

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

July 27, 2012

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

PSF No.: 12MD-018

Maui

Assessment of \$500 Fine Against Association Of Apartment Owners (AOAO) of Lahaina Roads for Seawall Encroachment; Grant of Term, Non-Exclusive Easement to AOAO of Lahaina Roads for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-013: Seaward of 027.

APPLICANT:

Association of Apartment Owners (AOAO) of Lahaina Roads, a Non-Profit Corporation.

LEGAL REFERENCE:

Section 171-6(12), 13, 53(b), 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of 1403 Front Street, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-013:027, as shown on the attached map labeled Exhibit A.

AREA:

2,352 square feet, more or less.

ZONING:

State Land Use District: Urban and Conservation  
County of Maui CZO: Within Special Management Area

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES  NO

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace an 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 appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff cited evidence that the subject seawall appeared to have been built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343. 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."

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) Comply with the County of Maui's Special Management Area permitting requirements prior to commencing any work on the seawall.
- 4) Assist the Department to secure Legislative and Governor approval for the easement pursuant to HRS Section 171-53(c).

REMARKS:

The applicant is planning to conduct minor repairs to the existing nonconforming seawall fronting the Lahaina Roads complex. As required, a site plan approval was submitted to the Office of Conservation and Coastal Lands for review and approval. During the review process it was discovered that the entire seawall and its footing was constructed seaward of the makai boundary of the Lahaina Roads property. In addition, a portion of the encroachment is situated makai of the shoreline. Staff believes that the easement involves a portion of submerged lands and fast lands which may impact value pursuant to HRS Section 171-53(b), and require prior approval from the Governor and Legislature pursuant to HRS Section 171-53(c) (photos are attached as Exhibit E). There is no prior government approval for the structure. The total encroachment area has been determined to be 2,352 square feet (see Exhibit B, Survey Map) (Meets and Bounds Description, Exhibit D).

The Office of Conservation and Coastal Lands (OCCL) staff has determined that the issuance of an easement for the encroachments would have no adverse impacts on beach and recreational resources, and do not act as a detriment to public access (see OCCL letter, Exhibit C). The OCCL has also indicated that they will not be requiring an after-the-fact Conservation District Use Permit be obtained by the applicant to cure the encroachment. However, they are in support of an easement, which would be required for the use of public lands, for the area that the encroachment encumbers.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is recommending a fine of \$500.00, as the subject encroachment is over 100 square feet.

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.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

<i>Agency</i>	<i>Comments</i>
Office of Conservation & Coastal Lands	No objections, See Exhibit (C)
County of Maui – Planning Dept.	No response received
Office of Hawaiian Affairs	No response received

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. 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) 4-5-013:027, 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. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to AOA of Lahaina Roads 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) 4-5-013:027, 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:

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



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 27, 2012

**EXEMPTION NOTIFICATION**

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

**Project Title:** Issuance of Term Non-Exclusive Easement to AOA of Lahaina Roads

**Project / Reference No.:** PSF No. 12MD-018

**Project Location:** Lahaina, Maui, Hawaii

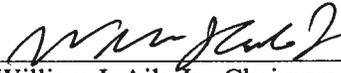
**Project Description:** Granting of a Term Non-Exclusive Easement for Seawall Encroachment Purposes (2,352 sq. ft.).

**Chap. 343 Trigger(s):** Use of State Lands in Conservation District (Shoreline)

**Exemption Class No. and Description:** In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, 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 [HAR 11-200-8 (a)(1)].

