

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
Honolulu, Hawaii

REF:OCCL:DH

CDUA: MA-3543

Acceptance Date: May 19, 2010  
180-Day Exp. Date: November 15, 2010

October 28, 2010

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

**REGARDING:** After the Fact (ATF) Conservation District Use Application  
(CDUA) MA-3543 for Hale Kai AOA Seawall

**APPLICANT:** Mark Alexander Roy, Munekiyo and Hiraga, Inc., 305  
High Street, Wailuku, Hawaii 96793 for Hale Kai AOA  
Condominiums, 3695 Lower Honoapiilani Road, Lahaina,  
Hawaii, 96753

**LANDOWNER:** State of Hawaii, Department of Land and Natural  
Resources (DLNR)

**TMK:** Located Makai of Subject Parcel TMK: (2) 4-4-001:042,

**ISLAND:** Honokowai, Island of Maui

**AREA OF USE:** 1,480 Square Feet

**SUBZONE:** Resource

**ENFORCEMENT CASE MA-08-03**

Through Enforcement Case MA-08-30, Hale Kai AOA was instructed to remove the unauthorized improvements (boulders, cement) and restore the area back to its original condition or receive permission to keep the improvements from the Board of Land and Natural Resources (BLNR)(Exhibit 1). Hale Kai AOA was instructed to apply for a ATF CDUA.

**DESCRIPTION OF AREA AND CURRENT USE**

The subject property TMK: (2) 4-4-001:042 is located adjacent to the shores of Honokowai Beach Park, Lahaina, Island of Maui, and is located in the State Land Use

(SLU) Urban District. The condominium development is within the Urban District however areas makai of the shoreline are located in the SLU Conservation District, Resource subzone. A white sandy beach defines the subject area. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, the subject area is in a moderate to high Overall Hazard Assessment area. Access to the subject parcel is from Lower Honoapiilani Road in Lahaina (**Exhibits 2, 3 & 4**).

According to the applicant, there are no rare, threatened, or endangered species of flora or fauna on or in the vicinity of the property. There are no previously identified archeological or cultural resources located within the confines of the property or along the immediate shoreline.

### **PROPOSED USE**

Hale Kai AOA is requesting ATF CDUA approval for the 1,480 square foot seawall located on state-owned lands. Hale Kai AOA will then apply for a non-exclusive easement for the seawall from the Maui District Land Office (MDLO)(**Exhibit 5**).

### **SUMMARY OF COMMENTS**

The application was referred to the following agencies for their review and comment: DLNR - MDLO, Division of Aquatic Resources (DAR), Division of Forestry and Wildlife (DOFAW), Historic Preservation Division (HPD), Division of Conservation and Resource Enforcement (DOCARE), State Parks Division, Engineering Division, Division of Boating and Ocean Recreation (DOBOR), Maui County Planning Department, Maui County Department of Public Works, Lahaina Public Library, and Department of Health (DOH), Office of Hawaiian Affairs (OHA). Comments were received and summarized from the following agencies:

#### Maui District Land Office

Any encroachments onto State lands requires the issuance of an easement from the State of Hawaii; the MDLO does not object to the processing of the CDUA.

*Staff Note: The applicants are aware a lease for state lands needs to be obtained and will contact the MDLO.*

#### Engineering Division

We confirm that the project site, according to the Flood Insurance Rate map (FIRM) is located in Zone VE. The National Flood Insurance Program regulates developments within Zone VE as indicated in bold letters. Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator (Carol Tyau-Beam) of the DLNR, Engineering Division (808) 587-0267. Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your community's local flood ordinances may prove to be more restrictive and

thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinator (Francis Cerizo) at the County of Maui, Department of Planning (808) 270-7771.

*Applicant Response: We acknowledge the subject improvements are located in Flood Zone VE as depicted on the FIRM for the area, and note the developments within a Special Flood Hazard Area is subject to compliance with applicable NFIP rules and regulations.*

State Parks

No comments.

Division of Forestry and Wildlife

No comments.

Division of Conservation and Resources Enforcement

DOCARE conducted a site inspection at Hale Kai AOA. At the visit concern was voiced regarding the BLNR's Enforcement Case MA-08-30 terms and conditions. Fines were imposed on Hale Kai for placing boulders and cement makai of the shoreline. Hale Kai President (John Male) was asked to explain the fines. He noted the fines were paid and that the repairs were not going to exceed the property pin. No further concerns on enforcement issued.

Staff Note: DOCARE comment came in late therefore the applicant did not respond.

County of Maui, Department of Public Works

There are two open building permits (B2006/1517 and B2006/1518); please contact the Building Inspection Section to arrange final inspections.

*Applicant Response: The final building inspections have been passed for the permits noted in your comment letter.*

Donald Newton

Please see attached **Exhibit 6**.

*Staff Note: Mr. Newton's concerns and Hale Kai AOA consultant's responses are included as an attachment. Staff notes the State's concerns were addressed in the violation proceedings and the CDUA application. OCCL's focus is the ATF permitting of the structure. Staff notes the County has addressed the part of the structure located mauka of the certified shoreline and relevant permits were obtained prior to the staff report being presented to the BLNR.*

**ANALYSIS**

After reviewing the application, the department found on June 1, 2010 that:

1. The proposed use is an identified land use in the Limited subzone pursuant to Hawaii Administrative Rules (HAR) Section 13-5-23, L-6, SEAWALLS AND SHORELINE PROTECTION, D-1, "Seawalls, shoreline protection devices, and shoreline structures," please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Draft Environmental Assessment (DEA) will be published in OEQC's Environmental Notice on June 8, 2010.

The DEA was published in the June 8, 2010 Environmental Notice. The Final Environmental Assessment (FEA) was published in the September 23, 2010 Environmental Notice.

## CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The purpose of the Conservation district is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. The purpose of this CDUA is to conform to the State's land use laws and legalize the revetment and fill area that encroaches upon state land.

The small beach fronting the subject parcel is characterized by parallel bands of emergent beach rock (a formation composed of weakly cemented calcium carbonate beach sand grains. Lateral access is available; the nonexclusive easement will ensure lateral access is permanent. Retaining the existing revetment will not change the use of the land nor result in any adverse impacts to the Conservation District.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area. The area is a rocky shoreline with very little or no sandy beach. The revetment has not impeded individuals from collecting limu or fishing off of the revetment.

The proposed use is an identified land use pursuant to Hawaii Administrative Rules (HAR), Section 13-5-23, L-6, SEAWALLS AND SHORELINE PROTECTION, D-1, "Seawalls, shoreline protection devices, and shoreline structures, within the Limited Subzone of the Conservation District." The removal of the completed work on the rock revetment seawall could cause loosening of sediments to enter the near shore waters during storms.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Improvements have taken place makai of the certified shoreline. Therefore, the completed action is outside of the Special Management Area. The completed action did not adversely impact coastal recreational opportunities or lateral access along the coast as the wet beach fronting the structure is submerged for much of the tidal cycle. The completed action did not adversely impact historic or cultural resources. The completed action was carried out to protect the subject upland property from coastal erosion, waves, and other coastal hazards. The completed action did not significantly degrade the already impacted beach processes.

Staff notes that the County of Maui approved a Special Management Area (SMA) Minor approval SM2 2010/0024 (pursuant to Sections 12-202-12 and 12-202-14), and Shoreline Setback Approval 2009/0024 (pursuant to Sections 12-203-6, 12-203-11, 12-203-12, and 12-203-12(a)(5) for the seawall and its improvements.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff notes the proposed seawall will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region. Staff notes the ATF CDUA is being submitted to address the lack of an OCCL permit and issuance of an easement from the MDLO. No new action is proposed within the subject area. However, should work be proposed staff notes the Hale Kai AOA will need to consult with the OCCL.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The subject property is located in a residential neighborhood of Honokowai along the shoreline. The coastline in the vicinity of the condominium consists mostly of hardened shoreline; approximately 2,000 feet to the north of the Hale kai and 1,500 feet to the south of Honokowai Beach Park. Staff is of the opinion that the rock revetment seawall is compatible with the locality and surrounding area.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Any impacts to the environment has already occurred as this is an ATF CDUA.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

Not applicable.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

It is staff's opinion that the proposed project will not be detrimental to the public health, safety and welfare. No significant impacts of the after the fact action have been identified.

## **DISCUSSION**

The action undertaken on State owned lands and within the Conservation District was completed without the appropriate approval. Removal of the encroaching portion of the seawall would result in destabilizing the remaining coastal armoring structure and threatening the southern habitable building. Removal of the structure would not significantly improve beach processes or beach access.

## **RECOMMENDATION:**

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE After the Fact (ATF) Conservation District Use Application (CDUA) MA-3543 for Hale Kai AOA Seawall, subject to the following terms and conditions:

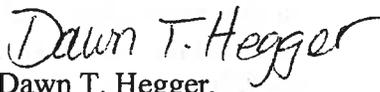
- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii

Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"

- 4) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 5) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 6) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 7) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 8) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 11) The applicant shall notified and receive prior approval from the OCCL, if additional work is to be conducted;
- 12) The applicant shall contact the Maui District Land Office to obtain an easement for the use of State-owned lands;

- 13) Other terms and conditions as may be prescribed by the Chairperson; and
- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

  
Dawn T. Hegger,  
Senior Staff Planner

Approved for Submittal

  
\_\_\_\_\_  
LAURA H. THELEN, Chairperson  
BOARD OF LAND NATURAL RESOURCES

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Laura H. Thiele  
Chairperson  
Board of Land and Natural Resources  
Commission on Water Resource Management

Russell Y. Tsuji  
First Deputy

Ken C. Kawahara  
Deputy Director, Water

Aquatic Resources  
Boating and Ocean Recreation  
Bureau of Conveyances  
Commission on Water Resource Management  
Conservation and Coastal Lands  
Conservation and Resources Enforcement  
Engineering  
Forestry and Wildlife  
Historic Preservation  
Kauai and Nihoa Island Management  
Land  
State Parks

REF:OCCI:DH

ENF: MA-08-30

CERTIFIED/RETURN RECEIPT

MAY 27 2008

John Male  
3691 Lower Honoapiilani Road, Apartment 105  
Lahaina, Hawaii 96761

RECEIVED

MAY 28 2008

David Merchant,  
305 High Street # 101,  
Wailuku, Hawaii 96793

Dear Mr. Male and Mr. Merchant,

SUBJECT: Enforcement File No. MA-08-30  
Regarding Unauthorized Seawall Improvements Located Makai of Shoreline in  
the Vicinity of Subject Parcel (2) 4-4-001:042

This is to inform you that on Friday May 23, 2008, the Board of Land and Natural Resources (BLNR) found the Hale Kai AOA to be in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes (HRS), regarding the failure to obtain the appropriate approval for the unauthorized seawall improvements located makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042, subject to the following terms and conditions:

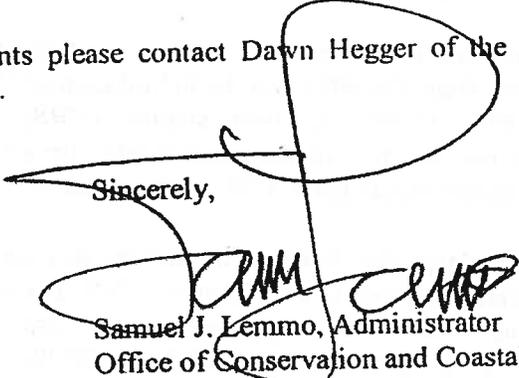
1. The Hale Kai AOA violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), two instances by placing boulders and cement material makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 in the Conservation District to occur. The landowner is fined a total of \$4,000.00 for two Conservation District violations;
2. That Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements, within 365 days from the date of the BLNR's action, unless otherwise permitted by the BLNR;
3. That Hale Kai AOA will stake the metes and bounds of their subject parcel as not to infringe upon state-owned beach lands after the removal of the boulders and cement;

EXHIBIT 1

4. That Hale Kai AOA is fined an additional \$1,000.00 for administrative costs associated with the subject violations (\$500.00 OCCL staff/\$250.00 MDLO staff/\$250 DOCARE staff);
5. That Hale Kai AOA shall pay all fines (total \$5,000.00) within thirty (30) days of the date of the Board of Land and Natural Resources' action;
6. That OCCL will transmit a copy of this report to the County of Maui to enable Maui County to investigate all other unauthorized improvements made on the seawall structure;
7. That either the OCCL and/or the MDLO staff will conduct a site visit of the area within 180 days from the date of the removal of the boulders and cement;
8. That no further work shall occur in the area within the Conservation District, without the Board of Land and Natural Resources' approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District without approval; the alleged will be fined an additional \$2,000 a day;
9. That in the event of failure of Hale Kai AOA to comply with any order herein, they shall be fined an additional \$2,000 per day until the order is complied with; and
10. That in the event of failure of Hale Kai AOA to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Should you have any questions or comments please contact Dawn Hegger of the Office of Conservation and Coastal Lands at 587-0380.

Sincerely,

  
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

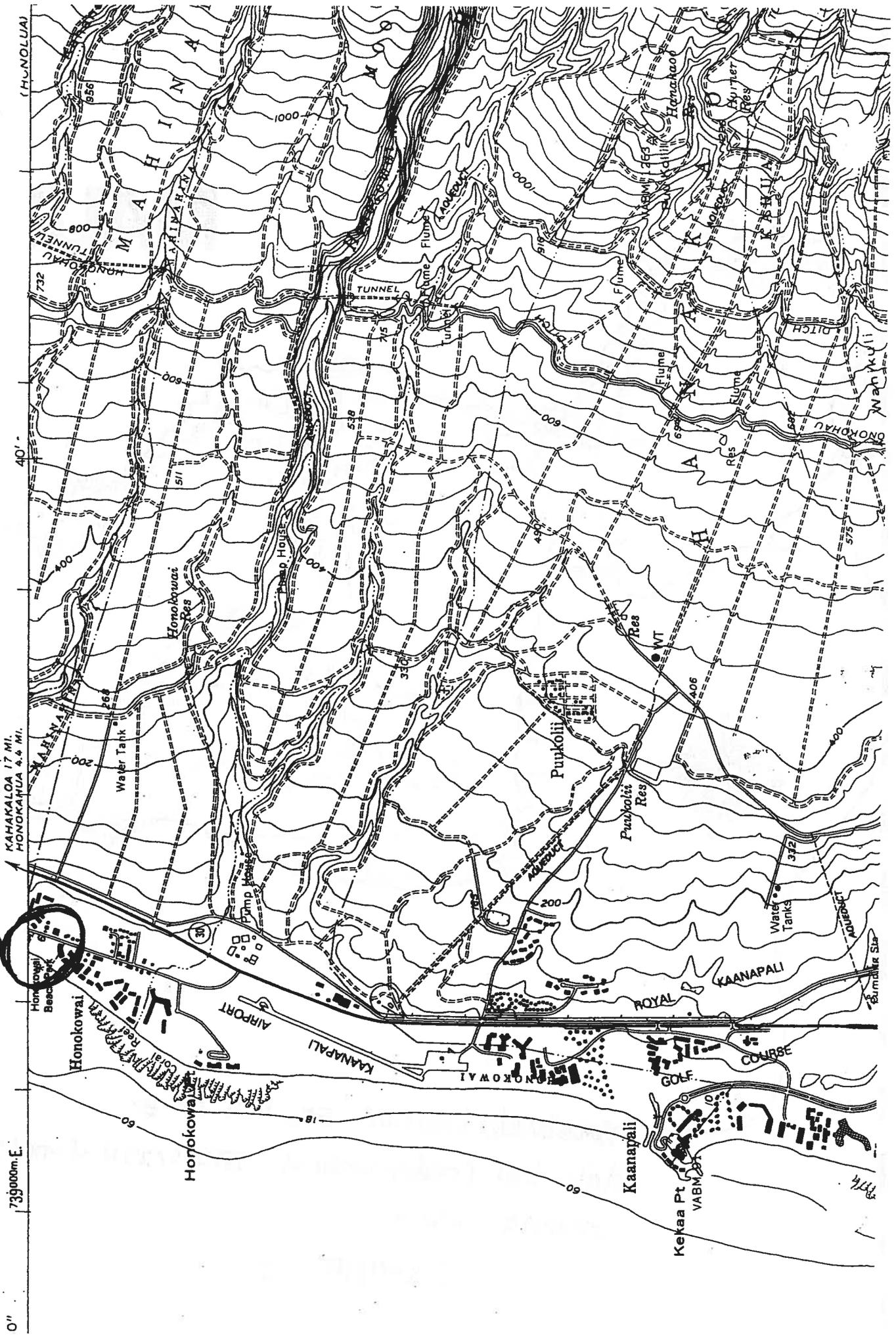
c: Chairperson  
Maui District Land Agent  
Maui County Planning Department – T. Abbot  
DOCARE – Maui Branch



Subject Parcel Hale Kai repair  
TWR: CD 4-4-001:042

EXHIBIT 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

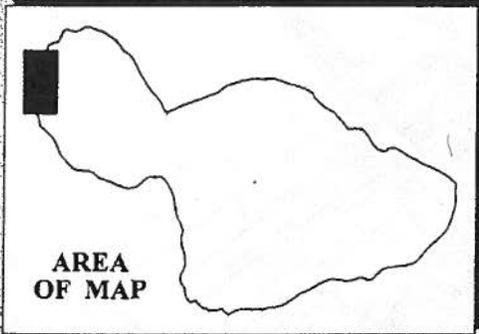


0" 739000m. E.

