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

March 10, 2011

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

PSF No.: 02MD-538

Maui

RE-SUBMITTAL. Cancellation of Revocable Permits Nos. S-5834 and S-5835 issued to the Hale Pau Hana Homeowners Association and Issuance of a Term, Non-Exclusive Easement to the Association of Apartment Owners of Hale Pau Hana for Rubble Rock Revetment, Wall, Concrete Stairways, Landscaping and Maintenance Purposes, Kamaole Beach Lots, Kamaole, Kula, Maui, Tax Map Key (2) 3-9-005: Portion of 001.

BACKGROUND:

Staff requested the Land Board at its meeting held on January 27, 2011, under agenda Item D-6 to be withdrawn from consideration because the Applicant had concerns on how the Department would value the rock revetment and landscaping areas.

APPLICANT:

Association of Apartment Owners of Hale Pau Hana, a Domestic Nonprofit Corporation.

LEGAL REFERENCE:

Section 171-13, 53(b), 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government Beach Reserve, Kamaole Beach Lots, Kamaole, Kula, Maui, identified by Tax Map Key: (2) 3-9-005: Portion of 001, as shown on the attached map labeled Exhibit (A) and the GIS over view photo labeled Exhibit (B).

AREA:

0.35 acres, more or less.

ZONING:

State Land Use District: Urban
County of Maui CZO: Open Space

TRUST LAND STATUS:

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

CURRENT USE STATUS:

- Revocable Permit No. S-5834, Hale Pau Hana Homeowners Association for construction and maintenance of a rubble rock revetment.
- Revocable Permit No. S-5835, Hale Pau Hana Homeowners Association, for landscaping, maintenance purposes and two stairways.
- Revocable Permit No. S-7573, AOAO of the Royal Mauian, for landscape and maintenance purposes.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove the existing rock revetment and concrete stairways, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the

Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Refer to the attached Exemption Notification form regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR. (Exhibit C)

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine initial one-time payment;
2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

The Land Board at its meeting on July 13, 1979, under agenda Item F-1-e, approved the issuance of a month-to-month revocable permit to Hale Pau Hana Homeowners Association for landscaping (consisting of Bermuda lawn grass, coconut palms, native kiawe and other ground cover, four stairways, one shower, one 6 ft x 52 ft concrete shuffleboard, two barbecue areas, and eleven tiki torches. The request by the owners of the condominium complex covers an after-the-fact request for improvements already constructed on the premises. Revocable Permit No. S-5731 was issued effective April 1, 1978. Then, the Land Board at its meeting on May 9, 1980, under agenda Item F-17, authorized the cancellation of Revocable Permit No. S-5731, the removal of all improvements constructed on the premises and the restoration of the area to its original (natural condition). There were numerous violations by the tenant and the tenant attempted to create a private atmosphere for the benefit of their guests on Government land. Later, the Land Board at its meeting on January 9, 1981, under agenda Item F-1-c, authorized the issuance of a month-to-month revocable permit to Hale Pau Hana Homeowners Association for landscaping (consisting of Bermuda

lawn grass, coconut palms and other ground cover), maintenance (sprinklers) and two stairways. The stairways and landscaped area were presently utilized by the general public and guests of the condominium units of Hale Pau Hana and adjoining properties to bypass a sand and rock walkway along the shoreline fronting the right center portion of this area that has been washed away by the winter surf. Removal of the other improvements under Revocable Permit No. S-5731 commenced on December 9, 1980. Revocable Permit No. S-5835 was issued effective May 10, 1980. The Land Board on January 8, 1982, under agenda Item F-6, authorized the subject Revocable Permit No. S-5835 to include one more stairway.

The Land Board at its meeting on October 24, 1980, under agenda Item F-1-d, approved the issuance of a month-to-month revocable permit to Hale Pau Hana Homeowners Association for construction of a rubble rock revetment. The rubble rock revetment was constructed on an emergency basis following the severe storm of January 1980 to prevent the undermining and destruction of the south-end building of the Hale Pau Hana condominium complex. The revetment not only prevented undermining, but also prevented further erosion of portion of the Government Beach Reserve fronting the south building. Revocable Permit No. S-5834 was issued effective March 1, 1980.