**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.

**Recommendation:** It is anticipated 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., Chairperson

7/10/12  
\_\_\_\_\_  
Date

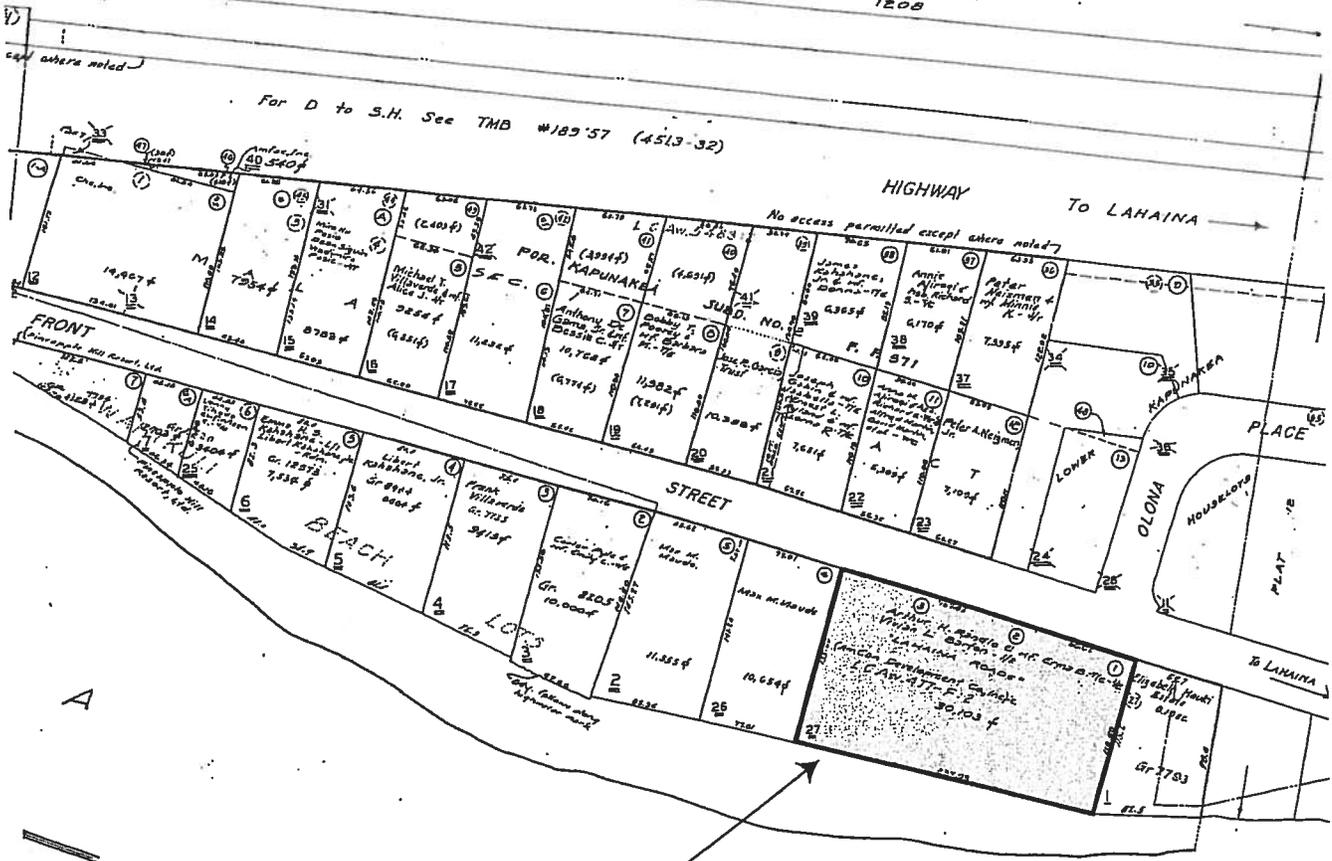
True North  
1-30

PLAT 30  
"WAHIKULI TERRACE  
F. SUB'D." 1208

For D to S.H. See TMD #189'57 (4513-32)

