an effective means for deterring unlawful behavior by imposing serious consequences for such violations. The existing statutory remedy for encroachment on public lands requires the violator to restore public land, if altered, to its original condition and assume the costs thereof, but does not require the payment of administrative costs and damages incurred by the Department. Other infractions of chapter 171, HRS, or any rules adopted thereunder for which violation a penalty is not otherwise provided, require the violator to pay for administrative costs and damages incurred by the Department. This bill corrects that inconsistency by requiring the violator who encroaches on public land to be liable for administrative costs incurred by the Department and for payment of damages. The Governor signed into law Act 215, Session Laws of Hawaii 2008 relating to civil penalties for violations on public lands.

Section 171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26. In addition to the foregoing, the board may: (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

(A) Be fined not more than $1,000 a day for the first offense;

(B) Be fined not less than $1,000 nor more than $4,000 per day upon the second offense and thereafter;

(C) If required by the board, restore the land to its original condition if altered and assume

the costs thereof;
(D) Assume such costs as may result from adverse effects from such restoration; and
(E) Be liable for administrative costs incurred by the department and for payment of damages.

Staff did check if this encroachment violation could be handled through the Civil Resource Violation System. According to the Penalties Coordinator, the penalty schedule has to be approved by the Land Board before any cases can be handled by the Departments' Civil Resource Violation System. That has not been done.

Although, Ms. Harrison removed the encroachment and later re-installed the underground irrigation system, we are treating this as a first offense. This will be the first investigation to be done with the new revisions approved by the Legislature and Governor in 2008. Staff is recommending a fine of $1,000 and that Ms. Harrison restore the land to its original condition and assume all costs. Staff is not recommending any administrative costs because staff did not document their time on this investigation.

In the event, Ms. Harrison does not remove the encroachment and restore the area within thirty (30) days, staff is recommending additional $1,000 per day fines. The encroachment is still there. Regardless, if the contractors encountered a problem or the truck had a flat tire or the owners were away. This is considered a second offense. Therefore, a $1,000 per day fine is appropriate.

Lastly, Recommendation 5 and 6 are needed in the event Ms. Harrison is unwilling to comply with the removal of the encroachment and restoration of the area.

RECOMMENDATION: That the Board:

1. Ms. Barbara Harrison violated the provisions of Chapter 171-6, Hawaii Revised Statutes for unauthorized encroachment upon public land and is fined $1,000.

2. Ms. Barbara Harrison shall pay the $1,000 fine within thirty (30) days of the date of the Board's action (March 11, 2010).

3. Ms. Barbara Harrison shall at her own expense remove the encroachment and restore the area within thirty (30) days of the Board's action (March 11, 2010).

4. In the event of failure of Ms. Barbara Harrison to comply with any order herein, Ms. Barbara Harrison shall be fined an additional $1,000 per day until the order is complied with.

5. That in the event Ms. Barbara Harrison does not remove the encroachment and restore the area within sixty (60) days of the Board's action, authorize Land Division to hire a contractor or contractors to remove the encroachment and restore the area. Assess Ms. Barbara Harrison all costs related to the removal of the encroachment and the restoration of the area.

6. In the event, Ms. Barbara Harrison fails to reimburse Land Division for its clean-up expenses or fails to pay the $1,000 fine, and any additional $1,000 per day fines, authorize Land Division to file a lien on Ms. Barbara Harrison property located at 1470 Halama Street or any other properties owned by Ms. Barbara Harrison.