REMARKS:

A site inspection of the beach reserve area revealed that both month-to-month short-term permits were not the appropriate dispositions for the existing uses. After discussing the possibility of a long-term easement with the AOAO of the Hale Pau Hana, it was agreed that a 55-year long-term easement would be the more appropriate disposition for the subject revetment, both stairways and maintenance of the area. A recent inspection was conducted and there are only 2 concrete stairways.

By letter dated November 9, 2007, the Office of Conservation and Coastal Lands (OCCL) indicated that there were no objections to the retention of the subject revetment through an appropriate land disposition as designated by the Maui Land Division. Further it was determined that no conservation district violations exist with regards to this legally constructed and previously approved structure. Therefore, an after-the-fact Conservation District Use Application to cure this matter will not be required.

The OCCL has determined that the structure has a positive impact in terms of coastal hazards as it prevents shoreline erosion and will help to mitigate inland flooding associated with large wave and storm events. (Exhibit D)

Comments were solicited from the following agencies:

County of Maui, Planning Dept.	Refer to Exhibit E.
County of Maui, Public Works	No response received.
County of Maui, Parks Dept.	No objections.
Dept of Hawaiian Home Lands	No response received.
Office of Hawaiian Affairs	No response received.
Office of Conservation & Coastal Lands	No objections. Refer to Exhibit D.
Royal Mauian Home Owners Association	No objections.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff recommends no fine as the subject revetment was constructed with the authorization from the Board of Land and Natural Resources at its meeting on October 24, 1980 under item F-1-d.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to no-compliance with such terms and conditions.

There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permits Nos. S-5834 and S-5835.

2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as tax map key: (2) 3-9-005:006, provided 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.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Hale Pau Hana covering the subject area for rubble rock revetment, wall, concrete stairways, landscaping and maintenance 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) 3-9-005:006, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

C. Review and approval by the Department of the Attorney General; and

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

E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

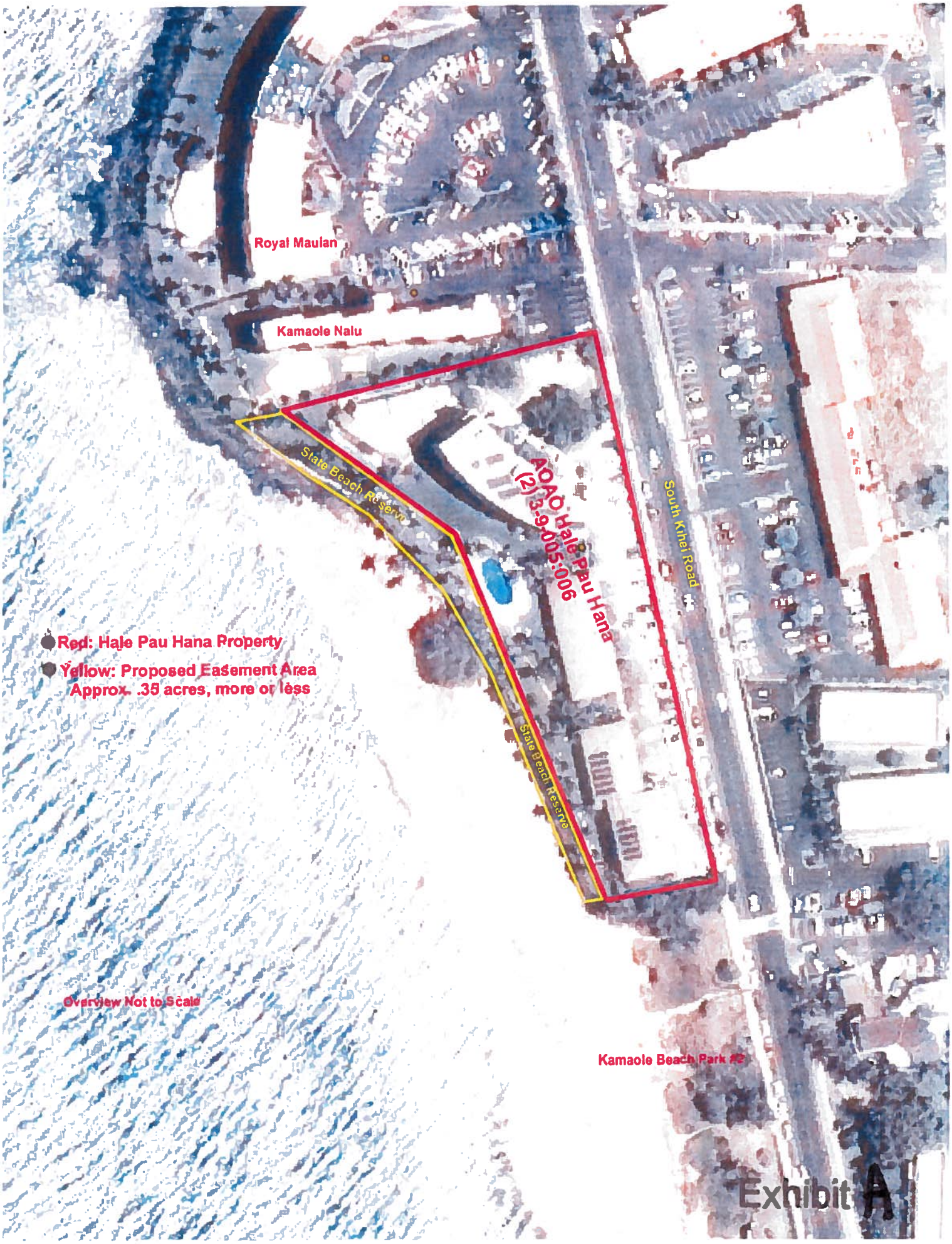
F. Applicant will remove and prevent any unnatural vegetation from growing seaward of the toe of the revetment, on the beach to allow for improved public access and recreational use of the shoreline area fronting the revetment.

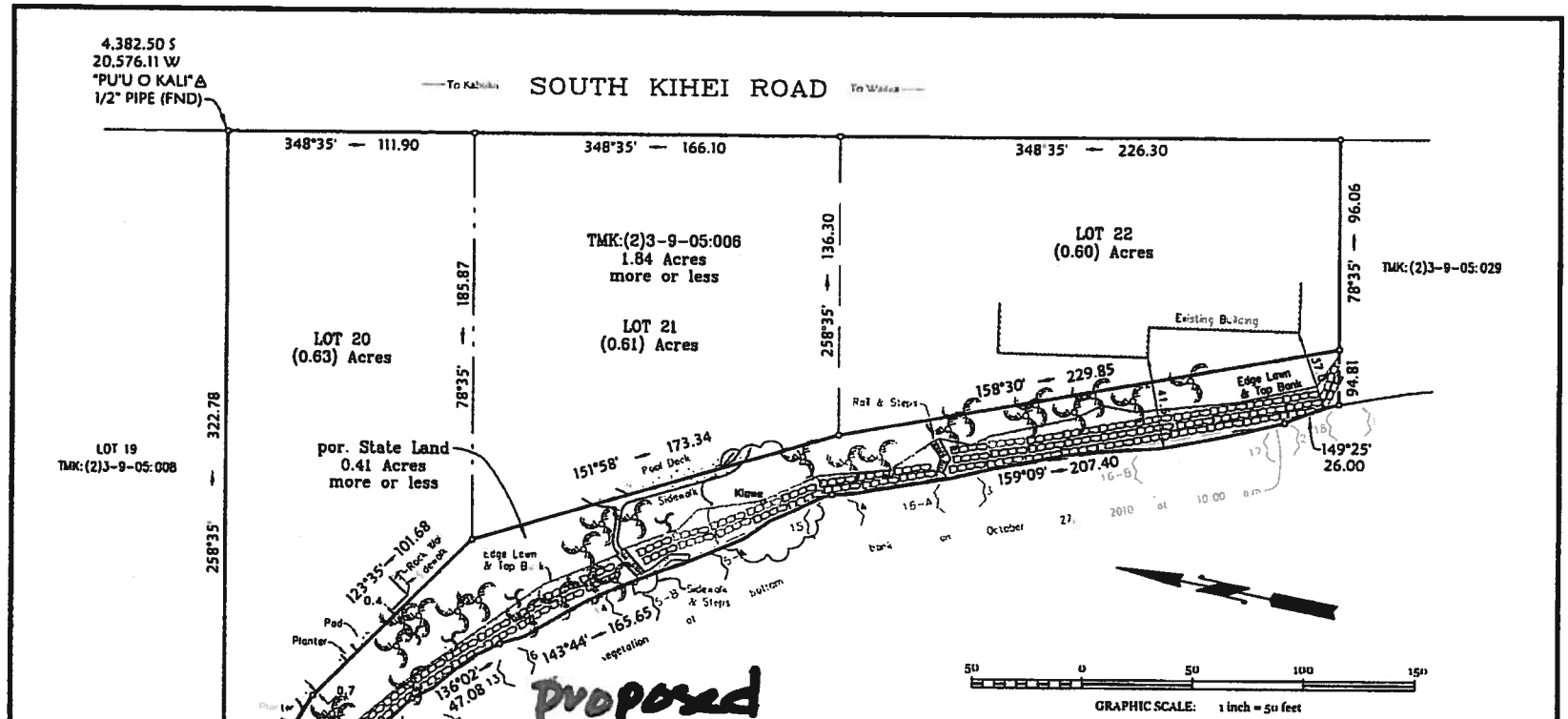
Respectfully Submitted,

for Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:

William J. Aila Jr., Interim Chairperson


Royal Maulan
Kamaole Nalu
State Beach Reserve
AOAO Hale Pau Hana
(2) 3-9-005:006
South Kihei Road
State Beach Reserve
Red: Hale Pau Hana Property
Yellow: Proposed Easement Area
Approx. .35 acres, more or less
Overview Not to Scale
Kamaole Beach Park #2
Exhibit A



Proposed

Shoreline Certification of

a portion of

STATE LAND FRONTING LOTS 20, 21 & 22

of the

KAMAOLE BEACH LOTS

Situated at

Kamaole, Kula, Maui, Hawaii

Prepared For:
David Gilbert
c/o Michelle Cockett
P.O. Box 1631
Wailuku, Maui, HI 96793

This work was prepared by me or under my direct supervision.

Randall Sherman
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS4187
License Expiration Date: April 30, 2012
Land Court Certificate No 189

RANDALL SHERMAN
LICENSED PROFESSIONAL LAND SURVEYOR
LS4187
HAWAII, U.S.A.

NOTES:
1. This map is based on an actual field survey performed on 27 OCT 10.
2. Azimuths and coordinates are referred to Government Survey Triangulation Station "PU'U O KALI"
3. ( ) Indicates: location, direction number, and included angle of accompanying photographs.

= Coconut Palm

Date: 3 NOV 10

TMK: (2) 3-9-05:006
(2) 3-9-05:001 por

10143.dwg COCKETT

• VALLEY ISLE SURVEYORS, INC. • P.O. BOX 1001 • KIHEI, MAUI, HAWAII 96753 • TEL: 808 874-8066 • FAX: 808 874-8366 • E-MAIL: VIS@VALLEYISLESURVEYORS.COM •

EXHIBIT "D"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
INTERIM FIRST DEPUTY

WILLIAM M. TAM
INTERIM 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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 10, 2011

EXEMPTION NOTIFICATION
regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Issuance of a Term Non-Exclusive Easement to the Association of Apartment Owners of Hale Pau Hana for a Rubble Rock Revetment, Wall, Concrete Stairways, Landscaping and Maintenance Purposes
Project / Reference No.:	02MD-538
Project Location:	Kamaole Beach Lots, Kamaole, Kula, Maui, Tax Map Key (2) 3-9-005:001 (portion)
Project Description:	Issuance of Term, Non-Exclusive Easement
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states: "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4 that states: "Minor alterations in the conditions of land, water, or vegetation".
Consulted Parties:	The Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project. The exemption is appropriate because the structure has been in existence since the Board approved the issuance of a revocable permit for its construction in 1980. Approval of the easement to allow the continued existence of the revetment should not result in any significant changes or impacts beyond that already existing. Furthermore, the Office of Conservation and Coastal Lands

EXHIBIT "C"

determined that the structure has a beneficial impact in terms of preventing shoreline erosion and mitigating inland inland flooding.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila, Jr.
Interim Chairperson

3/1/11
Date

LINDA LINGLE
GOVERNOR OF HAWAII

LAURA H. THIELEN
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

2007 NOV 15 P 3:16

REF:CC

File Number Encroachment: MA-08-005

MEMORANDUM:

TO: Larry Pacheco, Land Agent, Maui
Land Division

THROUGH: Daniel Ornellas, District Land Agent, Maui

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

SUBJECT: Shoreline Encroachments onto State Beach Reserve Lands Seaward of the Hale Pau Hana Resort at Kihei, Maui,
Tax Map Key: (2) 3-9-005:001

After receiving the October 8, 2007 memorandum from Maui Land Agent Larry Pacheco, the OCCL determined that the most effective means of assessing the appropriateness of the structure was to complete a Shoreline Encroachment Information Sheet. The purpose of assessing the structures impacts on the beach resource is to provide Maui District the same basic data and interpretation the OCCL provides to Land Division for cases where land owners are seeking easements in coastal areas.

According to information, photographs, maps, and Revocable Permits contained in the memorandum, it is clear that the existing revetment was authorized under RP # S-5834 on March 01, 1980. The two sets of stairs, sprinklers, and landscaping were authorized under RP # S-5835 on January 8, 1982. As such the OCCL interprets that to mean that the existing structures are currently legal.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

EXHIBIT "D"

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:
The surrounding uses are condominium at the Hale Pau Hana Resort and public at the Kamaole II Beach Park, the southern neighbor.

Beach Resources:
There is an excellent beach resource on the coastline fronting the revetment and the beach park.

Public Access:
This section of coastline has excellent public access both lateral and perpendicular to the beach. The stairways and walkway help to provide improved shoreline access from the headland and State Land to the beach. *The signs required in RP # S-5835 are not present, and their absence may mislead the general public by providing the appearance of private ownership for the revetment and adjacent state lands.*

Effect of Removing the Encroachment on:
Beach Resources: *Removal of the revetment would release sediment to the littoral system. The coastal dunes and coastal plain at the abutting beach park appear to be predominantly composed of beach and dune quality sands. Kamaole II Beach Park, the southern neighbor to the revetment, has a natural beach face that extends more than 20 feet mauka of the toe of the revetment. As such, removal of the revetment and consequent erosion of the coastal plain would result in sediment release into the littoral system, potential dune formation, and unfettered seasonal and long-term migration of the beach. Though the littoral system does not currently show significant signs of negative impact from the revetment, future sea level rise and consequent beach migration will create a situation where beach accommodation space and volume are impacted by the revetment.*

Public Access: *OCCL staff has determined that public access will not be enhanced by removal of the structures, but will likely be diminished. The stairs and walkway provide improved access corridors for the public, both parallel and perpendicular to the beach. The beach parallel access is not on the beach, but on the manicured lawn area above the revetment. However, the lack of appropriate, and required signage on the stairs and walkway likely lead to the misperception that the state land mauka of the revetment is privately owned. Removal of the revetment will likely improve lateral access along the beach itself, as it will allow the beach to widen and thereby provide more sandy beach to both walk along and recreate upon. Removal of the unauthorized and unnatural vegetation seaward of the toe of the revetment, on the beach, will improve beach access and recreational use.*

Affect on Adjacent Properties: *Removal of the structure will likely create an erosion threat to the two southern structures at Hale Pau Hana Resorts. Due to the height of the structure and the sandy nature of the substrate, it is believed that there would be an immediate, but small erosion event while the dune face equilibrated, followed by a more significant erosional event as part of the natural, seasonal beach migration cycle that erodes during*

the winter months. The southernmost structure appears to be close the makai property boundary of the parcel. Erosion makai of this structure would likely result in emergency armoring on state lands.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in both HRS § 205A and in the OCCL's evaluation criteria would support both removal of all structures, or continuing to permit all structures. Because HRS § 205A does not give precedence to recreational resources (205A 2.c.1), coastal hazards (205A 2.c.6), or beach protection (205A 2.c.9) there are no statutory criteria for determining the appropriateness of the structure when conflicting requirements are met. As a result, the OCCL will provide you with an analysis of the impacts of the structures and a recommendation for action.

Negative: The structures have a negative impact on recreational uses as they extend across the area that would be beach face, impound sediment that would be available to the littoral system, and will prevent the landward migration of the beach under higher sea levels in the future.

Positive: The structures have a positive impact in terms of coastal hazards as they prevent shoreline erosion and will help to mitigate inland flooding associated with large wave and storm events.

The structures have a mixed impact in terms of beach protection as they are occupying the accommodation space the beach would naturally use during seasonal and chronic erosion events, thus preventing natural shoreline processes. In addition, the structures interfere with existing, and future, recreational and waterline activities. However, the structures are also preventing the loss of improvements due to erosion.

As the southern building will likely face immediate threat from erosion should the revetment be removed, the OCCL suggests an easement for the revetment. The OCCL suggests removing all vegetation seaward of the revetment, removing the concrete landings and walkways at the base of the stairs, replacing the signs that are supposed to be posted at each set of steps to clearly indicate that the revetment and the lands to mauka are open to the public, terminating the pathway on the north end at the start of the beach and creating stairs to the beach, and removing all non-natural materials (concrete blocks and rubble) from the beach and headland areas.

If, at some future time, legislation mandates that the recreational and beach resources are more important than improvements, the OCCL would recommend removal of shoreline structures inhibiting beach processes.

We hope this letter helps resolve some of the outstanding issues regarding the subject property. Please feel free to contact Chris Conger, Sea Grant Extension Agent at the Office of Conservation and Coastal Lands at 587-0049.

cc: Maui Board Member
Chairperson's Office
Land Division
Maui County Planning Department

1D

CHARMAINE TAVARES
Mayor

KATHLEEN ROSS AOKI
Director

ANN T. CUA
Deputy Director

RECEIVED
MAUI DISTRICT
LAND DIVISION

2010 DEC 15 PM 1:03

COUNTY OF MAUI

DEPARTMENT OF PLANNING

December 9, 2010

Mr. Larry Pacheco
Department of Land and Natural Resources
Land Division
54 High Street, Room 101
Wailuku, Hawaii 96793

Dear Mr. Pacheco:

SUBJECT: REQUEST FOR COMMENT ON PROPOSED 55-YEAR, TERM NON-EXCLUSIVE EASEMENT TO THE AOAO OF HALE PAU HANA FOR A RUBBLE AND ROCK REVETMENT, LOCATED AT A PORTION OF GOVERNMENT LANDS OF KAMAOLE BEACH LOTS, KAMAOLE, KULA, MAUI, HAWAII; TMK: (2) 3-9-005:001 (POR.) (RFC 2010/0169)

The Department of Planning (Department) is in receipt of your attached letter dated October 27, 2010, requesting comment on granting the subject easement on the State Beach Reserve parcel at TMK: (2) 3-9-005:001 as shown in Exhibit B.

The Department is familiar with the rubble and rock revetment from a site visit in 2010 related to future development of a public access trail along the State Beach Reserve fronting this parcel that connects Kamaole Beach II with Kamaole Beach I, to the north, across the subject State Beach Reserve lands.