HIGHWAY TO LAHAINA

No access permitted except where noted



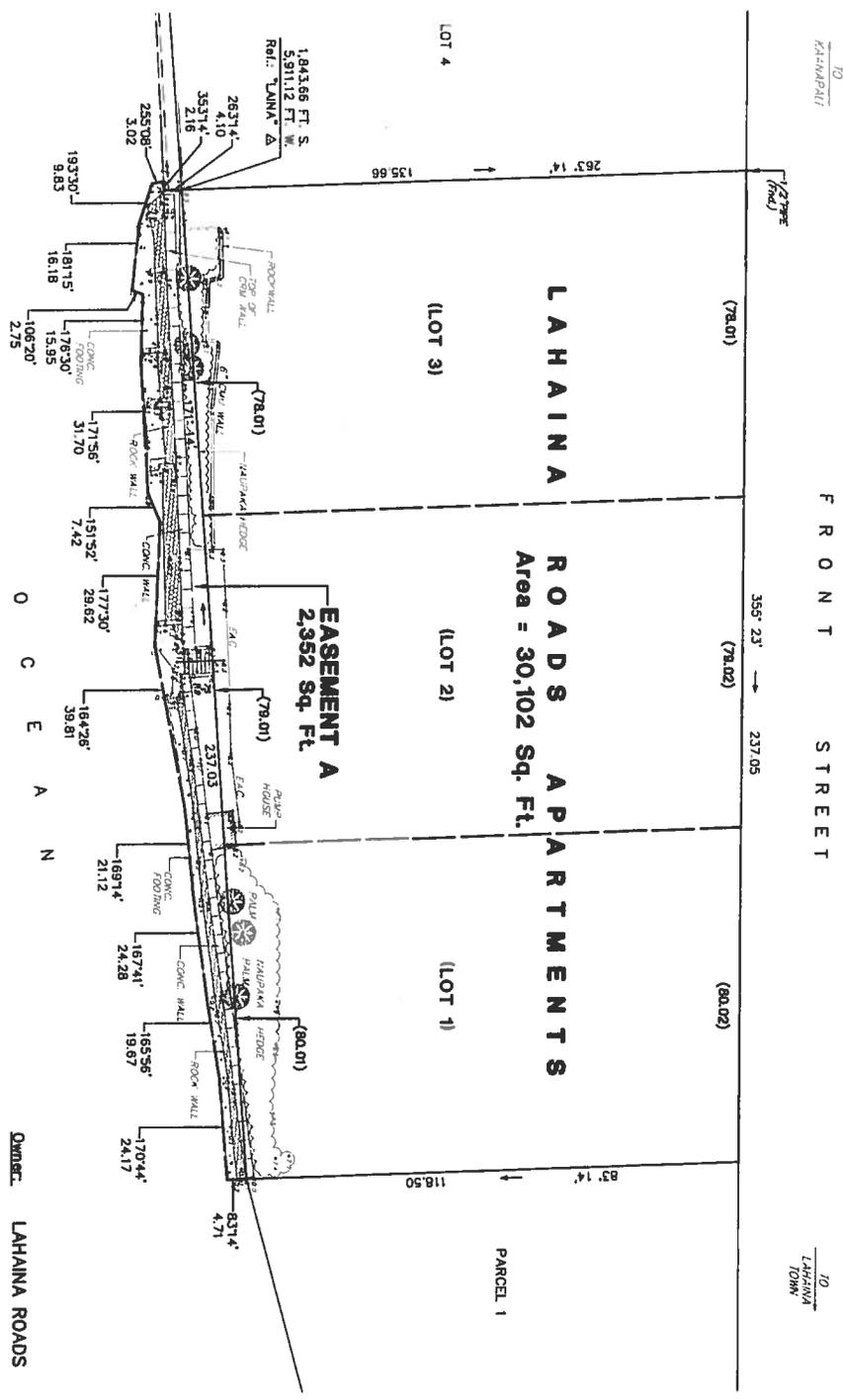
PROJECT SITE

SECOND DIVISION		
ZONE	SEC.	PLAT
4	5	13
CONTAINING		PARCELS
Scale: 1 in. = 50 ft.		

TRUE NORTH  
SCALE 1" = 20 FT



Top Map Key (2) 4-5-13: 27  
MAPPING, MAUI, HAWAII 96793



**LAHAINA ROADS APARTMENTS**  
**DESIGNATION OF EASEMENT A**  
**FOR SEAWALL PURPOSES**

BEING ALL OF LOTS 1, 2 AND 3,  
MALA BEACH SUBDIVISION  
AT LAHAINA, MAUI, HAWAII

R. T. TANAKA ENGINEERS, INC.



*Kirk T. Tanaka*  
KIRK T. TANAKA  
Licensed Professional Land Surveyor  
License Expires April 30, 2014

Owner: LAHAINA ROADS  
Address: 1403 FRONT STREET  
LAHAINA, MAUI, HAWAII 96761

DATE 05/10/12

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

EXHIBIT "B"

NEIL ABERCROMBIE  
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

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

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
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

REF:OCCL:TM

Shoreline Encroachment: MA 09-07

Christopher L. Hart  
Chris Hart & Partners, Inc.