KAHANA 17 MI.  
HONOKAHAUA 4.4 MI.

40°

(HONOLULU)



Pacific Ocean

Subject Property

Haukoe Point

To Kapalua

Kahana

Honokowai

Honoapiilani Highway

Honokowai Point

Kekaa Point

To Lahaina

Kaanapali

Source: County of Maui, GIS

After-the-Fact Permitting for  
 Improvements to Existing Seawall/  
 Revetment  
 Regional Location Map

NOT TO SCALE

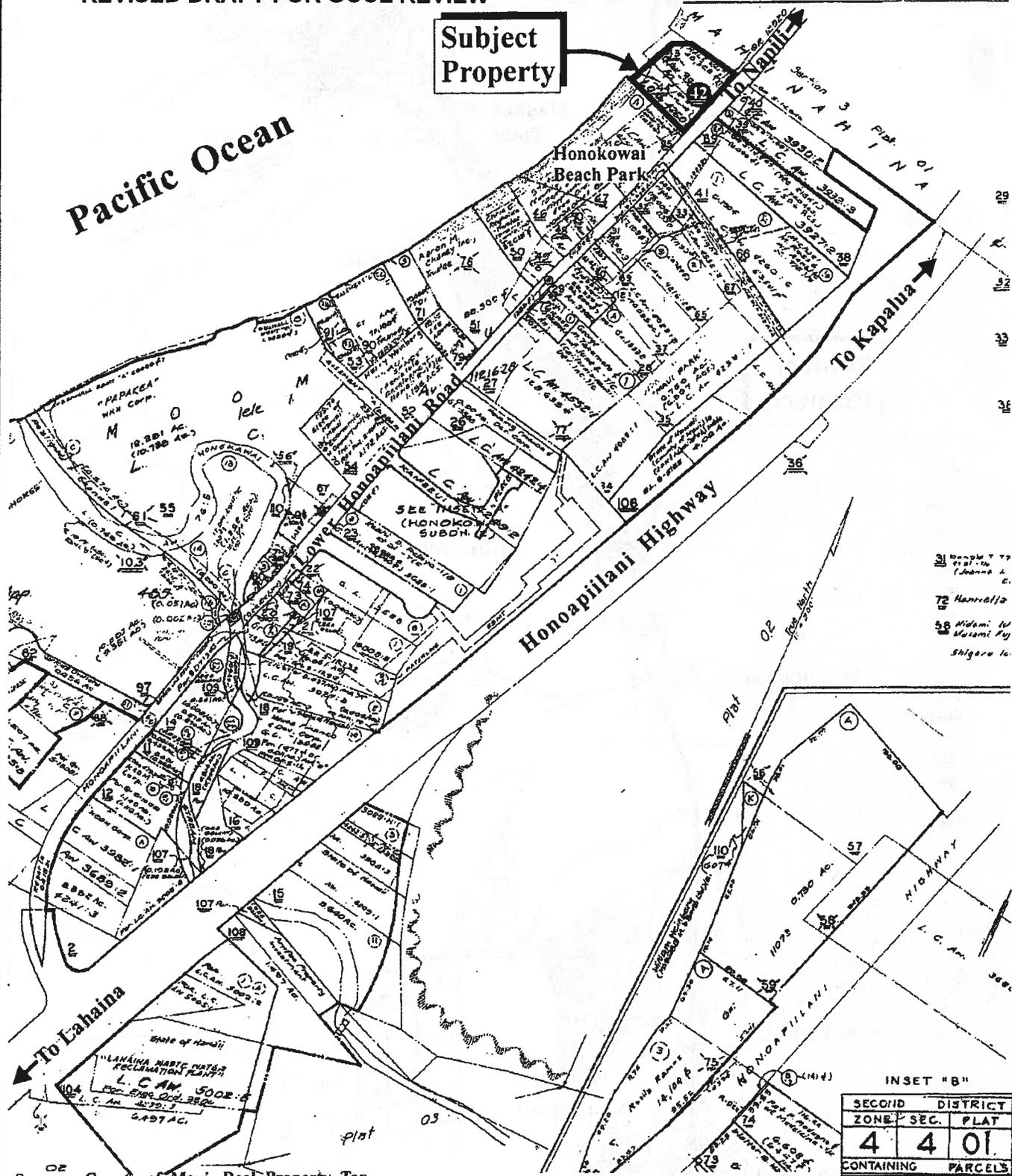


Prepared for: Hale Kai Association of Apartment Owners

MUNEKIYO & HIRAGA, INC.  
 HaleKai/Seawall 1401/DraftEA/regional

**Subject Property**

Pacific Ocean

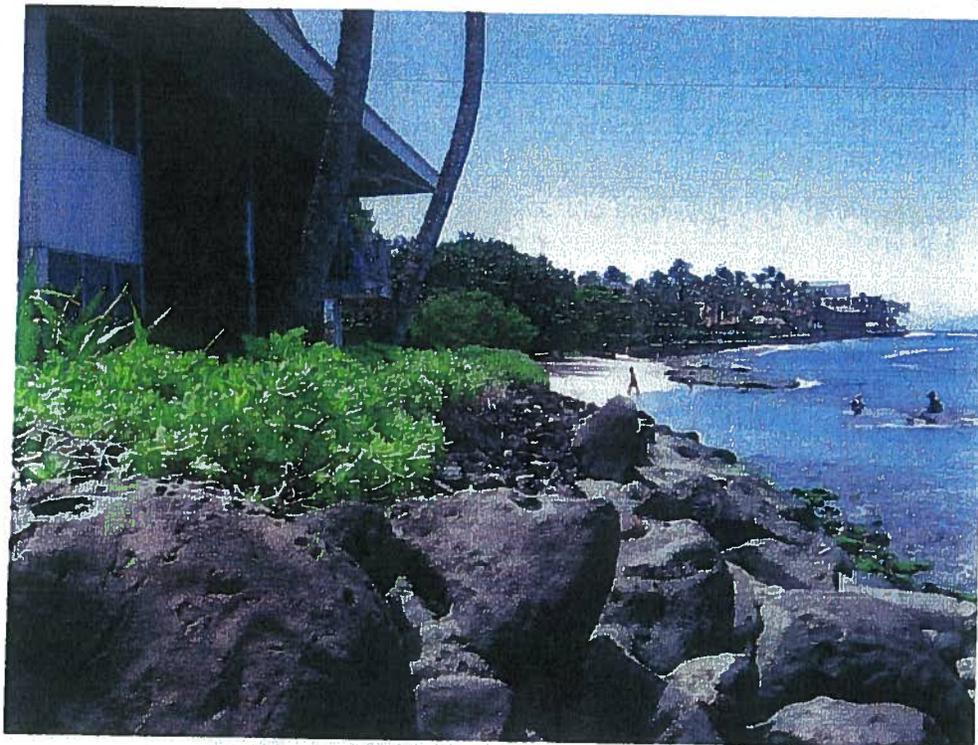


After-the-Fact Permitting for NOT TO SCALE  
 Improvements to Existing Seawall/  
 Revetment  
 Site Location Map

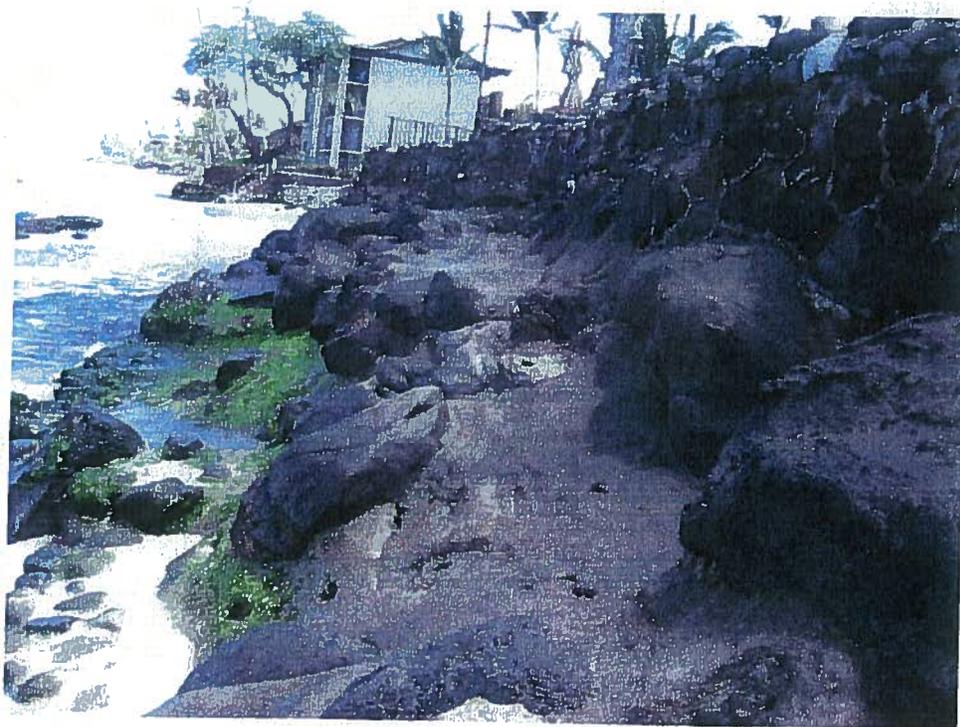


Prepared for: Hale Kai Association of Apartment Owners

MUNEKIYO & HIRAGA, INC.



**Existing Revetment Structure**



**Existing Seawall Structure**

Source: Munekiyo & Hiraga, Inc.

**Figure 8**

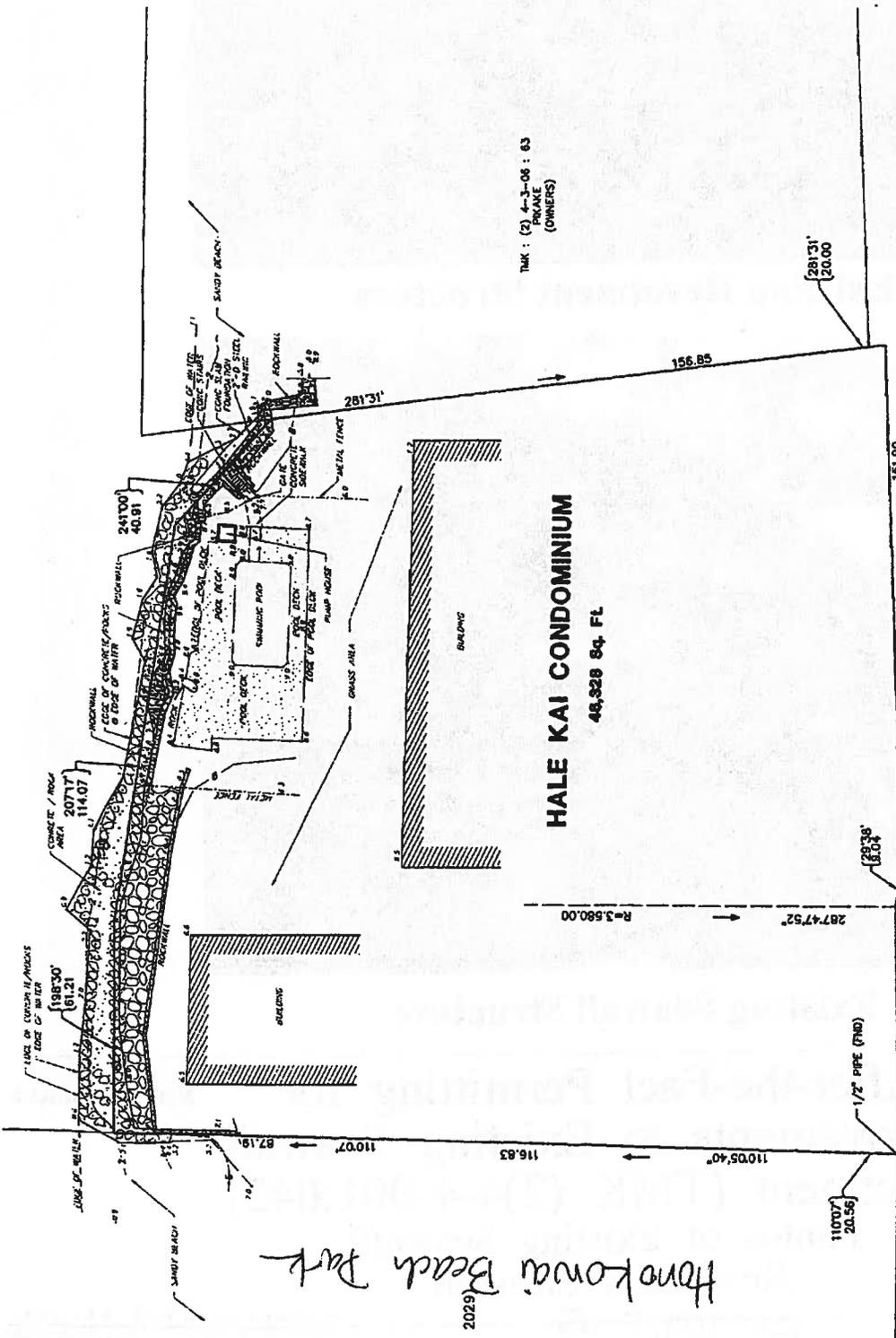
**After-the-Fact Permitting for  
Improvements to Existing Seawall/  
Revetment (TMK (2)4-4-001:042)  
Photos of Existing Seawall/  
Revetment Structure**

**NOT TO SCALE**

Prepared for: Hale Kai AOA

**EXHIBIT 5**

**MUNEKIYO & HIRAGA, INC.**  
HaleKai/Seawall 1401/DraftEA/seawallstruc estropertylin



*Honokowai Beach Park*  
2029

TMK : (2) 4-3-06 : 63  
PARKS  
(OWNERS)

LOWER HONOKOWAI ROAD

# TOPOGRAPHIC SURVEY MAP OF HALE KAI CONDOMINIUM LOT SHORELINE AREA AT HONOKOWAI, LAHAINA, MAUI, HAWAII



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION



*Kirk T. Tanaka*  
KIRK T. TANAKA  
Professional Engineer  
License Certificate No. 7223-U  
License Expires APRIL 30, 2010

11/04/00  
DATE

May 10, 2010

Sam Lemmo, Administrator  
State of Hawaii  
Department of Land and Natural Resources  
**Office of Conservation and Coastal Lands**  
P.O. Box 621  
Honolulu, Hawaii 96809

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2010 JUL -8 A 9:59

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

SUBJECT: Corrections to:  
Sea Engineering Inc. May 15, 2009 letter  
To: Roberta Donnelly From: Jim Barry  
Munekiyo & Higraga, Inc. October 2, 2009 letter  
To: Laura H. Thielen From: Mark A. Roy  
Munekiyo & Higraga, Inc. November 4, 2009 letter  
To: Sam Lemmo From: Mark A. Roy

Dear Mr. Lemmo,

I am writing this letter to inform you, your staff and the Board of Land and Natural Resources (BLNR) of some false, misleading and incomplete information provided to you by the Hale Kai AAO through their consultants Mark Roy, Munekiyo & Higraga, Inc. and Jim Barry, Sea Engineering, Inc.

The Hale Kai President, Roberta Donnelly has forbidden their consultant, Mark Roy, to communicate or discuss with me the misinformation in his correspondence. I have to assume they do not want the facts nor the truth as it may adversely influence the decisions made by the readers.

I believe that you and your staff should have the accurate, complete and factual information. When the BLNR makes their decisions on the permit violations, the decisions will be based on the complete and factual information. Without accurate and complete information the corrective actions will not solve the problems created by the violations.

This letter and the ATTACHMENTS are provided to correct the false, misleading and incomplete information. The ATTACHMENTS are provided

to support information I am providing in this letter. Many of the photos in the consultants letters are my photos, used without my permission.

From: Sea Engineering Memorandum May 15, 2009

Page 2.

2. Existing Structures

Figure 1. Project site layout

See: ATTACHMENT 1. CORRECTIONS TO Figure 1.

(1.) 55' X 24" ROCKWALL REPAIRED IN 1993 shows the actual location of the rockwall.

See: ATTACHMENT 1.A The photos, lower left and upper right "During 1993 Repairs" show the wall repair and "Gravel and Geotextile Filter" construction on the building side of the wall as approved in the January 1993 SMA/SS approval, not seaward side of the wall as shown in Figure 1. Photo upper left is before 1993 repair, photo lower right is after 1993 repair.

(2.) 1998 REPAIRS shows the actual location of the 1998 REPAIRS. No 1998 repairs were made In the area indicated by 1998 Repairs in Figure 1. by Sea Engineering.

See ATTACHMENT 1. B. to ATTACHMENT 1. H. for photos before, during and after the 1998 repairs to the sea wall.

From: Sea Engineering Memorandum May 15, 2009

Bottom of Page 2.

2. Existing Structures

1998 - Repairs made to the revetment structure in front of the south building similar to "Geotextile Filter Construction" (see Figure 1. for location)

This is a false and misleading statement. As stated above, there were no repairs made in the designated area, seaward of the rock wall and in front of the south building. All 1998 repairs were made in front of the grass area, north of the walkway and the south building as shown in ATTACHMENT 1.