The Department supports granting of the easement with the following conditions:

1. That the public continue to have full access to the property that is subject to this easement.

2. That the AOAO work cooperatively with the County of Maui and the Kihei Community Association to establish a future public trail fronting the property on the State Beach Reserve parcel, including this easement.

3. That the AOAO work with the Department to post a minimum of three (3) visible signs clearly indicating boundaries between public property from private property on the shoreline boundary of the AOAO property. The signs will be placed and maintained during the life of the easement at the north end, south end, and center point of the parcel, abutting the State Beach Reserve boundary, clearly delineating public lands from private property, and inviting access of the public onto the public lands.

EXHIBIT "E"

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

4. That no landscaping be established on the easement that will deter public access.

Finally, the Department requests that the length of time for the easement be reduced from the proposed fifty-five (55) years to ten (10) years, with extensions granted pending review for compliance of all conditions associated with the easement.

Thank you for the opportunity to comment. Should you require further clarification, please contact Coastal Resources Planner James Buika at james.buika@mauicounty.gov or at (808) 270-6271.

Sincerely,

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

for KATHLEEN ROSS AOKI
Planning Director

xc: Ann T. Cua, Deputy Planning Director
James A. Buika, Coastal Resources Planner
Kuhea Paracuelles, Office of the Mayor
Department of Parks and Recreation
Tara Owens, UH Sea Grant Program - Maui
Kihei Community Association
Royal Mauian Home Owners Association
Project File
General File

KRA:CIY:JAB:sa
K:\WP_DOCS\PLANNING\RFC\2010\0169_HalePauHana55yrEasement\Comments.doc

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 10, 2011

PSF No.: 02MD-538

Ms. Kathleen Ross Aoki, Planning Director
County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

Dear Ms. Aoki,

SUBJECT: Proposed Term, Non-Exclusive Easement to the Association of Apartment Owners of Hale Pau Hana for Rubble Rock Revetment, Wall, Concrete Stairways, Landscaping and Maintenance Purposes, Kamaole Beach Lots, Kamaole, Kula, Maui, Tax Map Key No. (2) 3-9-005:001 (portion).

Thank you for letter to Larry Pacheco dated December 9, 2010, providing comments for the matter referenced above. We are writing in response to those comments. The County of Maui ("County"), requested that the grant of easement be granted on the conditions that "the public continue to have full access to the property that is subject to this easement", and that "no landscaping be established on the easement that will deter public access." The terms and conditions of the proposed easement addresses the County's concerns, as it will be non-exclusive, so the public shall have access to the easement area. Furthermore, any landscaping that serves to diminish public access to the easement area shall not be allowed.

The County also requests that "the AOAO work with the Department to post a minimum of three (3) visible signs clearly indicating boundaries between public property from private property on the shoreline boundary of the AOAO property." We are supportive of the placement of signs, but request that the State, as the landowner and grantor of the easement, be consulted in the placement of signs on State-owned lands.

The County requests that "the AOAO work cooperatively with the County of Maui and the Kihei Community Association to establish a future public trail fronting the property on the State Beach Reserve parcel, including the easement." We recognize that the County possesses the statutory authority to provide for public access to the shoreline under Hawaii Revised Statutes Section 46-6.5, and are supportive of such actions. However, we also request that the

EXHIBIT "E"

parties involved in this project obtain approval from the State, if the designated trail is indeed located on State land.

Finally, the County requested that the term of the proposed easement by reduced from fifty-five (55) years to ten (10) years, with options to extend pending for compliance of the easement's terms and conditions. Unfortunately, the State does not have the legal authority to provide for extensions of term easements, but must rather initiate the process again. The State is in favor of granting the proposed easement for the full fifty-five year term, but does retain the authority to enforce against potential violations. If you have any questions, please contact Larry Pacheco, Land Agent, at 808-984-8118. Thank you.

Very truly yours,

Russell Y. Tsuji
Administrator

cc: MDLO