Wailuku, Maui 96793-1717

MAR - 1 2012

ATTN: Raymond Cabebe

SUBJECT: Request to Resolve State Land Encroachment by Lahaina Roads Located Makai of  
Front Street, Lahaina, Maui (2) 4-5-013:027

Dear Mr. Hart and Mr. Cabebe:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of the shoreline encroachment information for the subject location. According to the information submitted, approximately ( $\approx$ ) 2,352-ft<sup>2</sup> of encroachment has been identified (revetment/seawall, stairs, CRM wall, portion of the pool deck, vegetation, portion of a pump house) makai of the subject property upon State land. The seawall is  $\approx$ 237-ft long and ranges from about 8 to 9.5 feet in height with a concrete stairway about 5.5-ft wide to the shoreline located at the middle of the seawall structure with the other mentioned improvements landward of the structure.

OCCL staff was unable to locate any construction permit or other land use authorization permits for the subject improvements. According to the State Survey Division, there are no prior shoreline certifications for the property. After review of documents forwarded to our Office, staff notes the following:

- A memorandum dated May 8, 1968 regarding 'Construction Progress' of the Lahaina Roads Apartments stating, "To date, we have completed the following stages. 1. All footings are complete. 2. Sea Wall is in."
- The Special Management Area (SMA) Minor Permit Approval, Shoreline Setback Approval (SSA), and Environmental Assessment Exemption for the Proposed Repairs to the Existing Nonconforming Seawall For Lahaina Roads AOA states, "6. The seawall legally exists, prior to June 22, 1970, being constructed in 1968."

EXHIBIT "C"

As the location of the shoreline in 1968 is unknown, the DLNR will not be asking that an after-the-fact Conservation District Use Permit be obtained to cure this matter. However Lahaina Roads must obtain an easement for the use of public lands.

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.

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.

According to your information, Lahaina Roads is a four-story condominium construction in the late 1960's with a total of 42-units. A  $\approx 760\text{-ft}^2$  swimming pool with a concrete deck is located makai of the condominium.

#### Surrounding Land Uses

The surrounding costal uses along the coastline are primarily residential. The Makai Inn apartment unit to the north has an existing abutting concrete and rock seawall  $\approx 162\text{-ft}$  long along its seaward boundary; and the private residence to the south has an existing abutting  $\approx 83\text{-ft}$  long concrete and rock wall along its seaward boundary.

#### Beach Resources

Beach resources are poor to non-existent. There is no sandy beach fronting the property. The region is heavily armored. There is no fringing reef offshore and the shoreline consists of beach rock, boulder beaches, rock revetments and basalt outcroppings. Most of the area consists of wet seawalls with limited access and near shore recreational opportunities.

#### Public Access

There is no public access through the property nor are there existing beach access easements identified in the immediate area. A County park is located about 365-feet to the south that has excellent access to the shoreline. Lateral access along the shoreline is available along the base of the seawalls during the lowest of tides. Given the irregular and varying high heights of neighboring seawalls, access may be considered impassable upon the walls.

#### Effect of Removing the Encroachment on:

Beach Resources: Removal of the entire seawall and stairs will not improve beach resources as the shoreline is heavily armored. Removal will release sediment into the ocean.

Public Access: It does not appear that public access will be improved by removing the encroachment as abutting neighbors on both sides have seawalls.

Affect on Adjacent Properties

Removal of the encroaching improvements would have a negative effect on the surrounding parcels due to the potential for end flanking, scouring and erosion of the dirt and fill behind the wall as the adjacent properties have erosion control seawalls. Removal of the structure will likely create an erosion threat to the pool deck and may affect the integrity of the pool.

The effect of removing the seawall would place an unnecessary risk to adjacent property's seawall and the landward improvements and would not provide an appreciable gain in beach area.

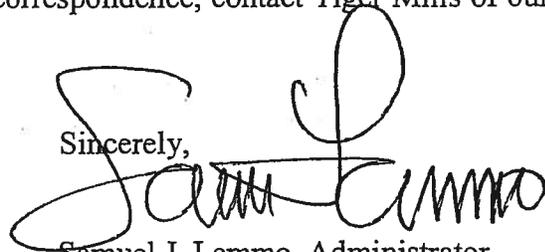
It has been the general policy and practice of the OCCL to support easement requests that have no discernible effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as a primary erosion control for potentially threatened structures, impacts to the adjacent and upland 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 HRS §§ 205A & 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the encroachment area. The OCCL has no objections to an easement request being processed.

Lahaina Roads is required to obtain a land disposition for the use of public lands. Please contact the Maui District Land Office (984-8103) regarding the processing of an easement. Once the easement is acquired, then the encroachment would be considered resolved and the OCCL may review plans to repair the seawall. If an easement is not pursued, Lahaina Roads shall be required to remove the encroachment.

We hope this correspondence resolves some of the outstanding issues regarding this matter. Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

Sincerely,



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

C: Chairperson  
MDLO  
Maui County  
-Planning Department

EASEMENT "A"

LAHAINA ROADS APARTMENTS

SITUATED AT LAHAINA, MAUI, HAWAII

An Easement for seawall purposes affecting the seashore in favor of Lahaina Roads Apartments Lot and described as follows:

Beginning at the Northeast corner of this Easement, being also the Northwest corner of Lahaina Roads Apartments Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station LAINA" being 1,843.66 feet South and 5,911.12 feet West and running by azimuths measured clockwise from True South:

1. 351° 14' 237.03 feet along Lahaina Roads Apartments Lot;
2. 83° 14' 4.71 feet along the remainder of seashore;
3. 170° 44' 24.17 feet along the remainder of seashore;
4. 165° 56' 19.67 feet along the remainder of seashore;
5. 167° 41' 24.28 feet along the remainder of seashore;
6. 169° 14' 21.12 feet along the remainder of seashore;
7. 164° 26' 39.81 feet along the remainder of seashore;
8. 177° 30' 29.62 feet along the remainder of seashore;
9. 151° 52' 7.42 feet along the remainder of seashore;
10. 171° 56' 31.70 feet along the remainder of seashore;
11. 176° 30' 15.95 feet along the remainder of seashore;
12. 106° 20' 2.75 feet along the remainder of seashore;
13. 181° 15' 16.18 feet along the remainder of seashore;
14. 193° 30' 9.83 feet along the remainder of seashore;

**EXHIBIT "D"**

15. 255° 08' 3.02 feet along the remainder of seashore;
16. 353° 14' 2.16 feet along the remainder of seashore;
17. 263° 14' 4.10 feet along the remainder of seashore to the point of beginning and containing an area of 2,352 Square Feet.



R. T. TANAKA ENGINEERS, INC.

A handwritten signature in black ink that reads "Kirk T. Tanaka".

