

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

August 9, 2013

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

PSF No.: 12MD-102

Maui

Amendment of Perpetual, Non-Exclusive Land Office Deed No. S-27836 to Trustees of the Papakea Seawall Easement Trust, on Behalf of the Papakea Association of Apartment Owners, Maintenance and Repair of Existing Seawall and Landscaping of the Easement Area Purposes, