

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

June 28, 2013

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

PSF No.:11MD-064

Maui

Grant of Term, Non-Exclusive Easement to Association of Apartment Owners (AOAO) of Kihei Surfside for Rockwall and Stairway Encroachment Purposes, Keawakapu, Kamaole, Kula, Maui, Hawaii, Tax Map Key: (2) 3-9-004: Por. of 001.

APPLICANT:

Association of Apartment Owners of Kihei Surfside, a Domestic Non-profit Corporation.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Keawakapu, Kamaole, situated at Kula, Kihei, Maui, identified by Tax Map Key: (2) 3-9-004: portion of 001, as shown on the attached map labeled Exhibit A and the GIS Overview labeled Exhibit C.

Exhibit B – Survey map identifying encroachment area, prepared by Akamai Land Surveying, Inc.

Exhibit D – Photos of encroachment dated July 1, 2011.

AREA:

51 sq. ft., more or less.

ZONING:

State Land Use District: Urban
County of Maui CZO: Park District - SMA

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

A portion of the subject parcel is encumbered by Executive Order No. 3963 to the Kaho'olawe Island Reserve Commission for an office, information center, boat house/ storage facility, and native Hawaiian plant nursery purposes.

.298 acres are encumbered by the Association of Apartment Owners of Mana Kai Maui for landscaping purposes under revocable permit number S-5405.

CHARACTER OF USE:

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

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 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 one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The Association of Apartment Owners ("AOAO") of Kihei Surfside has requested an easement to address an encroaching section of rock wall and stairs fronting their property. Previous residential owners, the Watanabe's, built the rock wall and stairs during the course of their ownership from 1955 through 1967. The encroaching section of the wall and stairway encumbers 51 square feet of the adjacent State beach reserve, which fronts the AOA of Kihei Surfside property and is identified by Tax Map Key number: (2) 3-9-004: Portion of 001.

The current purpose of the stairway is to provide access to the state beach reserve and shoreline area fronting the Kihei Surfside property. Guests of the Kihei Surfside as well as the general public use this access for walking, jogging and other recreational purposes. The stairway does not obstruct lateral access through the area.

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.

AGENCY COMMENTS:

Requests for comments were submitted to the following agencies:

<i>Agency</i>	<i>Comments</i>
County of Maui – Planning Dept.	County requesting walkway improvements for coastal transit corridor. Request not related to this

	easement.
Office of Conservation and Coastal Lands	No comments received.
Office of Hawaiian Affairs	No comments received.
State - Division of Aquatic Resources	No objections
State – Historic Preservations	No objections, request archaeological monitoring if ground altering work to be conducted in the future.
Kahoolawe Island Reserve Commission	No objections / No comments

The requested use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. 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.
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) 3-9-004:028, 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 AOA Kihei Surfside covering the subject area for rock wall and stairway encroachment 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 easement document form, as may be amended from time to time;
 - B. The shoreline encroachment easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (2) 3-9-004:028,

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;

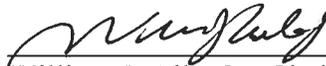
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

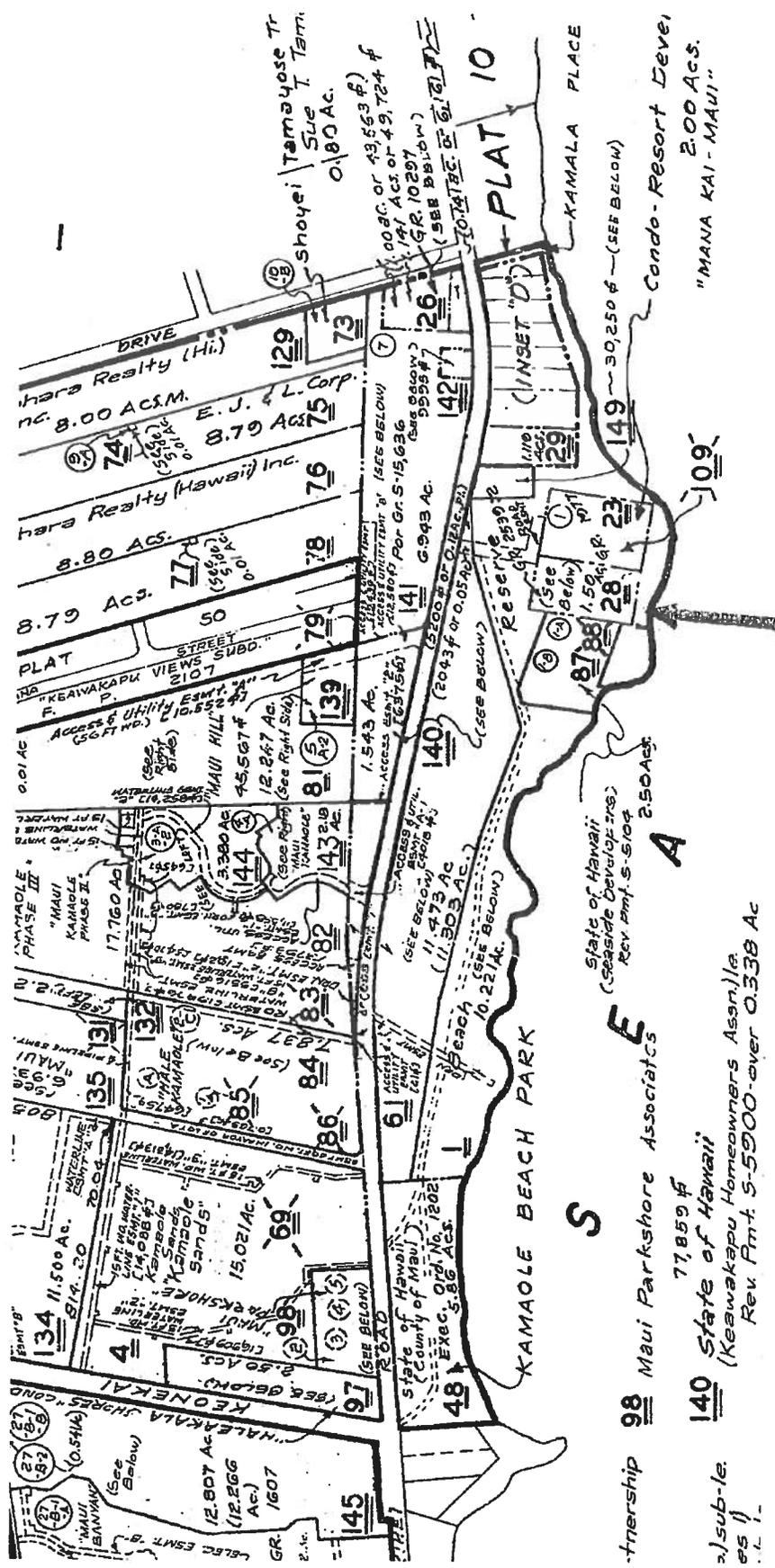


Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



SUBJECT AREA

- Partnership 98 Maui Parkshore Associates 77,859 \$
- 140 State of Hawaii (Keawakapu Homeowners Assn.)/a Rev. Pmt. 5-5900-over 0.338 Ac
- 109 Condo-Resort Devel. "MANA KAI-MAUI" 2.00 Acs.

DEPARTMENT OF THE TAX COMMISSIONER	
TAXATION MAPS BUREAU	
STATE OF HAWAII	
TAX MAP	
SECOND ZONE	DIVISION PLAT
3	9 04

LOT 14
T.M.K.:(2)3-9-04:87

272°00'00" → 330.00

NOTE: THE SHORELINE ENCROACHMENT EASEMENT IS OFFSET 0.15 FEET FROM WALLS AND OTHER ENCROACHMENTS. THE EASEMENT LINE OFFSET SHOWN ON THIS MAP HAS BEEN ENLARGED FOR CLARITY PURPOSES.

TRUE NORTH
SCALE: 1" = 10'

O C E A N
G O V E R N M E N T
B E A C H
R E S E R V E

R.

P.

GR. 2539,

198.00 (RECORD)

(65.04)

SPRINKLER HEAD

(271°07'30" 0.49)

(181°07'30" 22.80)

(182°57'30" 31.15)

(270°00'00" 0.70)

(182°37'00" 8.70)

(90°16'30" 0.65)

(180°21'00" 19.00)

182°00'00"

(182°07'00" 25.55)

(180°34'00" 12.35)

P.O.B.
9,172.01 S
20,642.47 W
"PUU O KAU" Δ

IRON RAILING
CONCRETE STAIRS
CONCRETE SIDEWALK

KIHEI SURFSIDE
T.M.K.:(2)3-9-04:28
AREA= 1.500 ACRES

CONCRETE & ROCK WALL

AP. 2. TO

CONCRETE STAIRS
CONCRETE PAD

SHORELINE ENCROACHMENT EASEMENT
AREA=51 SQ. FT.
OR 0.001 ACRE

"DANGEROUS OCEAN" SIGN

"KIHEI SURFSIDE" SIGN

HOSE BIB

CONCRETE STEPPING STONE PATH

CONCRETE & ROCK WALL

(14.02)

92°00'00" → 330.00

NOHOLOA



THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.

LOT 1
T.M.K.:(2)3-9-04:23

SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NO. 6960
EXPIRATION DATE: 30 APRIL 2012

MANA KAI - MAUI

EXHIBIT "B"

JOB NO.: 210235ESMT

SCALE: 1" = 20'

AKAMAI LAND SURVEYING, INC.
P.O. BOX 1748
MAKAWAO, MAUI, HAWAII 98768

T.M.K.:(2)3-9-04:28

DATE:13MAY'11 SHEET 1 OF 1



North

Blue: State Land
Red: Private

SUBJECT AREA

State of Hawaii
(2) 3-9-004:001

State of Hawaii
(2) 3-9-004:087

Kihel Surfside
(2) 3-9-004:028

Mana Kai-Maui
(2) 3-9-004:023

South Kihel Road

Exhibit (C)



Photos taken: 7/1/2011



Photos of concrete stairway and support walls where encroachment exist.



AOAO of Kilei Surfside





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 22, 2013

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 Kihei Surfside.

Project / Reference No.: PSF No. 11MD-064

Project Location: Keawakapu, Kamaole, Kula, Maui, Hawaii

Project Description: Granting of a Term Non-Exclusive Easement for Rockwall and Stairway Encroachment Purposes (51 sq. ft.).

Chap. 343 Trigger(s): Use of State Lands

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)], and Exemption Class No. 4, Minor alteration in the conditions of land, water, or vegetation."

Consulted Parties: Kimberly Mills of 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 request with the condition that the encroachment does not obstruct public access.

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

6/17/13

Date