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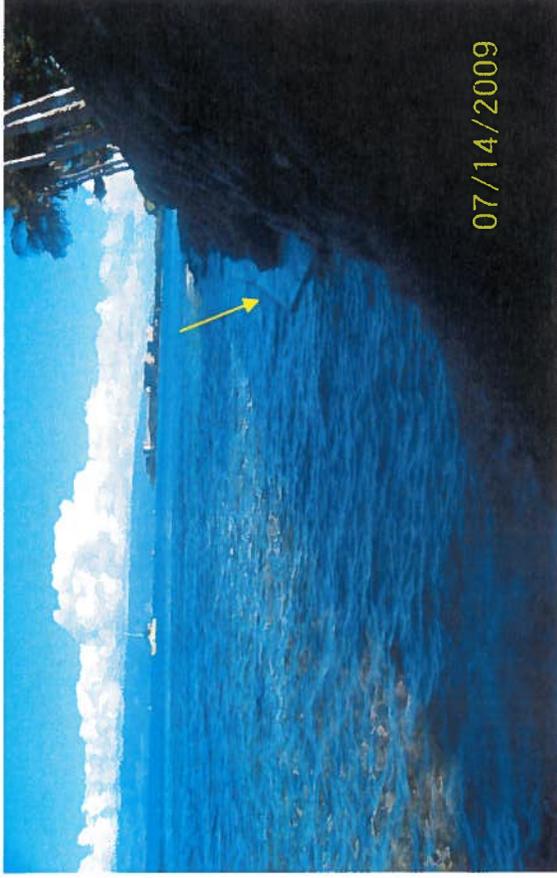
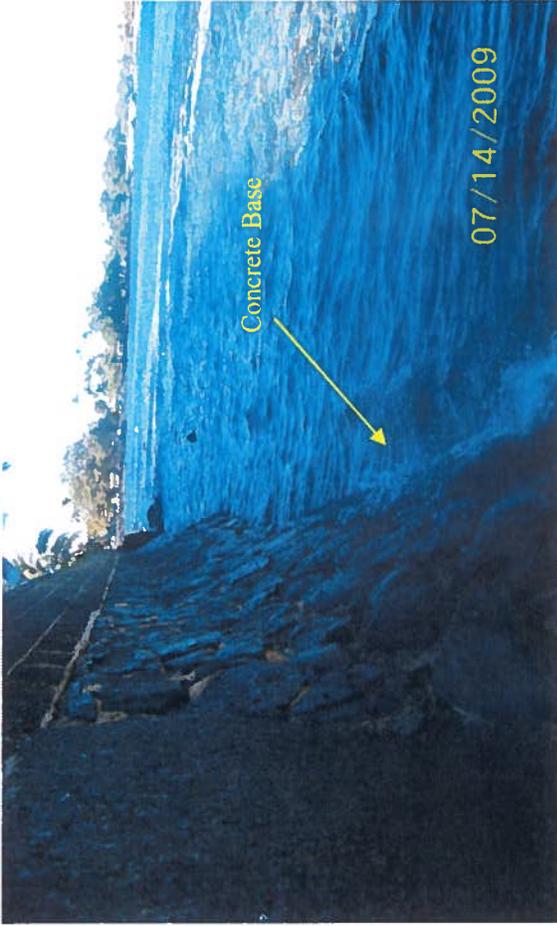
Kirk T. Tanaka  
Licensed Professional Surveyor  
Certificate No. 7223-LS  
License Expires: April 30, 2014

871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

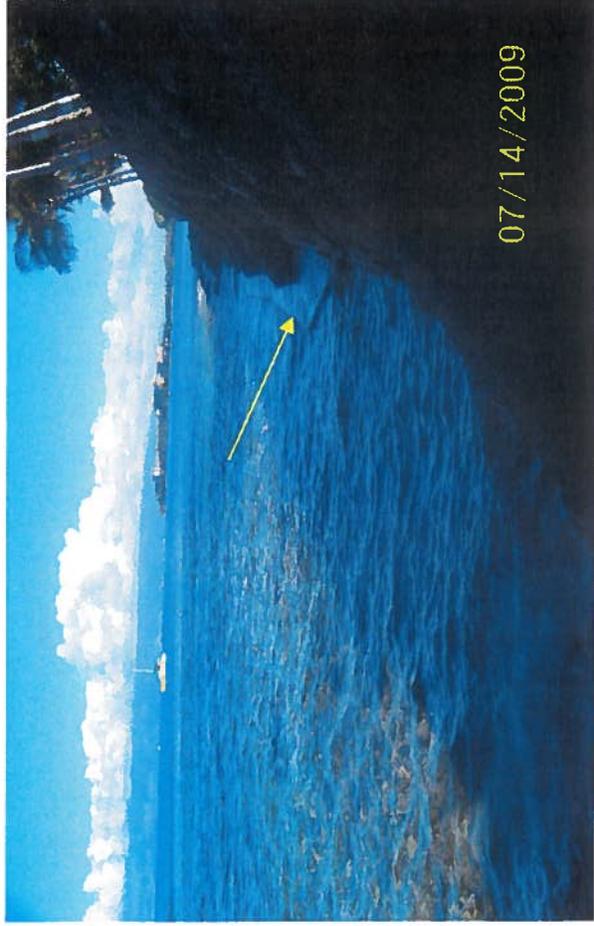
May 10, 2012

Photos taken: 7/14/09

Lahaina Roads, TMK: (2) 4-5-013:027



View of the seawall area facing south from stairway. All steel rods have been removed but the cement base still remains in place



Photos 2, 3 & 4 depict the shoreline and seawall area to the north of the stairway. All steel rods have been removed but the concrete base still remains in place.