(2.) 1998 REPAIRS.

From: Munekiyo & Higraga, Inc. October 2, 2009 letter

Page 1. BOULDER REPAIR AND MAINTENANCE WORK

Munekiyo & Higraga, Inc. November 4, 2009 letter

Page 2. (a) 1998 Boulder Repair and Maintenance Work

The following are false and misleading statements: The boulder work undertaken in 1998 and entailed (1) the widening of a pre-existing erosion channel running behind (mauka of) the existing boulder revetment and in front of a decorative landscaping wall that exists along the south side of the property, and (2) the placement of various sized rocks/boulders into the trench to stabilize the affected area and prevent further erosion. The work was undertaken by Hale Kai AOA in an effort to address wave-related water damage and building maintenance issues that were occurring within one of the condominium buildings that lies in close proximity to the ocean at this particular location.

See ATTACHMENT 1. B. BEFORE 1998 REPAIRS. Photos show the naupaka growing along the wall to the pool fence.

See ATTACHMENT 1. C. REMOVED NAUPAKA Photos show the removal and trucking away of the cut naupaka.

See ATTACHMENT 1. D. NAUPAKA VEGATATION REMOVED 1998. Photos show the area, oceanside of the wall, after the naupaka vegetation was removed. There is no pre-existing erosion channel.

See ATTACHMENT 1. E. TRENCH DUG TO REMOVE NAUPAKA ROOTS. Photos show trench dug to remove the naupaka roots.

See ATTACHMENT 1. F. PLACING BOULDERS IN ROOTS REMOVED TRENCH Photos show placing boulders and rocks into naupaka roots removed trench using a small bobcat.

See ATTACHMENT 1. G. MORE BOULDERS TO FILL ROOTS REMOVED TRENCH Photos show more placement of boulders and rocks in the naupaka roots removed trench.

See ATTACHMENT 1. H. COMPLETED PLACEMENT OF BOULDERS AND ROCKS TO TOP OF WALL Photos show the completed 1998 repair on both sides of the wall. All of the 1998 repairs were made in front of the grass area. The south building is to the left of the walk way and 20 feet way from the closest 1998 repaired location. At the time the 1998 repairs were made there were no "wave related damage and building maintenance issues" with the south building. The Hale Kai AOA was more interested in a new wall at the entrance to the property which was included as a free wall for the \$24,400 1998 seawall repair.

From: Sea Engineering Memorandum May 15, 2009  
Bottom of Page 2.

## 2. Existing Structures

2004 - Seawall structure raised approximately 16 inches; grout repair done around selected wall sections and individual stones (see Figure 4)

The “seawall structure raised approximately 16 inches” took five (5) workers three (3) days to complete. (4/26/04 to 4/28/04) The “grout repair done around selected wall sections and individual stones” took one (1) worker less than two (2) hours on 4/29/04. He even had time to grout his name.

See ATTACHMENT 2. PHOTOS OF 2004 WALL CONSTRUCTION AND GROUTING REPAIRS. Two photos of workers constructing the “16 inch seawall” and two photos of “grout repairs around selected sections and individual stones”

ATTACHMENT 2. Also applies to the first paragraphs :

From: Munekiyo & Higraga, Inc. October 2, 2009 letter

Page 2. CEMENT GROUTING REPAIR AND MAINTENANCE WORK

Munekiyo & Higraga, Inc. November 4, 2009 letter

Page 2. (b) 1998 Cement Repair and Maintenance Work

There is no reference in the above, Munekiyo & Higraga, Inc. documents about the “raising of the seawall structure 16 inches”. Maybe it will be included in the E.A.

From: Sea Engineering Memorandum May 15, 2009

Bottom of page 2

2. Existing Structures

2007 – “Gravel and Geotextile Filter Construction” repairs made to the revetment structure (see Figure 1. For location); Repairs are futher discussed below;

See ATTACHMENT 3. PHOTOS of LOCATION IN Figure 1. 2007 REPAIR. In the photos note the location of the 16” seawall and pool fence in relation to the location of the 2007 Repair in Figure 1.

See ATTACHMENT 1. (3.) 2007 Repair shows the actual location of the 2007 filter fabric trench. The location in Figure 1. is in the base of the

revetment that is composed of “rock grouted into relatively massive units”  
The actual location of the trench begins at the pool fence, runs south along the rock wall for approximately 20 feet. The west side, of the trench runs north to south from the pool fence and is approximately four (4) feet seaside from the rock wall.

See ATTACHMENT 1. H. COMPLETED PLACEMENT OF BOULDERS AND ROCKS TO TOP OF WALL. In the photos, note the location of the pool fence, naupaka and the shower pole, palm trees, bushes and building located on the mauka side of the wall.

From: Sea Engineering Memorandum May 15, 2009

Page 3.

Figure 5. Seawall condition existing during 2007 site visit.

Figure 5. is misleading. As shown in ATTACHMENT 1. H. the rocks are to the top of the wall. There is some erosion caused by the drainage of the ocean water that collected behind the wall, flowing south beyond the pool fence. The erosion under the pool fence extends north approximately four (4) feet. See ATTACHMENT 4. PHOTOS OF POOLING OCEAN WATER BEHIND SEAWALL AND PHOTOS OF EROSION UNDER POOL FENCE.

From: Sea Engineering Memorandum May 15, 2009

Page 5.

Figure 7. Condition of repaired revetment, January 2009

Figure 7. is misleading and incorrect.

See ATTACHMENT 5. ACTUAL CONDITIONS ON 1-20-09. The filter fabric trench built on 8/4/07, by an unlicensed contractor, was not built to the Sea Engineering Inc. specifications: It was not dug down to weathered coral. See ATTACHMENTS 6. to 10. for photos of the 2007 filter fabric trench construction.

From: Sea Engineering Memorandum May 15, 2009

Page 6. & 7.

*Corrective Action*

1. *Seawall*

The recommended "less costly solution" of controlling wave overtopping is to plant naupaka.

With the 16" vertical wall, constructed in 2004 and the raised height of 9", the wave overtopping sometimes reaches 20 feet high. See ATTACHMENT 11. OVERTOPPING WAVES. \* Note photos 1. & 2. south of pool fence. No 20 ft. overtopping, only run up along the full length of revetment south to the park beach.

The solution is to go back to their roots. Prior to the vertical wall built in 2004 there were never 20 ft. overtopping waves. Remove the vertical wall built in 2004, which will allow the waves to flow back into the ocean as it has been doing for since 1966. (\* see Note ATTACHMENT 11.) Then plant naupaka along the oceanfront of the property as shown in ATTACHMENT 12. NAUPAKA OCEANSIDE BEFORE VERTICAL WALL.

From: Sea Engineering Memorandum May 15, 2009

Page 7.

*Corrective Action*

*2. Revetment*

The recommended corrective action is to modify the crest to comply with the schematic representation shown in Figure 6. As follows:

- Remove the crest stones
- Excavate gravel 3 feet down below the crest
- Fill the excavation with stones approximately 1.5 ft. to 2 ft. in diameter.

This recommendation corrective action will put this area back to its original condition (see ATTACHMENT 1. H.) except for having a geotextile filter fabric around the stones placed in the 3 ft. deep trench.

The corrective action that should be undertaken for this area is to dig down to weathered coral, install a sand base, line the trench with filter fabric, fill with gravel to existing grade, then fill with stones to wall height as shown in Figure 6.

From: Munekiyo & Higraga, Inc. October 2, 2009 letter

Page 6. **Exhibit "B"**

Exhibit "B" is incorrect and misleading. See ATTACHMENT 13. REVISED Exhibit "B". The actual location of the 1998 BOULDER REPAIR WORK and 2004 CEMENT WALL REPAIR WORK is shown.

For additional information please review my September 21, 2009 letter to Clayton I. Yoshida, Re. Your letter to Mark Roy Dated October 13, 2008.

Thank you for your review of this information. If it would help your evaluation and the Board's decision process, I would make myself available to meet with staff and/or testify before the Board.

Should you have any questions or require additional information, please contact me at (808)669 6691.

Very truly yours,

Donald B. Newton  
3691 L Honoapiilani Rd. #201  
Lahaina, HI 96761

LIST OF ATTACHMENTS  
ATTACHMENTS

cc: James Buika, County of Maui, Department of Planning  
(w/ATTACHMENTS, via mail)  
Dawn Hegger, Office of Conservation and Costal Lands  
(w/ATTACHMENTS, via email)

TO: SAM LEMMO MAY 10, 2010

**LIST OF ATTACHMENTS:**

ATTACHMENT 1. CORRECTIONS TO Figure 1.

(1.) 55' X 24" ROCKWALL REPAIRED IN 1993

(2.) 1998 REPAIRS

(3.) 2007 REPAIRS

ATTACHMENT 1. A. BEFORE, DURING AND AFTER THE 1993 REPAIRS

ATTACHMENT 1. B. BEFORE THE 1998 REPAIRS

ATTACHMENT 1. C. NAUPAKA VEGETATION BEING REMOVED

ATTACHMENT 1. D. NAUPAKA VEGETATION REMOVED

ATTACHMENT 1. E. TRENCH DUG TO REMOVE NAUPAKA ROOTS.

ATTACHMENT 1. F. PLACING BOULDERS IN ROOTS REMOVED TRENCH

ATTACHMENT 1. G. MORE BOULDERS TO FILL ROOTS REMOVED TRENCH

ATTACHMENT 1. H. COMPLETED PLACEMENT OF BOULDERS AND ROCKS TO THE TOP OF WALL

ATTACHMENT 2. PHOTOS OF 2004 WALL CONSTRUCTION AND GROUTING REPAIRS

ATTACHMENT 3. PHOTOS OF LOCATION IN Figure 1. OF 2007 REPAIRS

ATTACHMENT 4. PHOTOS OF POOLING OCEAN WATER BEHIND SEAWALL AND PHOTOS OF EROSION UNDER POOL FENCE.

ATTACHMENT 5. ACTUAL CONDITIONS ON 1-20-09

LIST OF ATTACHMENTS: (continued)

ATTACHMENT 6. PHOTOS OF REMOVAL OF NAUPAKA 8/4/07

ATTACHMENT 7. DIGGING TRENCH

ATTACHMENT 8. TRENCH BEFORE FILTER FABRIC

ATTACHMENT 9. INSTALLING FILTER FABRIC

ATTACHMENT 10. COMPLETING FILTER FABRIC TRENCH

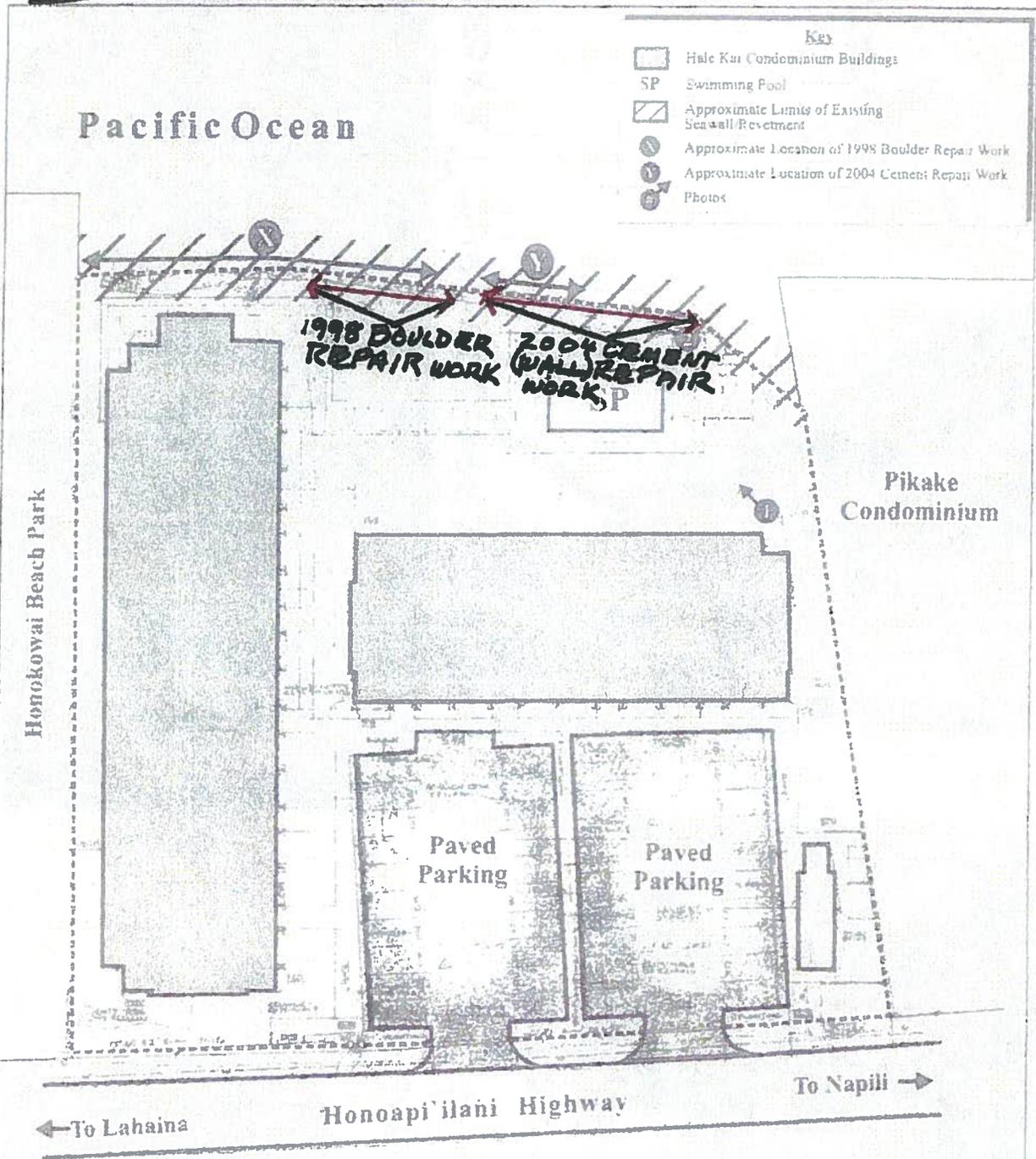
ATTACHMENT 11. OVER TOPPING WAVES

ATTACHMENT 12. NAUPAKA OCEANSIDE BEFORE WALL

ATTACHMENT 13. REVISED Exhibit "B" INDICATING ACTUAL 1998 BOULDER REPAIR WORK AND 2004 CEMENT (WALL) REPAIR WORK



# ATTACHMENT 13.



Source: Lemmon, Freeth, Haines & Jones, Ltd (1965)

Exhibit "B"

