

D-2

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

August 12, 2011

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

PSF No.:11MD-089

Maui

Grant of Term, Non-Exclusive Easement to Association Of Unit Owners (AOUO) of Hale Kai Condominium for a Term, Non-Exclusive Easement for Seawall / Revetment Purposes, Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001: Seaward of 042.

APPLICANT:

AOUO of Hale Kai Condominium, a Hawaii Non-Profit Corporation.

LEGAL REFERENCE:

Section 171-13 (2), and 171-53 (c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Honokowai, Lahaina, Maui, identified by Tax Map Key: (2) 4-4-001: seaward of 042, as shown on the attached map labeled Exhibit A.

Survey Map of easement area labeled Exhibit B.

AREA:

1,484 square feet, more or less.

ZONING:

State Land Use District:	Conservation
County of Maui CZO:	None

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:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, 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:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on June 8, 2010 with a finding of no significant impact (FONSI).

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 rent/one-time payment;

- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Remove any barriers (fences, overgrown vegetation, railings, signs, etc.) established beyond the Applicant's property that may prevent lateral access by the public over state lands.
- 4) Comply with all County of Maui Special Management Area and Shoreline rules and requirements.
- 5) Conduct an Archaeological Inventory Survey and submit to the State Historic Preservation Division for review. If pursuant to Archaeological Inventory Survey the seawall is determined to be over 50 years old, it shall be documented and issued a number for the State's Inventory of Historical Places list.

REMARKS:

The subject encroachment was discovered when an anonymous complaint was reported to Maui DOCARE relative to work being done to the existing seawall fronting the Hale Kai Condominium complex. During the investigation it was determined a portion of the seawall was encroaching beyond their private property onto portions of the shoreline and submerged lands.

A survey map of the encroaching portions of the seawall has been prepared by R. T. Tanaka Engineering, Inc. and submitted to the Maui District Land Office via the consulting firm of Munekiyo & Hiraga, Inc. Per the survey map and descriptions provided, the actual encroachment was determined to encumber a total of 1,484 square feet of state land, with submerged portions.

A Final Environmental Assessment (FEA) for the existing seawall/revetment was completed in the fourth quarter of 2010. The Finding of No Significant Impact (FONSI) was issued by the Office of Conservation and Coastal Lands on September 10, 2010. The FONSI notice was then published in the OEQC's September 23, 2010, Environmental Notice. Refer to letter from OCCL Administrator Sam Lemmo, labeled Exhibit C.

AGENCY COMMENTS:

Refer to the attached approved board submittal dated October 28, 2010, Item K-2, which was prepared by Senior Staff Planner Dawn Hegger of the Office of Conservation and Coastal Lands (OCCL) labeled Exhibit D. This submittal identifies the agencies that were solicited for comments and provides their responses.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending no additional fines as the applicant has already been assessed a \$5,000.00 fine by the OCCL for this conservation district use violation. Refer to OCCL letter, titled Enforcement File No. MA-08-30, labeled Exhibit E.

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

Pursuant to Section 171-53, HRS, "the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter." Staff will have to work with the Applicant in obtaining the legislative concurrent resolution.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-4-001:042, 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.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to AOOU of Hale Kai Condominium covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-4-001:042, 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

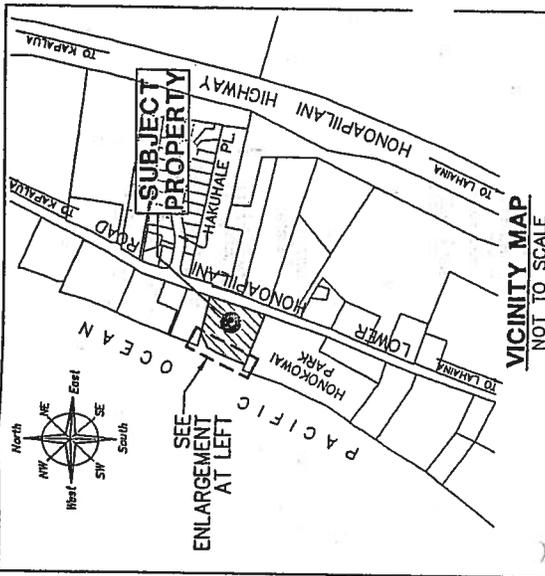
Respectfully Submitted,

  
\_\_\_\_\_  
Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:

*MT*   
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

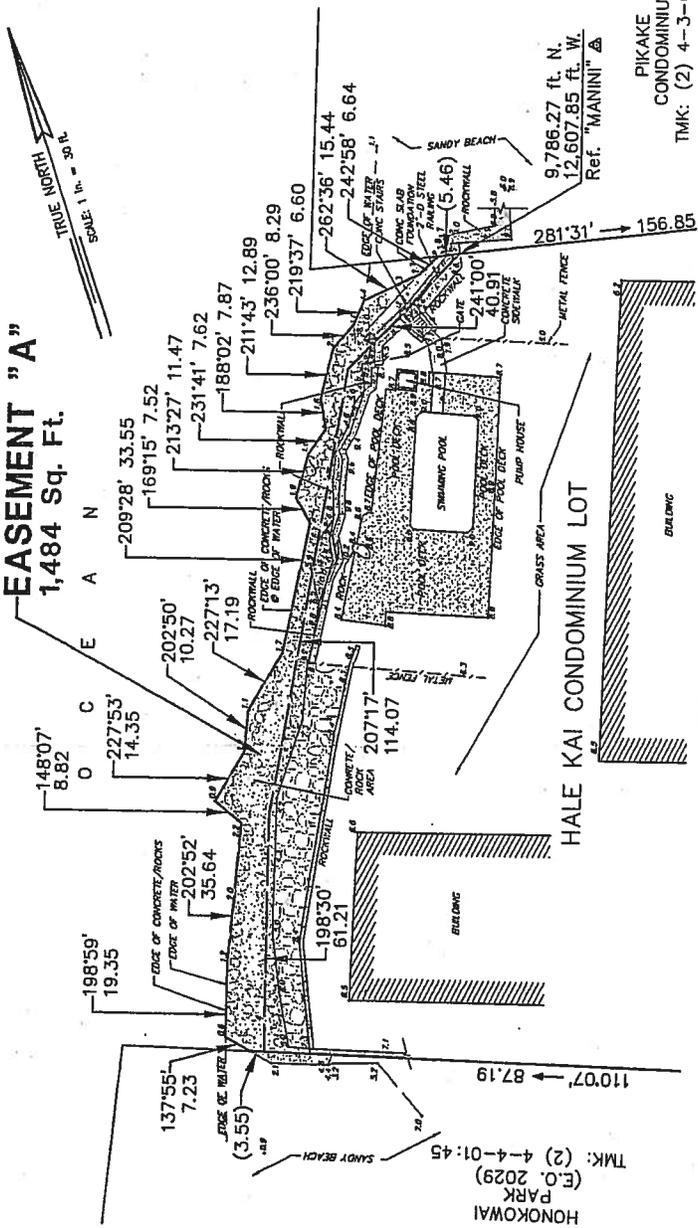




VICINITY MAP  
NOT TO SCALE

# EASEMENT "A"

1,484 Sq. Ft.



ENLARGEMENT  
SCALE: 1 in. = 30 ft.

## DESIGNATION OF EASEMENT "A" FOR SEA WALL IMPROVEMENTS AFFECTING THE SEASHORE IN FAVOR OF HALE KAI CONDOMINIUM LOT AT HONOKOWAI, LAHAINA, MAUI, HAWAII

Tax Map Key: (2) 4-4-01: 042  
871 KOLU STREET, SUITE 201  
WAILUKU, MAUI, HAWAII 96793

R. T. TANAKA ENGINEERS, INC.  
LAND SURVEYORS CIVIL & STRUCTURAL ENGINEERS



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION  
*Kirk T. Tanaka* 05/03/11  
DATE  
KIRK T. TANAKA  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: APRIL 30, 2012

MAY 05, 2011  
JOB NO. 08-085

EXHIBIT "I"

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. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
RUSSELL V. TSUJI  
ACTING FIRST DEPUTY  
LENORE N. OHYE  
ACTING 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  
KUILOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:DH

CDUA: MA-3543

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

SEP 10 2010

TO: Katherine Puana Kealoha, Director  
Office of Environmental Quality Control

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

SUBJECT: Final Environmental Assessment (FEA) for Hale Kai AOA's After-The-Fact (ATF) CDUA MA-3543, Located Makai of Subject Parcel TMK: (2) 4-4-001:042, Honokowai, Island of Maui

The Department has reviewed the Final Environmental Assessment (FEA) for After-The-Fact (ATF) Conservation District Use Application (CDUA) MA-3543 by Munekiyo and Hiraga regarding the repair and maintenance of a 1,480 square foot seawall located makai of subject parcel TMK: (2) 4-4-001:042, Honokowai, Island of Maui. The Draft Environmental Assessment (DEA) for the project was published in the June 8, 2010 issue of the Environmental Notice.

The FEA is being submitted to OEQC. We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. Please publish this notice in OEQC's upcoming September 23, 2010 Environmental Notice.

We have enclosed four copies of the FEA and ATF CDUA MA-3543 for the project. The OEQC Bulletin Publication Form is attached. Comments on the draft EA were sought from relevant agencies and the public, and were included in the FEA. Please contact Dawn Hegger, Senior Planner of our Office of Conservation and Coastal Lands staff at 587-0380 if you have any questions on this matter.

EXHIBIT "C"

**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

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
OCT 28 2010

ITEM K-2  
**EXHIBIT " D "**

(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*  
Dawn T. Hegger,  
Senior Staff Planner

Approved for Submittal

  
\_\_\_\_\_  
LAURA H. THLEN, 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 IL THELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUIH  
DIRECTOR

KEN C. KAWAHARA  
DEPUTY DIRECTOR WATER

AQUATIC RESOURCES  
BOATING AND RECREATION  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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HISTORIC PRESERVATION  
KAWAHAWEI ISLAND BUREAU OF CONSERVATION  
LAND  
STATE PARKS

REF:OCCI:DH

ENF: MA-08-30

CERTIFIED/RETURN RECEIPT

MAY 27 2008

RECEIVED

John Male

MAY 28 2008

Lahaina, Hawaii 96761

David Merchant,

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:

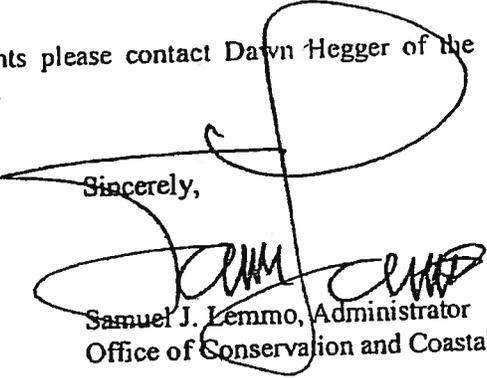
1. The Hale Kai AOA violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), two instances by placing boulders and cement material makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 in the Conservation District to occur. 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 "E"

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