7. Review and approval by the Department of the Attorney General.

8. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson

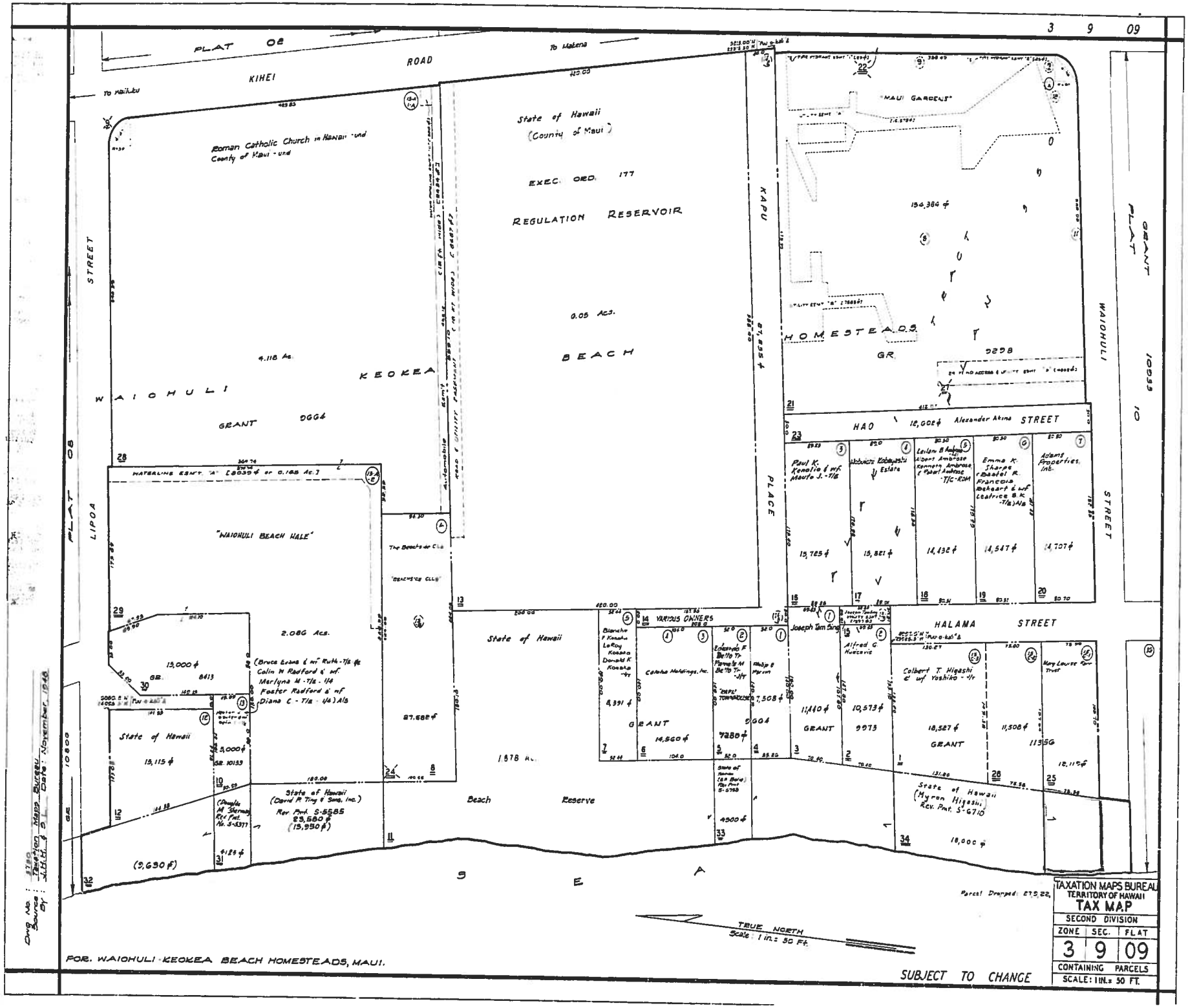
3 9 09
PLAT 08
KIHEI ROAD
To Makena
To Haiku
Roman Catholic Church in Hawaii and County of Maui
State of Hawaii (County of Maui)
EXEC. ORD. 177
REGULATION RESERVOIR
0.05 Acs.
BEACH
KAPU PLACE
"MAUI GARDENS"
154,384 ⌖
HOMESTEADS
GR.
9298
WAIOHULI STREET
GRANT PLAT 10099 10
4.118 Ac.
KEOKEA
WAIOHULI
GRANT 0664
LIPOA STREET
HAO STREET
18,006 ⌖ Alexander Akina
Paul K. Kenalio & wf. Mauto J. - T/E
Uhiuchi Kobayashi Estate
Leilani B. Ambrose Albert Ambrose Kenneth Ambrose & Robert Ambrose T/C-R3M
Emma K. Sharpe (Beadel R. Francois Bekaert & wf Leatrice B.K. - T/E) A/B
Adams Properties, Inc.
15,725 ⌖
15,821 ⌖
14,432 ⌖
14,547 ⌖
14,707 ⌖
HALAMA STREET
"WAIOHULI BEACH HALE"
The Beach's Inc Club
"BEACH'S INC CLUB"
HATEALINE EASM'T "A" (8039 ⌖ or 0.185 Ac.)
2.086 Acs.
13,000 ⌖
GR. 8413
(Bruce Evans & wf Ruth - T/E & Colin W. Radford & wf Marlyna M. - T/E - 1/4 Foster Radford & wf Diana C. - T/E - 1/4) A/B
27,682 ⌖
State of Hawaii
15,115 ⌖
5,000 ⌖
State of Hawaii (David M. Ting & Sons, Inc.) Rev. Pmt. S-8585 23,580 ⌖ (15,950 ⌖)
(Douglas M. Shimada Rev. Pmt. No. S-8377)
(9,630 ⌖)
4,125 ⌖
State of Hawaii
1.878 Ac.
Beach Reserve
VARIOUS OWNERS
Blanche P. Kosaka LeRoy Kosaka Donald K. Kosaka -1/4
Catalina Holdings, Inc.
4,391 ⌖
GRANT
14,560 ⌖
Edwards F. Betto Tr. Fanny M. Betto Tr. -1/4
"DAPS" TOWNHOUSES
7,508 ⌖
7288 ⌖
9604
State of Hawaii (Joe Bulu) Rev. Pmt. S-8780
4500 ⌖
Joseph Tom Sing
Alfred G. Nuccervio
11,140 ⌖
GRANT
10,573 ⌖
9973
Colbert T. Higashi & wf Yoshiko - 1/2
18,527 ⌖
GRANT
11,508 ⌖
11356
Mary Louise Kaw Trust
12,117 ⌖
State of Hawaii (Myron Higashi) Rev. Pmt. S-6710
18,000 ⌖
SEA
Parcel Dropped: 27, 9, 22.
TRUE NORTH
Scale: 1 in. = 50 Ft.
POR. WAIOHULI-KEOKEA BEACH HOMESTEADS, MAUI.
SUBJECT TO CHANGE
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
SECOND DIVISION
ZONE 3 SEC. 9 FLAT 09
CONTAINING PARCELS
SCALE: 1 IN. = 50 FT.
Orig. No. 1789
Source: Taxation Maps Bureau
By: J.H.H. & S.L.
Date: November, 1946

EXHIBIT A

Halama Beach House
Harrison
(2) 3-9-009:025
Subject Beach Reserve Area
(2) 3-9-009:011
Exhibit (B)

Photos taken: 4/23/09

Harrison, PSF#07MD-169

Newly installed irrigation system in operation within the beach reserve fronting Ms. Harrison's property. Photos taken at 10:45 a.m.

Photos taken: 10/7/09

Harrison, 1470 Halama Street – (2) 3-9-009:025

Photos depict newly installed irrigation lines and sprinkler heads within the Beach Reserve area fronting the Harrison property. The encroaching waterlines were observed to be tied into the water system at Ms. Harrison's property.