Hale Kai Condominium

NOT TO SCALE

TMK (2)4-4-001:042

Site Plan and Photo Reference Map

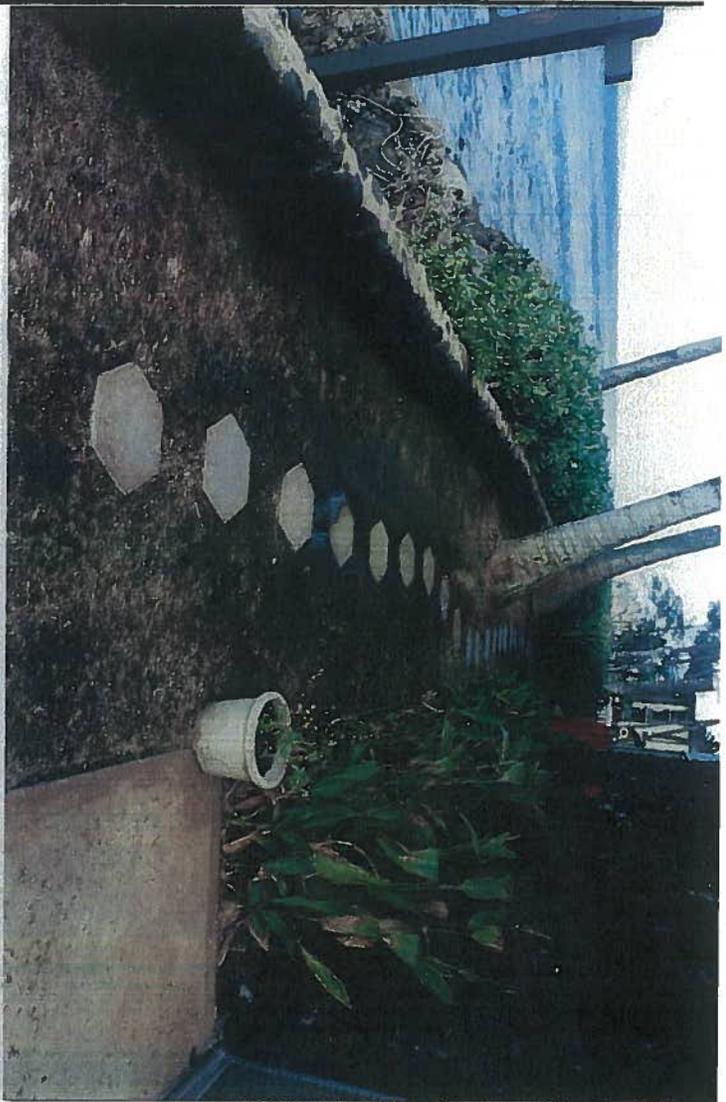


Prepared for: Hale Kai AOA

MUNERITO & PIRAGA, INC

HaleKaiSeawall 1401 0109 map01.rvt

# ATTACHMENT 13.



BEFORE ↑ DURING ↓ 1993 REPAIR



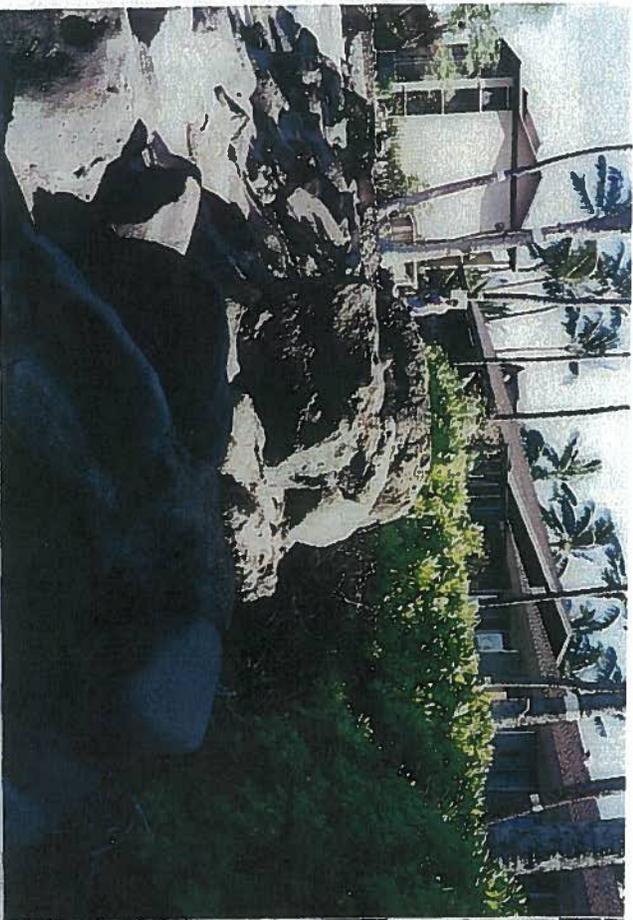
DURING 1993 REPAIR



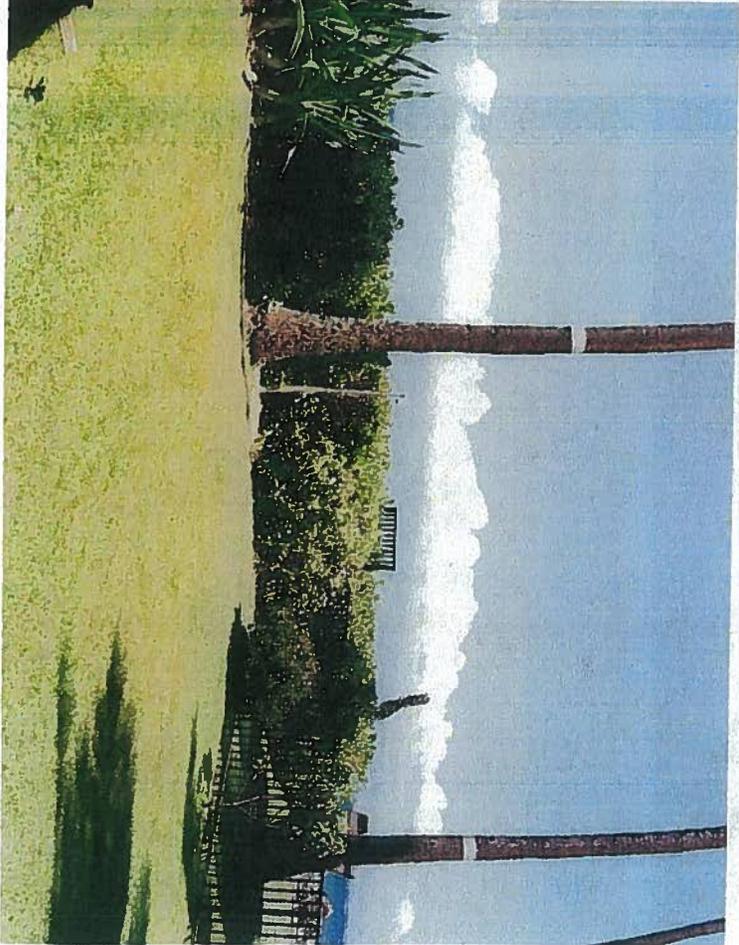
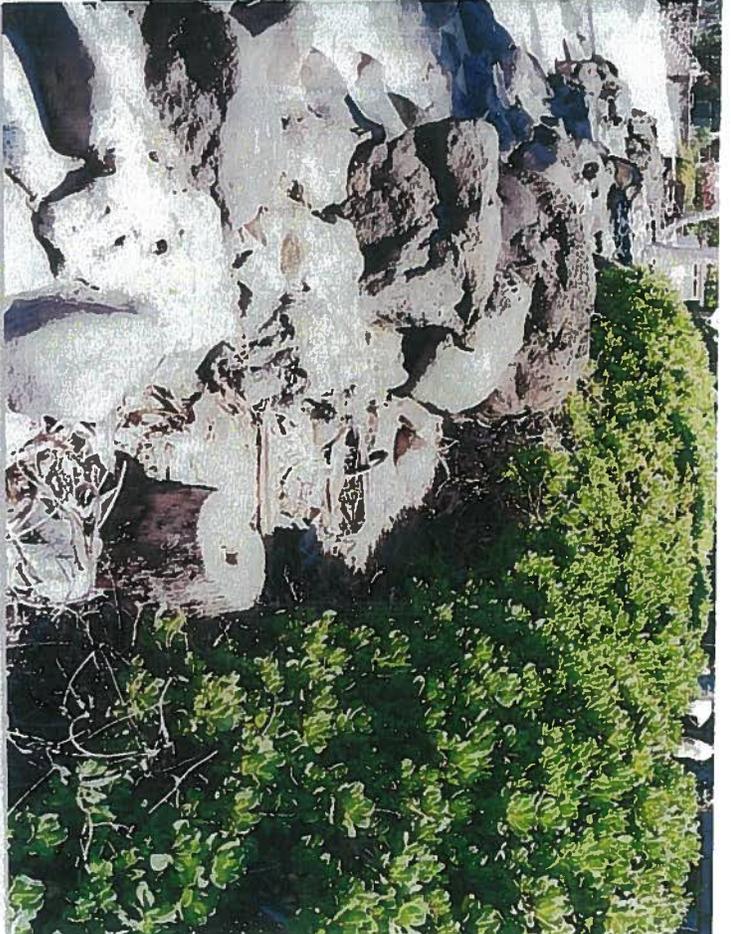
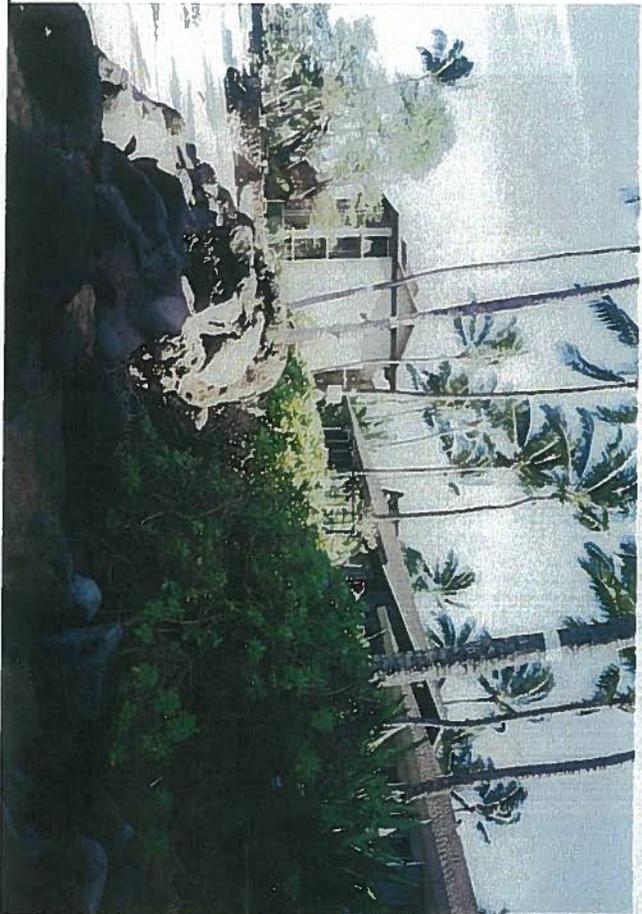
AFTER 1993 REPAIR

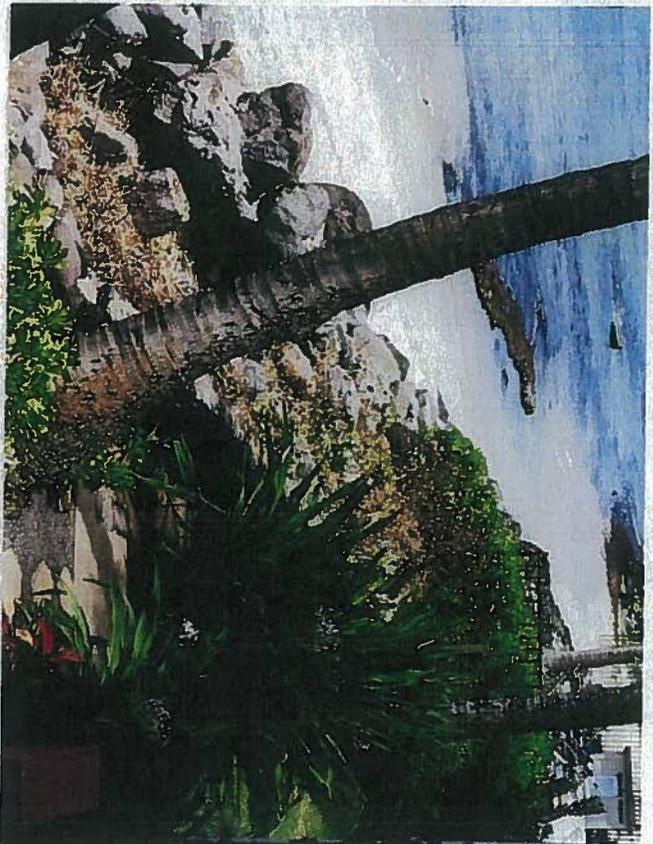
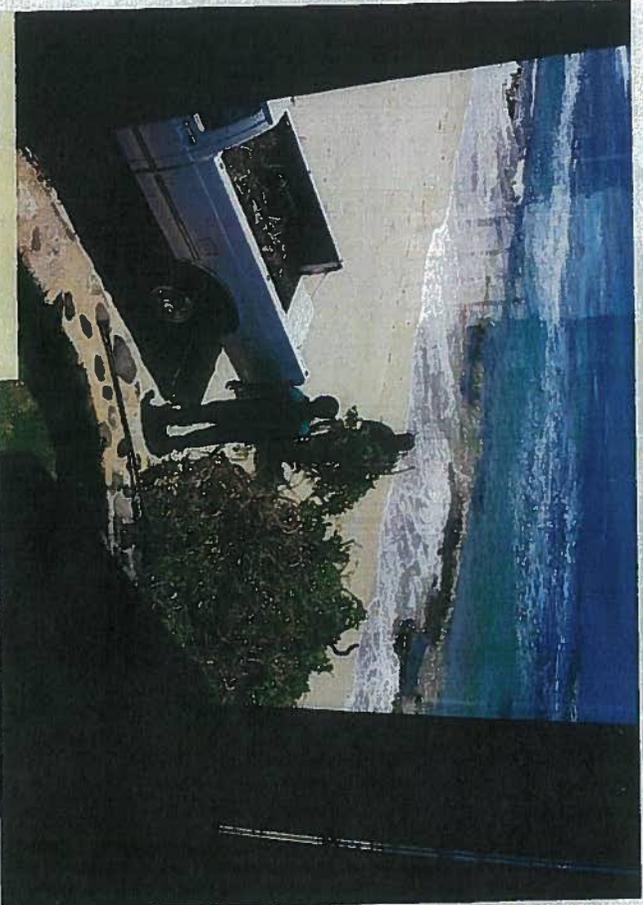
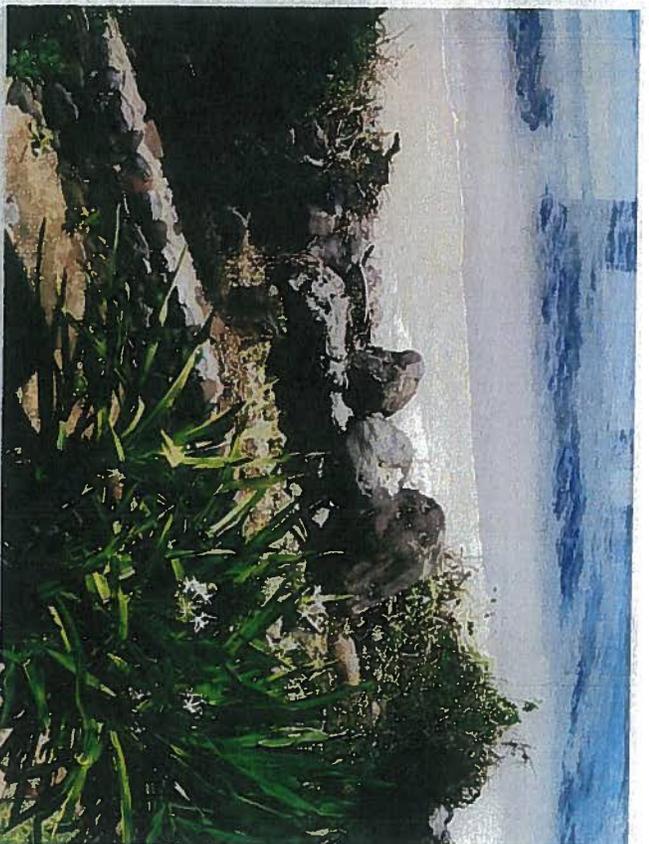
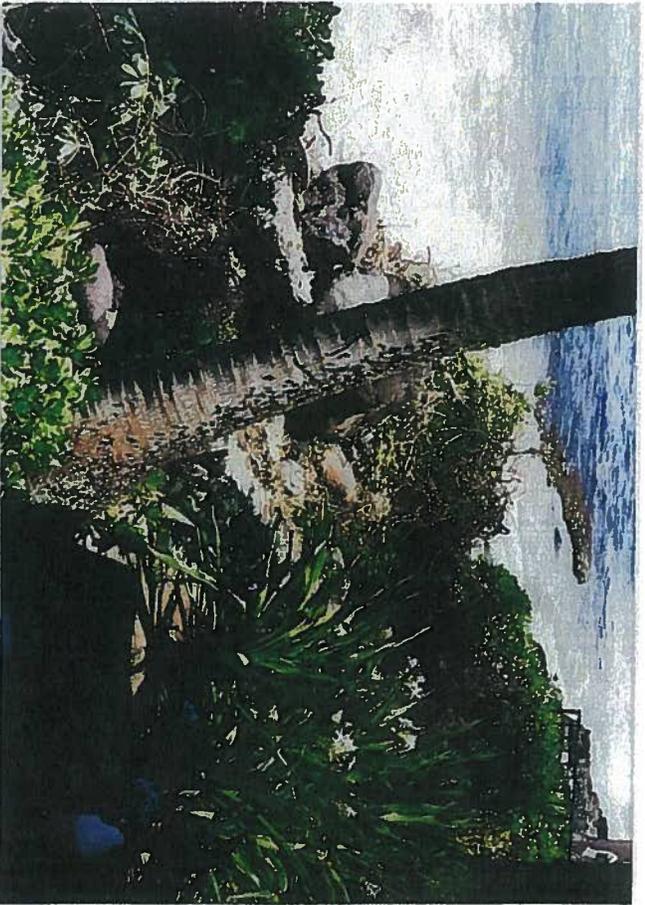


ATTACHMENT  
1. A.



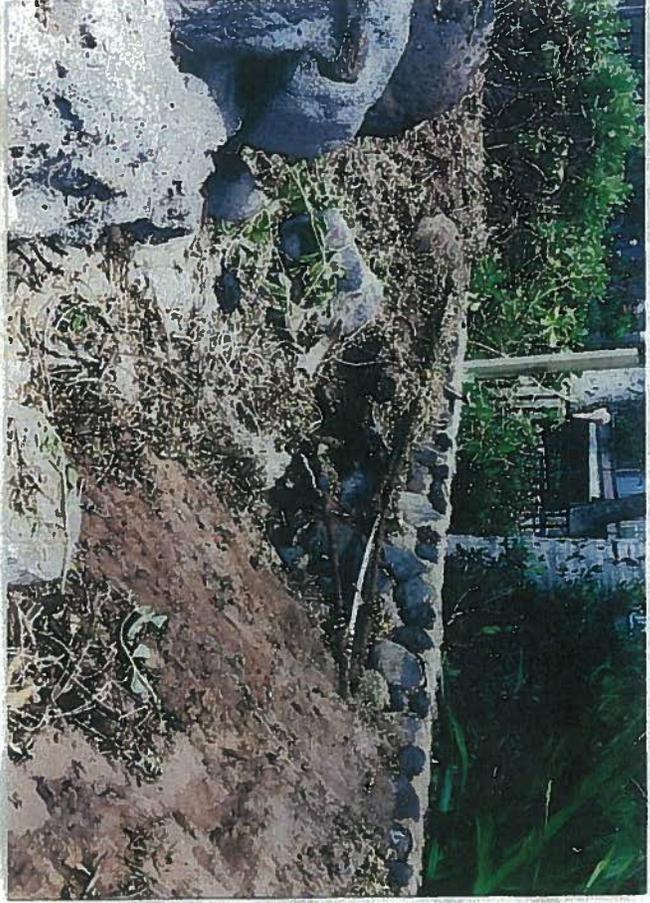
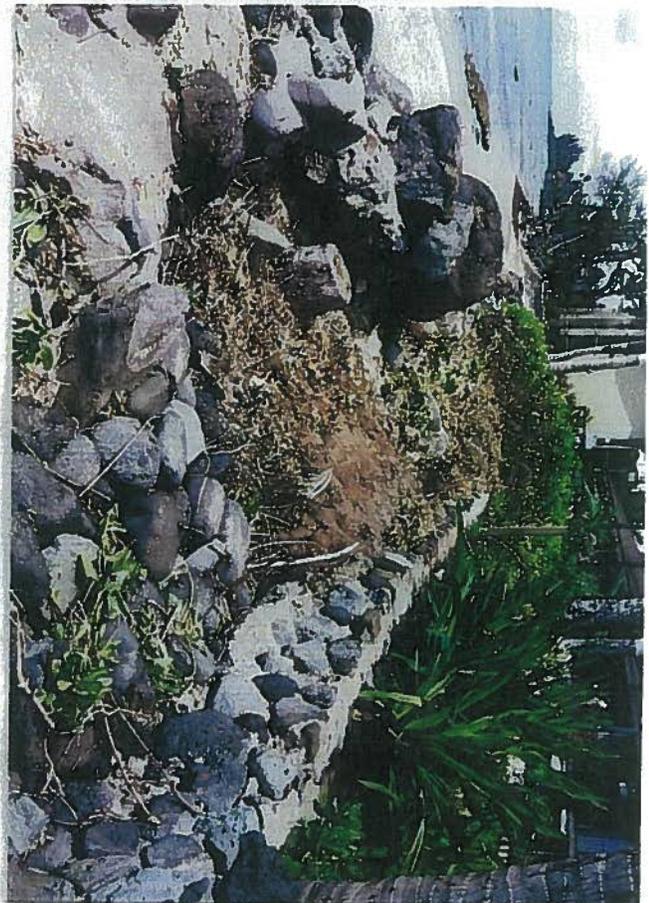
ATTACHMENT BEFORE 1998 REPAIR  
I. B.





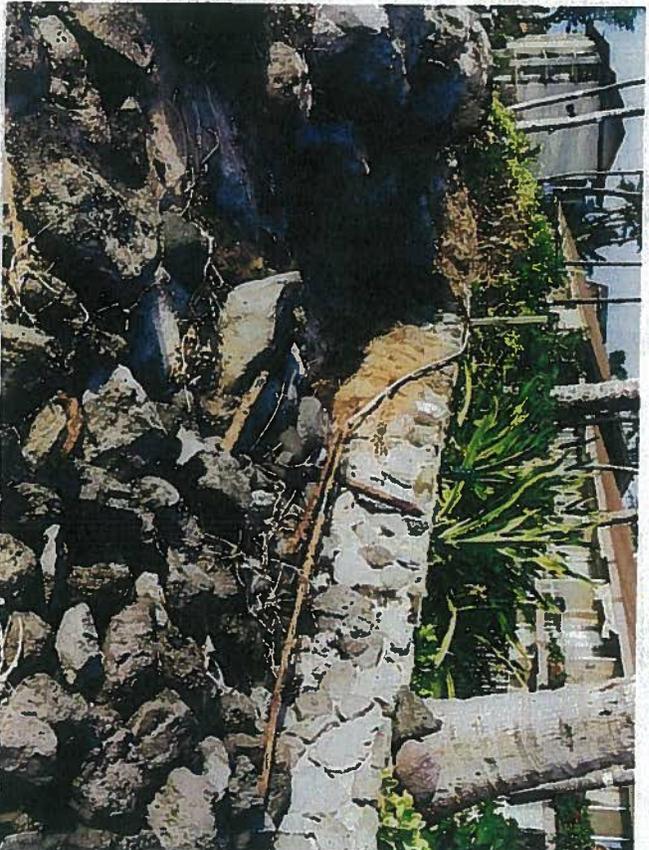
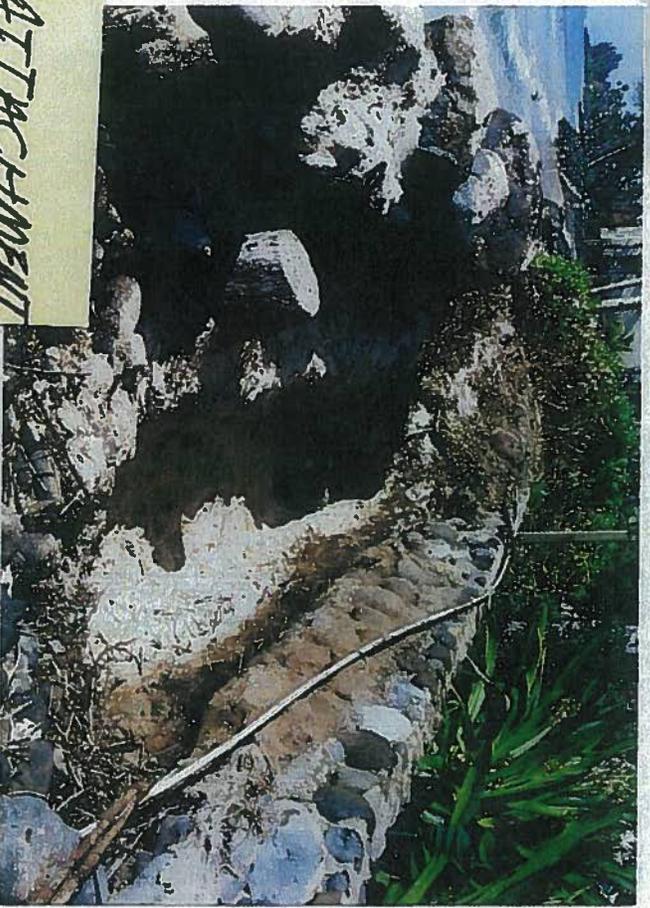
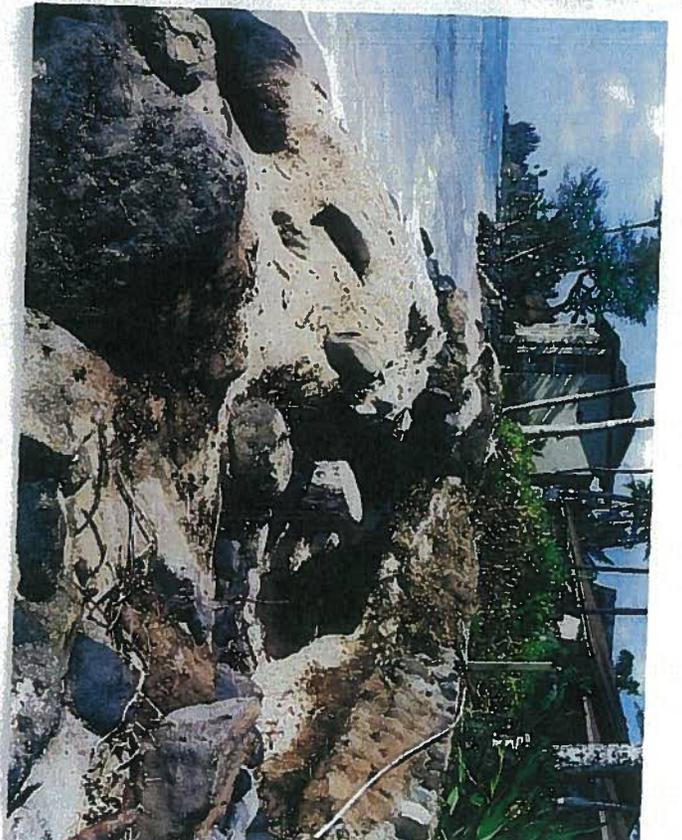
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1. C.

NAUPAKA VEGETATION BEING REMOVED



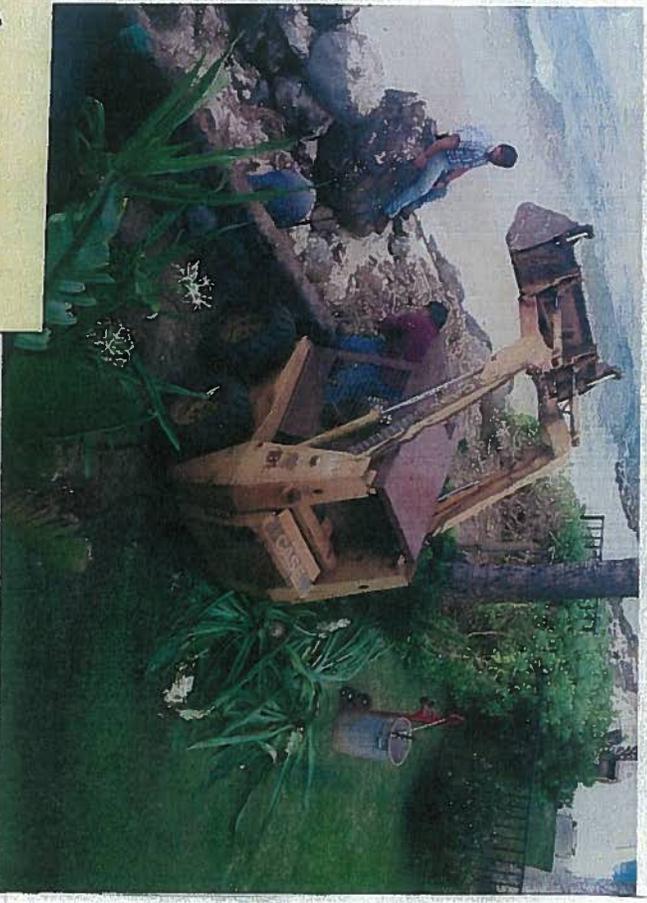
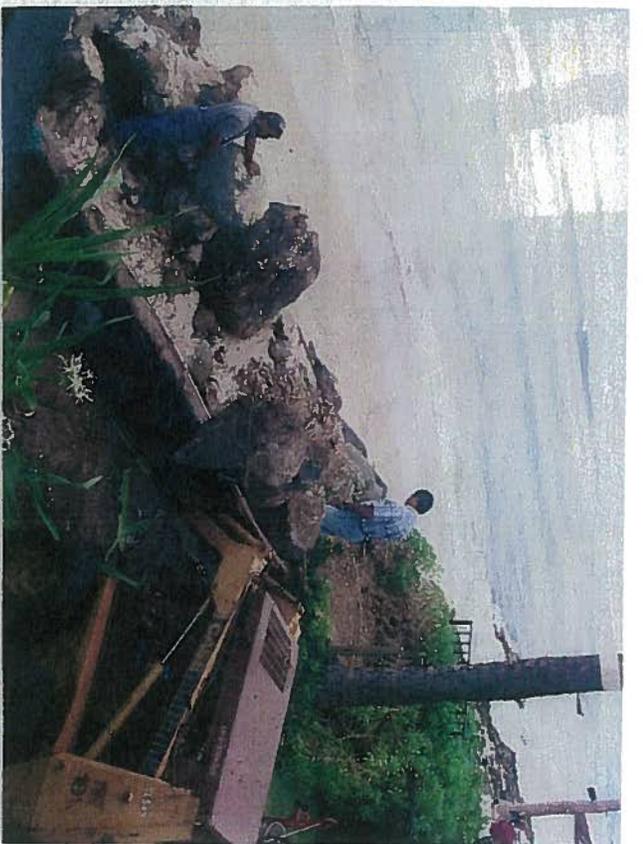
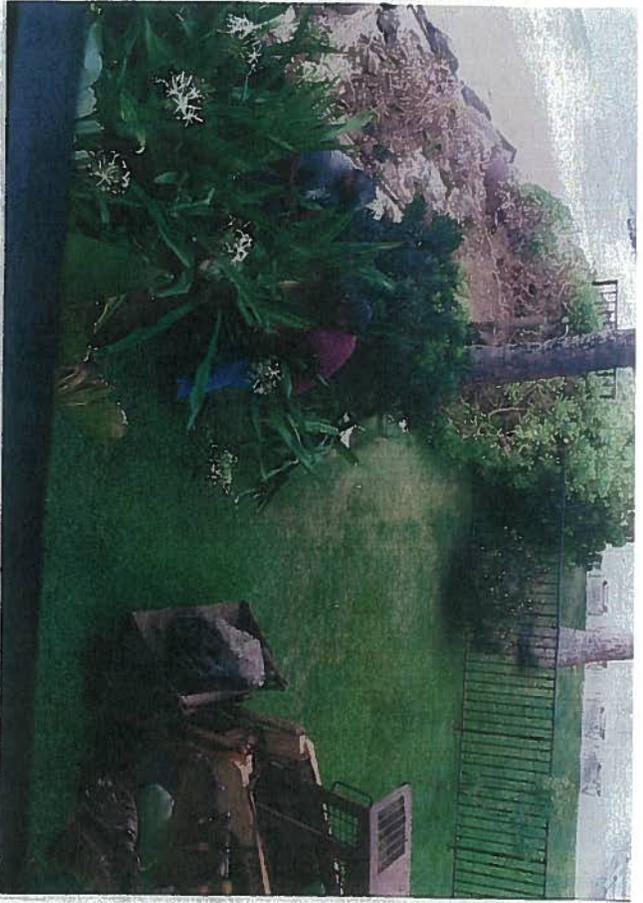
ATTACHMENT  
1. D.

NAUPAKA VEGETATION REMOVED



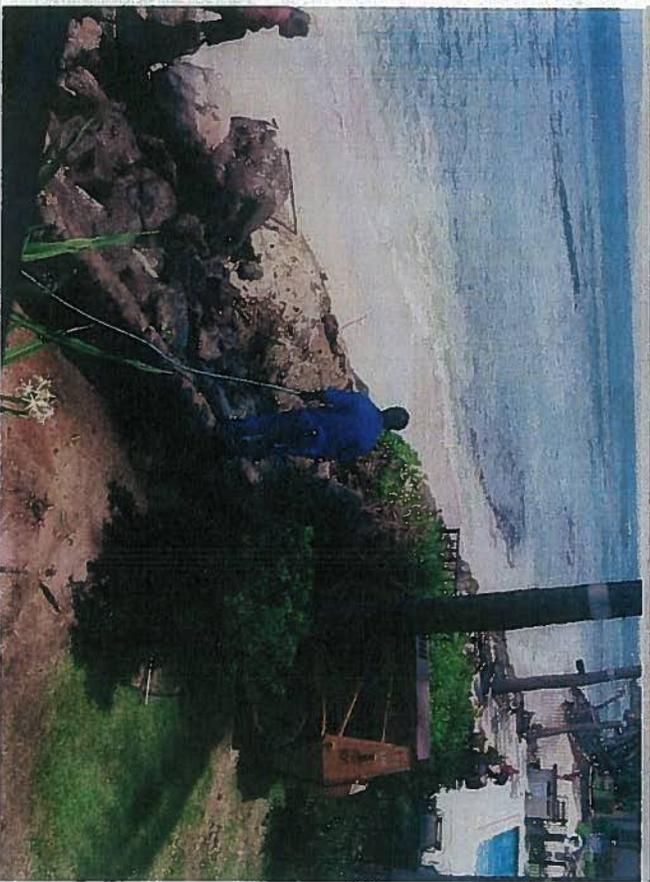
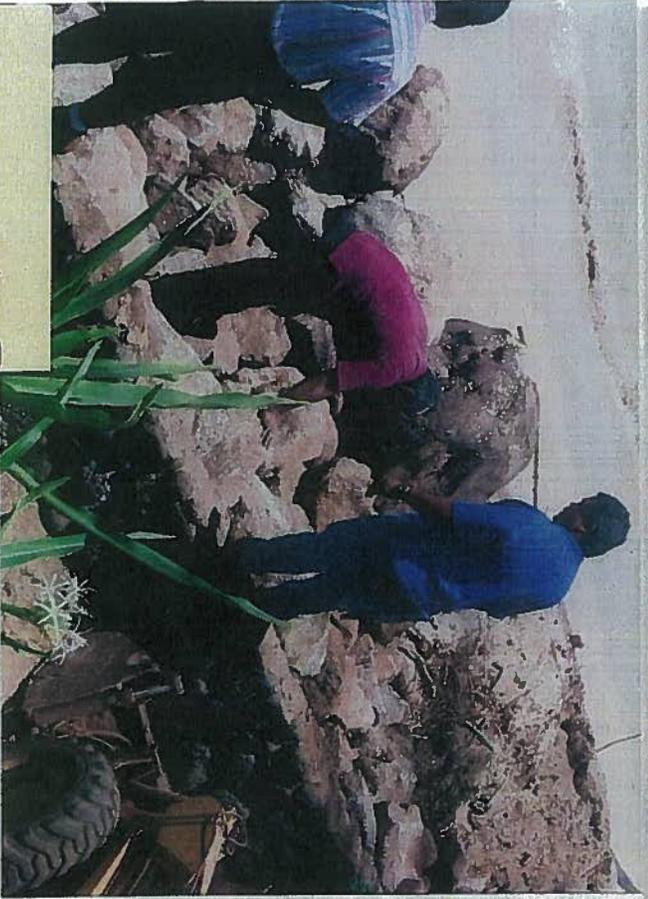
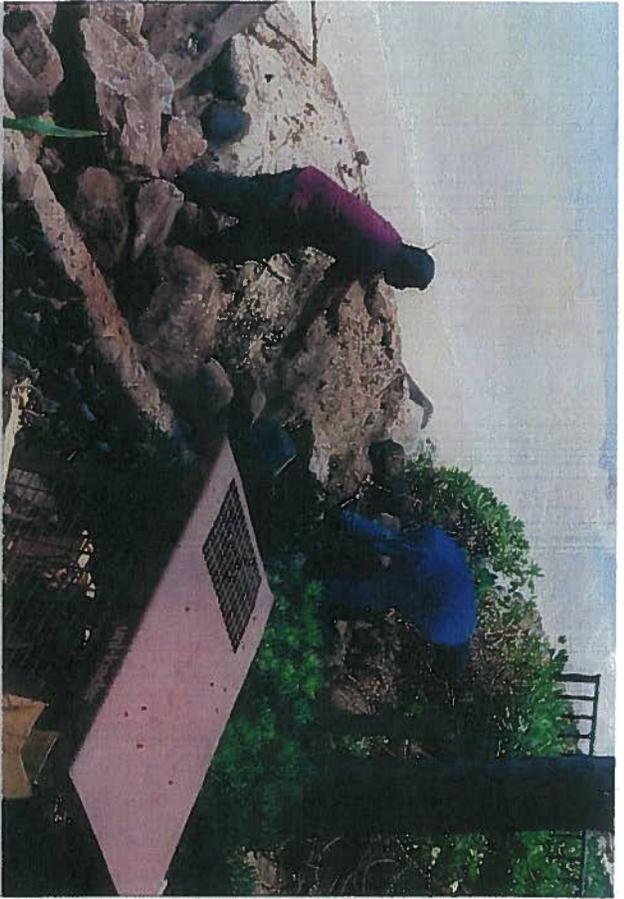
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1. E.

TRENCH DUG TO REMOVE NAUPAKA ROOTS



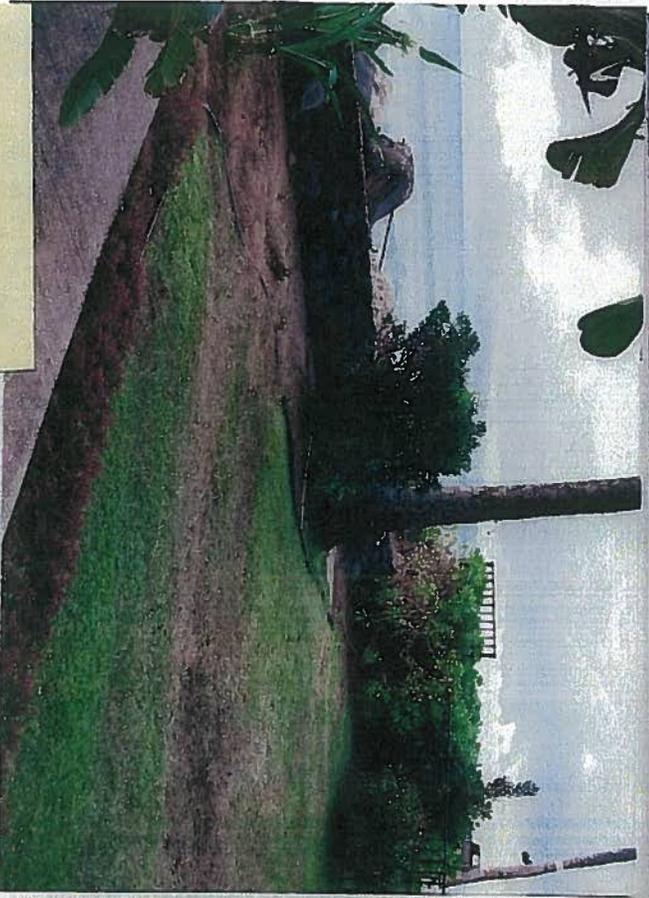
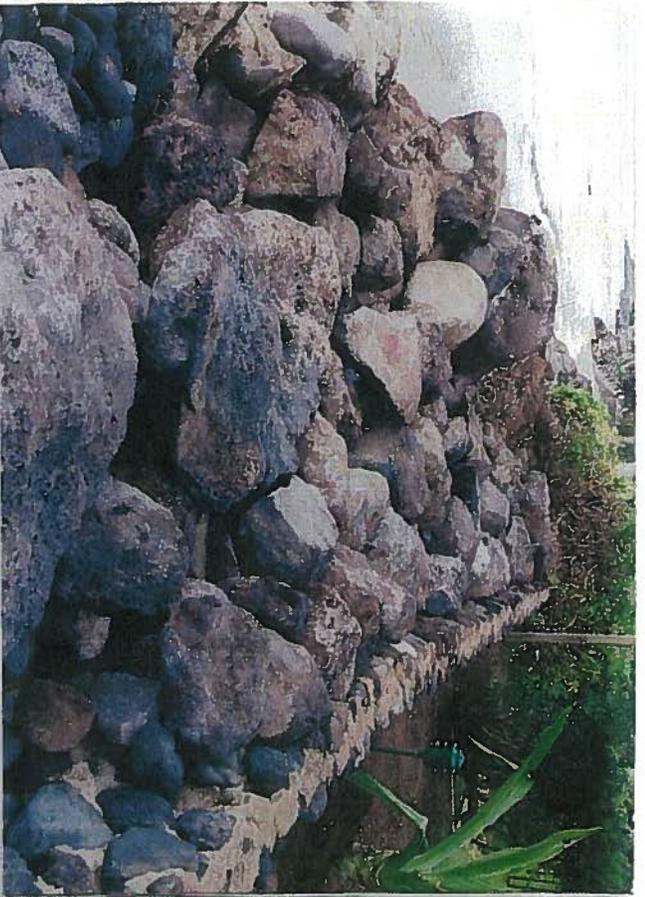
ATTACHMENT  
1. F.

PLACING BOULDERS IN ROOT TRAIL



ATTACHMENT  
1. G.

MORE BOULDERS TO FILL ROBT  
TRENCH



ATTACHMENT  
1. H.

COMPLETED PLACEMENT OF BOULDERS  
AND ROCKS TO TOP OF WALL



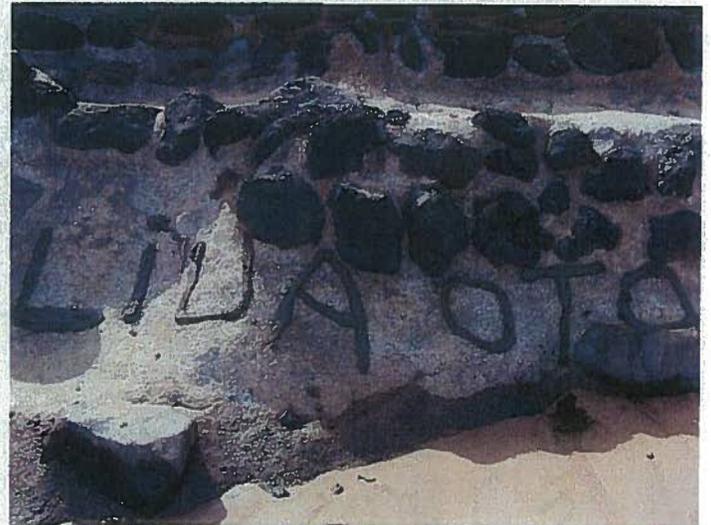
1. 7/26/04.JPG



2. 7/26/04.JPG

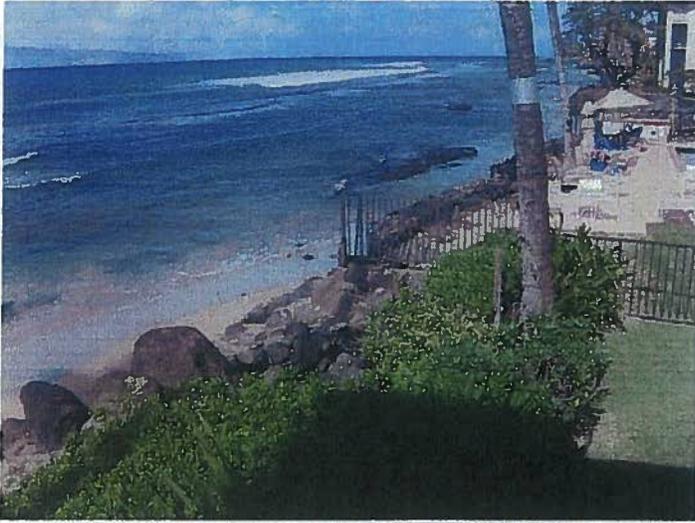


3. 7/29/04.JPG



4. 7/29/04.JPG

ATTACHMENT  
2.



1.LOOKING NORTH.JPG



2.LOOKING N/E.JPG



3.LOOKING EAST.JPG

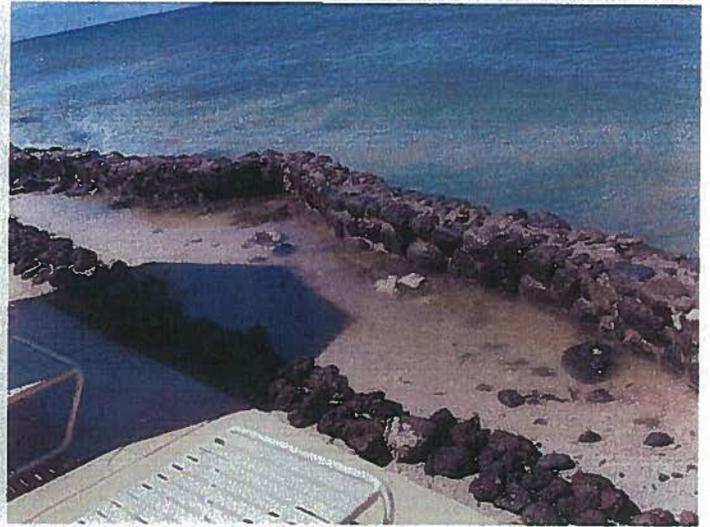


4.LOOKING NORTH.JPG

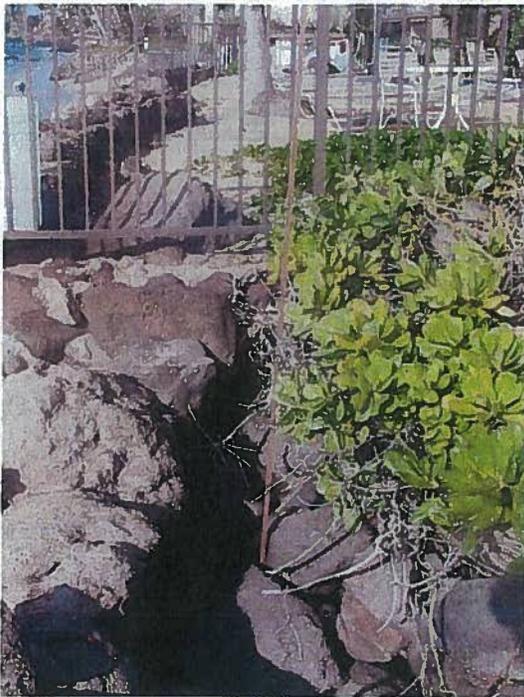
ATTACHMENT  
3,



1. POOLING.JPG



2. POOLING .JPG



3.HOLE 12/30/05.JPG



4.HOLE 12/30/05.JPG

ATTACHMENT  
4.

# ATTACHMENT 5.

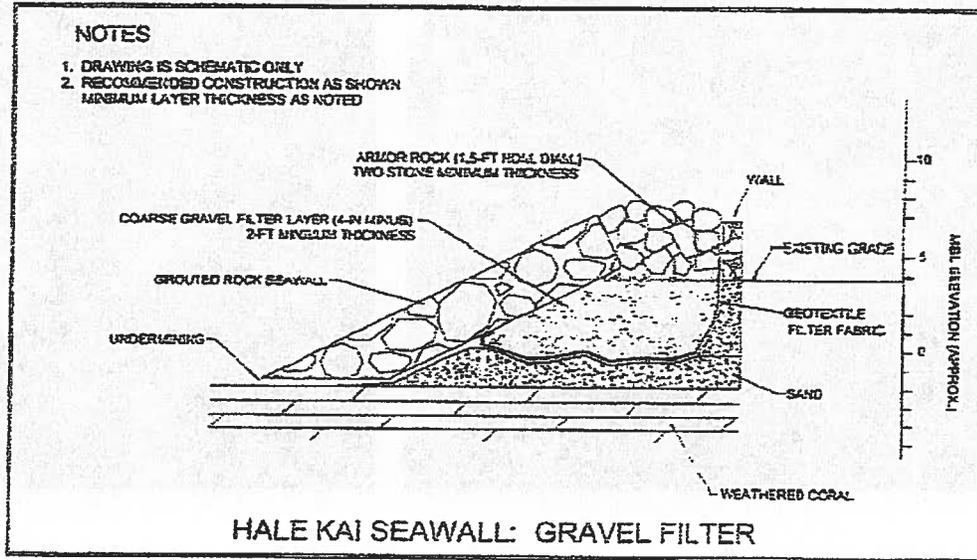


Figure 6. Recommended gravel filter repair

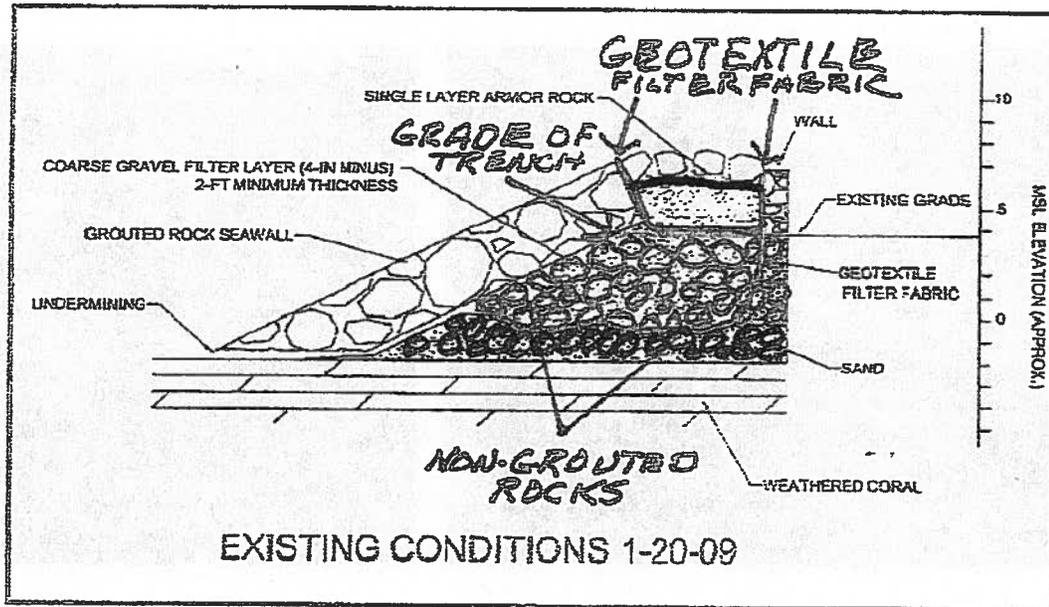
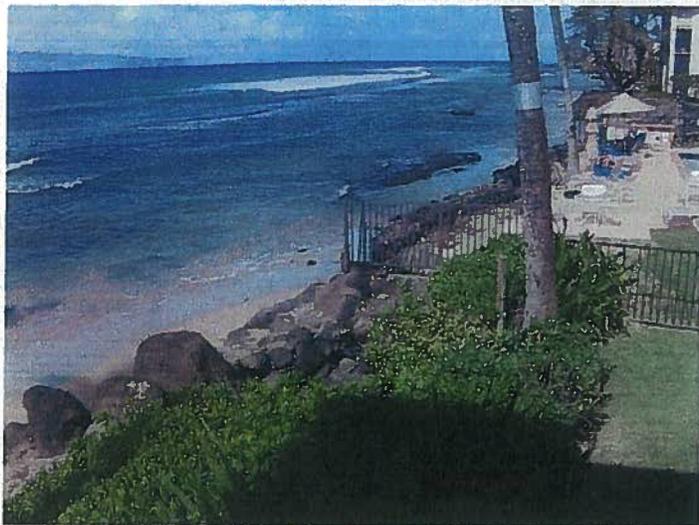


Figure 7. Condition of repaired revetment, January 2009

# ATTACHMENT 5.



1. BEFORE FF TRENCH.JPG



3.REMOVING NAUPAKA.JPG

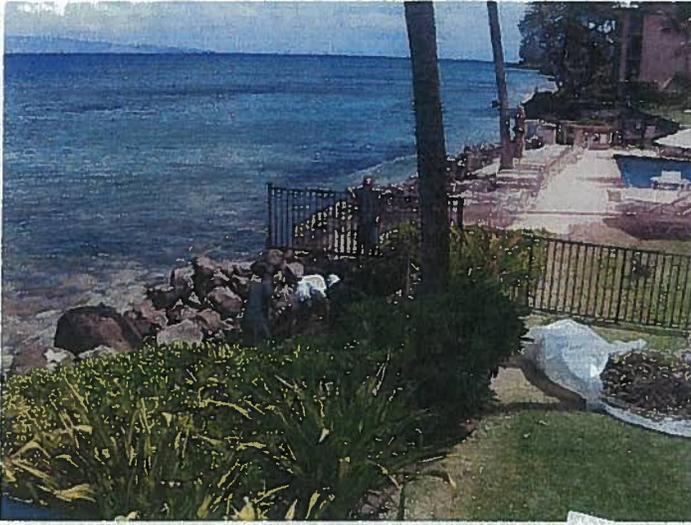


2.REMOVING NAUPAKA.JPG



4.REMOVING NAUPAKA.JPG

ATTACHMENT  
6.



1.DIGGING TRENCH.JPG



2.DIGGING TRENCH.JPG



3.DIGGING TRENCH.JPG



4.DIGGING TRENCH.JPG

ATTACHMENT  
7.



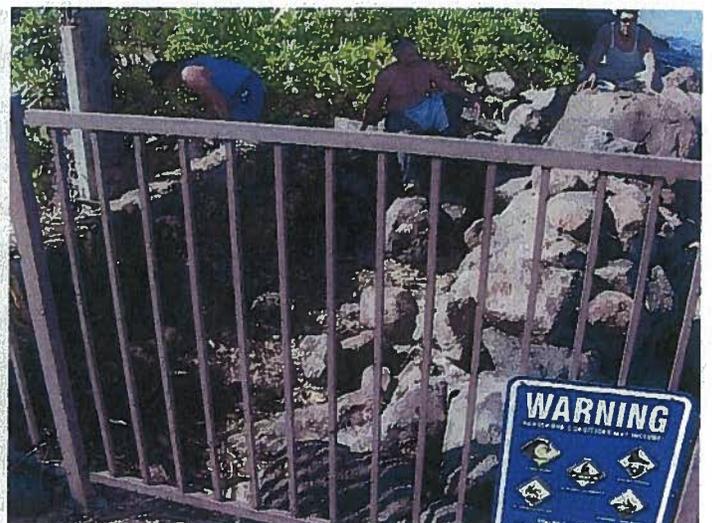
1. TRENCH.JPG



2. TRENCH.JPG

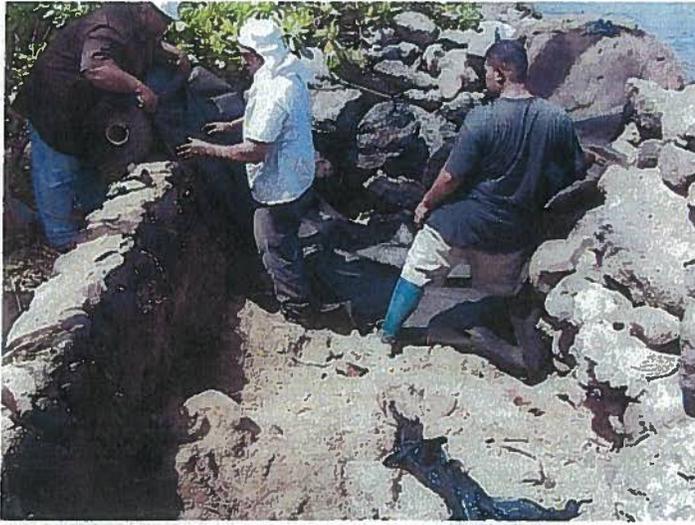


3. TRENCH.JPG



4. TRENCH.JPG

ATTACHMENT  
8.



1. INSTALLING F FABRIC.JPG



2. INSTALLING F FABRIC.JPG



3. INSTALLING F FABRIC.JPG

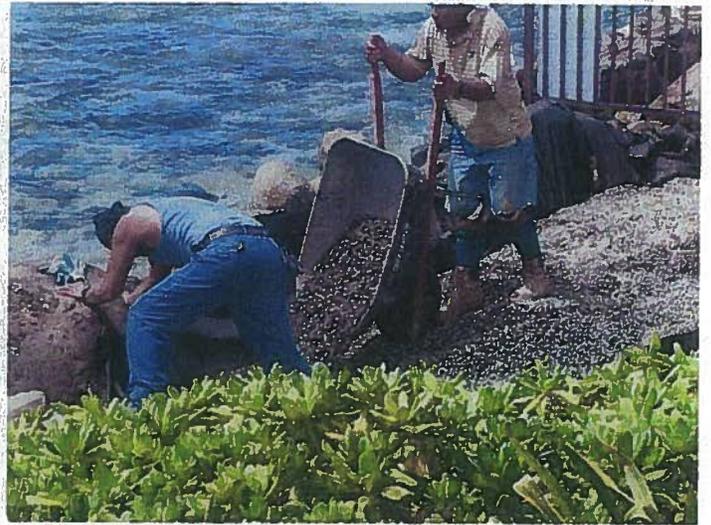


4. INSTALLING F FABRIC.JPG

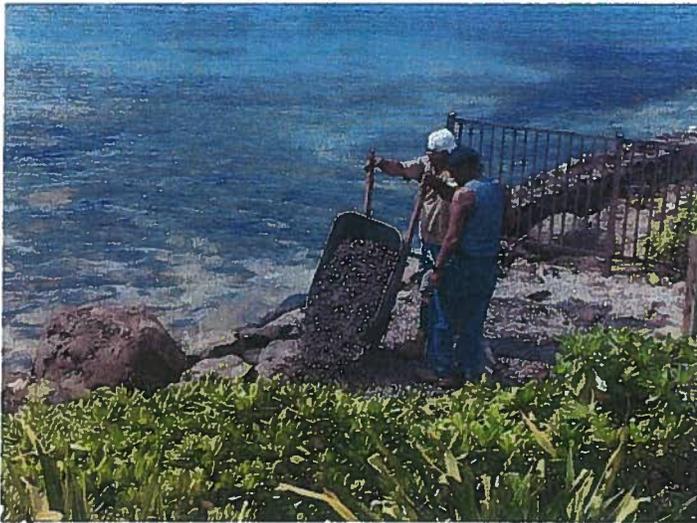
ATTACHMENT  
9.



1. PLACING ROCKS.JPG



2. GRAVEL ON TOP.JPG



3. LAST GRAVEL ON TOP.JPG

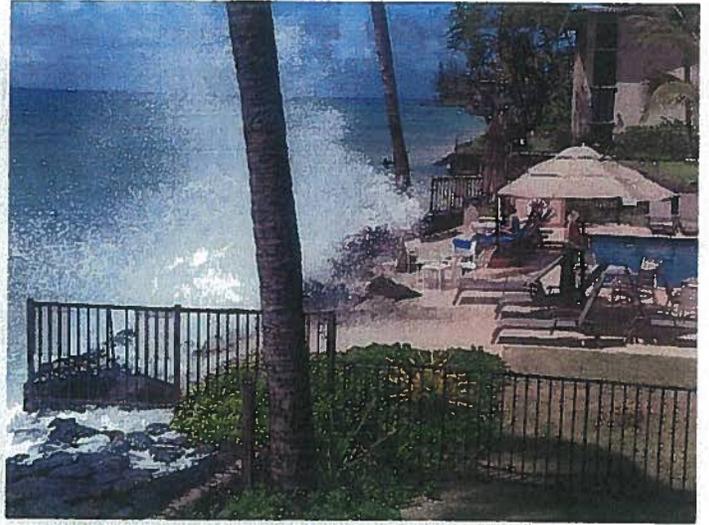


4. FINISHED.JPG

ATTACHMENT  
10.



1.OVERTOPPING.JPG



2.OVERTOPPING.JPG



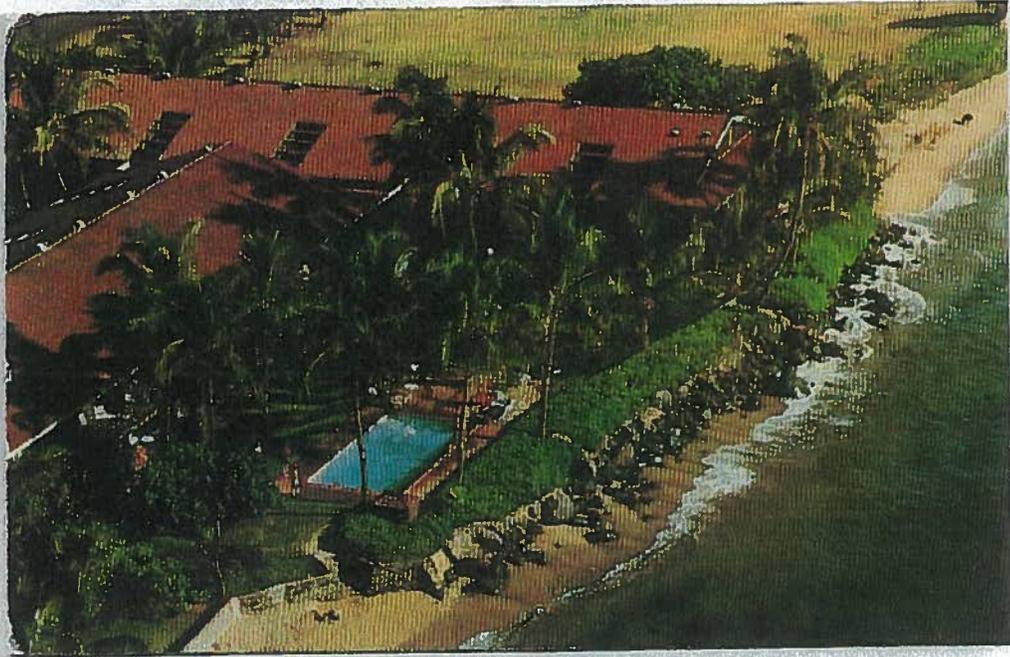
3.OVERTOPPING.JPG



4.OVERTOPPING.JPG

ATTACHMENT  
11.

ATTACHMENT 12.



ATTACHMENT 12.

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

2010 SEP -2 A 8: 48

August 25, 2010

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Samuel Lemmo, Administrator  
State of Hawaii  
Department of Land and Natural Resources  
**Office of Conservation and Coastal Lands**  
P.O. Box 621  
Honolulu, Hawaii 96809

**SUBJECT: After-The-Fact Conservation District Use Application for Repair and Maintenance Improvements to Existing Seawall/Revetment at TMK (2) 4-4-001:042, Honokowai, Maui, Hawaii (CDUA: MA-3543)**

Dear Mr. Lemmo:

We are in receipt of a letter from Mr. Donald B. Newton, dated May 10, 2010, providing comments relating to the Conservation District Use Application (CDUA) for the subject action. Hale Kai Association of Apartment Owners (AOAO) would like to offer the following information in response to the comments noted in Mr. Newton's letter:

**Comment No. 1:**

*The Hale Kai President, Roberta Donnelly has forbidden their consultant, Mark Roy, to communicate or discuss with me the misinformation in his correspondence. I have to assume they do not want the facts nor the truth as it may adversely influence the decisions made by the readers.*

*I believe that you and your staff should have the accurate, complete and factual information. When the BLNR makes their decisions on the permit violations, the decisions will be based on the complete and factual information. Without accurate and complete information the corrective actions will not solve the problems created by the violations.*

*This letter and the attachments are provided to correct the false, misleading and incomplete information. The attachments are provided to support information I am providing in this letter. Many of the photos in the consultant letters are my photos, used without my permission.*

EXHIBIT 6

Mundriyo & Hraga response

**Response:**

Mr. Newton was asked by the Hale Kai AOA on December 21, 2009 to refrain from communicating directly with our planning consultants, Munekiyo and Hiraga, Inc. The Hale Kai AOA has a fiduciary responsibility to manage the affairs of all condominium owners at the property, which includes effective use of monies for consultant fees. Mr. Newton was asked during this correspondence to direct any questions or concerns he had with regards to the seawall to the Hale Kai AOA. In this instance, the Hale Kai AOA would have reviewed the questions/concerns being raised by Mr. Newton (and any other owners for that matter), coordinated with our consultant (as necessary) and then responded accordingly with the appropriate answer. We are attaching emails regarding correspondence with Mr. Newton on this matter. **See Exhibit "A"**. To date, no questions or concerns have been received from Mr. Newton by the Hale Kai AOA.

Please rest assured that the Hale Kai is committed to addressing every issue raised during the processing of the CDUA. As such, we have reviewed Mr. Newton's letter and are providing the following responses to each of the comments raised.

The photographs used in both letters of correspondence to OCCL and in the CDUA/Draft Environmental Assessment (EA) were submitted by Mr. Newton to the County of Maui, Department of Planning (Maui Planning Department) in 2008. Copies of these photographs were provided by the Maui Planning Department's Zoning, Administration and Enforcement Division (ZAED) during the processing of addressing after-the-fact permit requirements for improvements made to the seawall/revetment between 2004 to 2007.

**Comment No. 2:**

*From: Sea Engineering Memorandum May 15, 2009*

*Page 2.*

*2. Existing Structures*

*Figure 1. Project site layout*

*See: ATTACHMENT 1. CORRECTIONS TO Figure 1.*

*(1.) 55' X 24" ROCKWALL REPAIRED IN 1993 shows the actual location of the rockwall.*

*See: ATTACHMENT 1.A The photos, lower left and upper right "During 1993 Repairs" show the wall repair and "Gravel and Geotextile Filter" construction on the building side of the wall as approved in the January 1993 SMA/SS approval, not seaward side of the wall as shown in Figure 1. Photo upper left is before 1993 repair, photo lower right is*

*after 1993 repair.*

(2.) 1998 REPAIRS shows the actual location of the 1998 REPAIRS. No 1998 repairs were made in the area indicated by 1998 Repairs in Figure 1. by Sea Engineering.

See ATTACHMENT 1. B. to ATTACHMENT 1. H. for photos before, during and after the 1998 repairs to the sea wall.

From: Sea Engineering Memorandum May 15, 2009

*Bottom of Page 2.*

*2. Existing Structures*

*1998 – Repairs made to the revetment structure in front of the south building similar to “Geotextile Filter Construction” (see Figure 1. for location)*

*This is a false and misleading statement. As stated above, there were no repairs made in the designated area, seaward of the rock wall and in front of the south building. All 1998 repairs were made in front of the grass area, north of the walkway and the south building as shown in ATTACHMENT 1. (2.) 1998 REPAIRS.*

**Response:**

We acknowledge the information provided on the repairs that were undertaken in 1993 by the Hale Kai AOA to a garden wall on the property that runs along the mauka side of the top of the existing seawall/revetment. An SMA approval was issued in 1993 by the County of Maui, Department of Planning prior to the completion of this work, which is separate and distinct from the 1998 boulder repair work and 2004 cement grouting repair work that is the subject of the CDUA currently being processed by OCCL.

We acknowledge and appreciate the provision of additional photos by Mr. Newton (identified as Attachments 1B through 1H in the May 10, 2010 letter) demonstrating the extent and scope of the 1998 boulder repair work. Figure 1 of the May 15, 2009 memorandum by Sea Engineering, Inc. (SEI) (provided in Appendix “E” of the Draft EA), will be revised to more accurately depict the location of the 1998 boulder repair work, which occurred in the area of the revetment as depicted in photos included in the attachments to Mr. Newton’s letter. The reference to the 1998 repair work on Page 2 of the SEI memorandum will be revised to further clarify the location of this work, as follows:

*1998 - Repairs made to the revetment structure in front of the West garden area, between garden wall and the grouted revetment boulders.*

A copy of the revised SEI memorandum will be included in the Final EA.

**Comment No. 3:**

From: Munekiyo & Hiraga, Inc. October 2, 2009 letter  
Page 1. BOULDER REPAIR AND MAINTENANCE WORK  
Munekiyo & Hiraga, Inc. November 4, 2009 letter  
Page 2. (a) 1998 Boulder Repair and Maintenance Work

The following are false and misleading statements: The boulder work undertaken in 1998 and entailed (1) the widening of a pre-existing erosion channel running behind (mauka of) the existing boulder revetment and in front of a decorative landscaping wall that exists along the south side of the property. and (2) the placement of various sized rocks/boulders into the trench to stabilize the affected area and prevent further erosion. The work was undertaken by Hale Kai AOA in an effort to address wave-related water damage and building maintenance issues that were occurring within one of the condominium buildings that lies in close proximity to the ocean at this particular location.

See ATTACHMENT 1. B. BEFORE 1998 REPAIRS. Photos show the naupaka growing along the wall to the pool fence.

See ATTACHMENT 1. C. REMOVED NAUPAKA Photos show the removal and trucking away of the cut naupaka.

See ATTACHMENT 1. D. NAUPAKA VEGATATION REMOVED 1998. Photos show the area, oceanside of the wall, after the naupaka vegetation was removed. There is no pre-existing erosion channel.

See ATTACHMENT 1. E. TRENCH DUG TO REMOVE NAUPAKA ROOTS. Photos show trench dug to remove the naupaka roots.

See ATTACHMENT 1. F. PLACING BOULDERS IN ROOTS REMOVED TRENCH Photos show placing boulders and rocks into naupaka roots removed trench using a small bobcat.

See ATTACHMENT 1. G. MORE BOULDERS TO FILL ROOTS REMOVED TRENCH Photos show more placement of boulders and rocks in the naupaka roots removed trench.

See ATTACHMENT 1. H. COMPLETED PLACEMENT OF BOULDERS AND ROCKS TO TOP OF WALL Photos show the completed 1998 repair on both sides of the wall. All of the 1998 repairs were made in front of the grass area. The south building is to the left of the walk way and 20 feet way from the closest 1998 repaired location. At the time the 1998 repairs were made there were no "wave related damage and building maintenance issues" with the south building. The Hale Kai AOA was more interested in a new wall at the entrance to the property which was included as a free wall for the \$24,400 1998 seawall repair.

**Response:**

We acknowledge the additional information provided by Mr. Newton clarifying that the repair work fronting the building along the shoreline on the south side of the property was completed in 1993 and that the 1998 boulder repair work occurred (further north) on an area of the revetment fronting the grassed area that exists between the South building and the swimming pool. The 1998 work was conducted by the AOA to address wave-related drainage and erosion problems that were being experienced along the affected portion of the revetment.

As noted in our previous response, a revised version of the May 15, 2009 SEI memorandum will be prepared for inclusion in the Final EA to more accurately reflect the location of 1998 boulder repair work. Figure 10 and all applicable narrative references of the Final EA will also be revised accordingly.

In particular, the Final EA will contain the following revised description of the 1998 boulder work:

*The boulder work was undertaken in 1998 and entailed (1) the removal of Naupaka vegetation and the widening of a pre-existing erosion channel running behind (mauka of) the existing boulder revetment and in front of a decorative landscaping wall that exists along the south side of the property, and (2) the placement of various sized rocks/boulders into the trench to stabilize the affected area and prevent further erosion. The work was undertaken by Hale Kai AOA in an effort to address wave-related water drainage and erosion problems that were occurring along the revetment/seawall structure.*

**Comment No. 4:**

*From: Sea Engineering Memorandum May 15, 2009  
Bottom of Page 2.*

*2. Existing Structures*

*2004 – Seawall structure raised approximately 16 inches; grout repair done around selected wall sections and individual stones (see Figure 4)*

*The "seawall structure raised approximately 16 inches" took five (5) workers three (3) days to complete. (4/26/04 to 4/28/04) The "grout repair done around selected wall sections and individual stones" took one (1) worker less than two (2) hours on 4/29/04. He even had time to grout his name.*

*See ATTACHMENT 2. PHOTOS OF 2004 WALL CONSTRUCTION AND GROUTING REPAIRS. Two photos of workers constructing the "16 inch seawall" and two photos of*

*"grout repairs around selected sections and individual stones"*

**Response:**

We acknowledge the information provided in Attachment 2 of Mr. Newton's letter and concur that this is an accurate description of the work that occurred in 2004. The limited scope of the 2004 cement grouting work is discussed in the Draft EA, as follows:

*The cement grouting repair and maintenance work was conducted in 2004. The existing revetment that runs along the shoreline of the Hale Kai property consists of a series of large grouted boulders that were installed at the property over 45 years ago, prior to the construction of the condominium. The grouting of these boulders in place occurred prior to the 1980's. The minor cement grouting replacement work was undertaken by the Hale Kai AOA in 2004 to reapply cement grouting to several boulders which were breaking away from the revetment structure. This regrouting work was completed as part of an overall repair and maintenance project that was intended to address damage to the vertical seawall that lies between the revetment and the swimming pool area of the property. It is noted that the 2004 cement replacement work affected only a small area of existing boulders located just below the decorative vertical wall that lies between the swimming pool area and the revetment.*

**Comment No. 5:**

*From: Munekiyo & Hiraga, Inc. October 2, 2009 letter  
Page 2. CEMENT GROUTING REPAIR AND MAINTENANCE WORK  
Munekiyo & Hiraga, Inc. November 4, 2009 letter  
Page 2. (b) 1998 Cement Repair and Maintenance Work*

*There is no reference in the above, Munekiyo & Hiraga, Inc. documents about the "raising of the seawall structure 16 inches". Maybe it will be included in the E.A.*

**Response:**

The Hale Kai AOA has undertaken coordination with the Maui Planning Department to address after-the-fact approval requirements for various other seawall repair and maintenance improvements that occurred between 2004 and 2007 that were determined (during the May 23, 2008 Board of Land and Natural Resources, BLNR enforcement action) to fall outside of State jurisdiction within the limits of the subject property. The raising of the seawall structure along the swimming pool was one of these actions that was deemed by the BLNR to fall within the jurisdiction of the County of Maui. On October 13, 2008, the Maui Planning Department issued an after-the-fact

Special Management Area (SMA) Minor Permit and a Shoreline Setback Approval (SSA) for these 2004-2007 repair and maintenance actions, of which included the raising of the seawall. A copy of the 2008 after-the-fact SMA Minor Permit and SSA approval letter from the Department of Planning is presented as Appendix "F" of the Draft EA.

**Comment No. 6:**

*From: Sea Engineering Memorandum May 15, 2009*

*Bottom of page 2*

*2. Existing Structures*

*2007 - "Gravel and Geotextile Filter Construction" repairs made to the revetment structure (see Figure 1. For location); Repairs are further discussed below;*

*See ATTACHMENT 3. PHOTOS of LOCATION IN Figure 1.2007*

*REPAIR. In the photos note the location of the 16" seawall and pool fence in relation to the location of the 2007 Repair in Figure 1.*

*See ATTACHMENT 1. (3.) 2007 Repair shows the actual location of the 2007 filter fabric trench. The location in Figure 1. is in the base of the revetment that is composed of "rock grouted into relatively massive units" The actual location of the trench begins at the pool fence, runs south along the rock wall for approximately 20 feet. The west side, of the trench runs north to south from the pool fence and is approximately four (4) feet seaside from the rock wall.*

*See ATTACHMENT 1. H. COMPLETED PLACEMENT OF BOULDERS AND ROCKS TO TOP OF WALL. In the photos, note the location of the pool fence, naupaka and the shower pole, palm trees, bushes and building located on the mauka side of the wall.*

**Response:**

We acknowledge the information in Mr. Newton's letter providing additional clarification on the location of the 2007 Gravel and Geotextile Filter repair work, as discussed in the May 15, 2009 SEI memorandum. Figure 1 of the SEI memorandum will be revised to move the arrow demarcating the area of the 2007 improvements further mauka to the top of the revetment/seawall structure. As noted previously, the revised SEI memorandum will be included in the Final EA.

**Comment No. 7:**

*From: Sea Engineering Memorandum May 15, 2009*

*Page 3.*

*Figure 5. Seawall condition existing during 2007 site visit.*

*Figure 5. is misleading. As shown in ATTACHMENT 1. H. the rocks are to the top of the wall. There is some erosion caused by the drainage of the ocean water that collected behind the wall, flowing south beyond the pool fence. The erosion under the pool fence extends north approximately four (4) feet. See ATTACHMENT 4. PHOTOS OF POOLING OCEAN WATER BEHIND SEAWALL AND PHOTOS OF EROSION UNDER POOL FENCE.*

**Response:**

The photographs provided in Attachment 1-H illustrate the condition of the revetment (looking south towards Honokowai Beach Park) as it existed in 1998. The site inspection, referenced in the May 15, 2009 SEI memorandum, was conducted in 2007, almost ten (10) years later. Figure 5 of the SEI memorandum represents an accurate depiction of the condition of that particular 20-foot section of the revetment as it existed during the site inspection in 2007. Figure 5 is intended to show the condition of this section of the revetment before the Gravel and Geotextile Filter was installed in 2007, as recommended by SEI. Figure 6 of the SEI memorandum shows the intended design as recommended by SEI in 2007 while Figure 7 is a representation of the same section of the revetment as it appeared following completion of the repair work during a January 2009 inspection by SEI. The May 15, 2009 SEI memorandum details a corrective action to repair this section of revetment so that it is consistent with the design as recommended in Figure 6. A SMA Minor Permit and SSA has been obtained from the Maui Planning Department for the completion of this corrective action repair work. The precise scope of work for this corrective action is described in our response to Comment No. 8 below.

In regards to the comment on drainage, Mr. Newton is correct in the statement he makes that there is occasionally ponding of sea water experienced along the mauka side of the revetment/seawall structure during periodic high wave events, which predominantly occur during the winter months. This is typical of most shoreline properties along the Kaanapali coastline. The various improvements that have been undertaken over the years by the Hale Kai AOA to the existing seawall/revetment structure have been completed with the intention of addressing these wave-related erosion issues and protecting the health and safety of residents at the Hale Kai property.

**Comment No. 8:**

*From: Sea Engineering Memorandum May 15, 2009*

*Page 5.*

*Figure 7. Condition of repaired revetment, January 2009*

*Figure 7. is misleading and incorrect.*

*See ATTACHMENT 5. ACTUAL CONDITIONS ON 1-20-09. The filter fabric trench built on 8/4/07, by an unlicensed contractor, was not built to the Sea Engineering Inc. specifications: It was not dug down to weathered coral. See ATTACHMENTS 6. to 10. for photos of the 2007 filter fabric trench construction.*

**Response:**

We appreciate the photographs provided by Mr. Newton showing the completion of the 2007 Gravel and Geotextile Filter work. The May 15, 2009 SEI memorandum provides an assessment of the current condition of the seawall/revetment at the Hale Kai property and, as noted previously, provides recommendations for corrective actions that are intended to address maintenance issues related to continued wave-related erosion issues along the structure.

The May 15, 2009 SEI memorandum identifies that a single layer of stones, approximately 1 ft. to 1.5 ft. in nominal diameter, was used to cover the crest of the Gravel and Geotextile Filter during its installation in 2007. These stones are not currently keyed together or otherwise locked in place and would likely be displaced under a significant storm event. The following corrective action was, therefore, recommended in the SEI memorandum to address this issue:

1. Removal of the existing crest stones from the 2007 gravel and geotextile filter area.
2. Excavation of the gravel within the area to 3 ft. below the revetment crest.
3. Placement of appropriately sized stones (approximately 1.5 ft. to 2 ft. in diameter) within the excavated area. All stones should be in close contact with adjacent stones and tightly packed behind the crest of the grouted portion.

As noted previously, a SMA Minor Permit and SSA was recently issued (in March 2010) by the Maui Planning Department for this corrective action repair work. Hale Kai will be proceeding with the crest stone replacement work upon completion of the CDUA process for the 1998 boulder repair work and the 2004 cement grouting repair work.

**Comment No. 9:**

*From: Sea Engineering Memorandum May 15, 2009  
Page 6. & 7.  
Corrective Action  
1. Seawall*

*The recommended "less costly solution" of controlling wave overtopping is to plant*

*naupaka.*

*With the 16" vertical wall, constructed in 2004 and the raised height of 9", the wave overtopping sometimes reaches 20 feet high. See ATTACHMENT 11. OVERTOPPING WAVES. \* Note photos 1. & 2. south of pool fence. No 20 ft. overtopping, only run up along the full length of revetment south to the park beach.*

*The solution is to go back to their roots. Prior to the vertical wall built in 2004 there were never 20 ft. overtopping waves. Remove the vertical wall built in 2004, which will allow the waves to flow back into the ocean as it has been doing for since 1966. (\* see Note ATTACHMENT 11.) Then plant naupaka along the oceanfront of the property as shown in ATTACHMENT 12. NAUPAKA OCEANSIDE BEFORE VERTICAL WALL.*

**Response:**

The May 15, 2010 SEI memorandum evaluated alternative solutions concerning shoreline protection and wave overtopping. The use of naupaka vegetation was presented as an option and has been selected by the Hale Kai AOA as the preferred alternative for implementation along the makai side of the swimming pool.

We have consulted with SEI regarding Mr. Newton's comments regarding the effects of the raising of the seawall as completed in 2004. We have been informed that while the additional vertical height of seawall along the swimming pool may direct wave impact and ocean spray more skyward, it also proves effective at blocking direct wave overtopping. Lowering the wall (as suggested in Mr. Newton's comment letter) will increase, not decrease the potential for wave overtopping to occur along the seawall/revetment structure.

**Comment No. 10:**

*From: Sea Engineering Memorandum May 15, 2009  
Page 7.  
Corrective Action  
2. Revetment*

*The recommended corrective action is to modify the crest to comply with the schematic representation shown in Figure 6. As follows:*

- Remove the crest stones*
- Excavate gravel 3 feet down below the crest*
- Fill the excavation with stones approximately 1.5 ft. to 2 ft. in diameter.*

*This recommendation corrective action will put this area back to its original condition*

*(see ATTACHMENT 1. H.) except for having a geotextile filter fabric around the stones placed in the 3 ft. deep trench.*

*The corrective action that should be undertaken for this area is to dig down to weathered coral, install a sand base, line the trench with filter fabric, fill with gravel to existing grade, then fill with stones to wall height as shown in Figure 6.*

**Response:**

We have also consulted with our coastal engineer (SEI) regarding Mr. Newton's comment on the preferred design for the crest stone replacement work as defined in the May 15, 2009 memorandum. The corrective action as recommended by Mr. Newton is similar to the design recommended by SEI. SEI does not recommend excavating down to the limestone substrate (weathered coral), as information concerning the nature and elevation of the substrate is not extensive. The gravel and geotextile filter is designed to respond to any settlement that may occur below the filter and will act as a plug to minimize hydraulic action. The geotextile layer will also serve to protect the substrate behind the revetment (below the existing garden wall). The resulting structure, as recommended in the May 15, 2009 SEI memorandum, will be an improvement over the previous condition as observed during the 2007 site inspection.

**Comment No. 11:**

*From: Munekiyo & Hiraga, Inc. October 2, 2009 letter  
Page 6. Exhibit "B"*

*Exhibit "B" is incorrect and misleading. See ATTACHMENT 13. REVISED Exhibit "B". The actual location of the 1998 BOULDER REPAIR WORK and 2004 CEMENT WALL REPAIR WORK is shown.*

**Response:**

As noted previously, the figures presented the Draft EA have been revised to clarify the location of the 1998 boulder repair work and the 2004 cement repair work.

**Comment No. 12:**

*For additional information please review my September 21, 2009 letter to Clayton I. Yoshida, Re. Your letter to Mark Roy Dated October 13, 2008.*

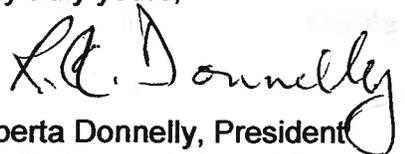
**Response:**

As discussed in our response to Comment No. 5, coordination with the Maui Planning

Department has been undertaken by Hale Kai AOA since 2008 to address after-the-fact approval requirements for various seawall repair and maintenance improvements that occurred between 2004 and 2007. This 2004-2007 repair work was determined (during the May 23, 2008 BLNR enforcement action) to fall outside of State jurisdiction within the limits of the subject property. On October 13, 2008, the Maui Planning Department issued an after-the-fact SMA Minor Permit and a SSA for these other repair and maintenance actions. As a condition of this approval, the Hale Kai AOA was required to prepare an engineering assessment of the existing seawall/revetment along the property to assess the current condition of the structure. As discussed in our earlier responses, the engineering assessment (as contained in the May 15, 2009 SEI memorandum) recommended various corrective actions (landscaping and minor revetment crest stone repairs) intended to address some minor maintenance issues that were identified during the course of the assessment. A copy of the May 15, 2009 SEI memorandum was presented as Appendix "E" in the Draft EA. A second SMA/SSA application was submitted to the Maui Planning Department in July 2009 requesting approval for these proposed corrective actions as defined in the SEI memorandum. The Maui Planning Department issued a SMA Minor Permit and SSA for the proposed corrective actions on March 23, 2010. Copies of both the after-the-fact and corrective actions SMA/SSA approval letters are presented in Appendix "F" of the Draft EA. It is our understanding that the letter to Clayton Yoshida (Administrator, Current Planning Division) from Mr. Newton (dated September 21, 2009), referred to in the foregoing comment, was evaluated by the Maui Planning Department as part of the processing of the foregoing 2008 and 2009 SMA Assessment applications.

We will be including a copy of Mr. Newton's letter (including the attachments) in the Final EA for the project. Should you have any questions regarding the information contained within this response, please do not hesitate to contact our planning consultant, Mark Alexander Roy of Munekiyo & Hiraga, Inc. at (808) 244-2015.

Very truly yours,



Roberta Donnelly, President  
Hale Kai Association of Apartment Owners

**Attachment**

cc: Dawn Hegger, Office of Conservation and Coastal Lands  
Mark Alexander Roy, Munekiyo & Hiraga, Inc.  
Dave Merchant, Merchant Horovitz, LLLP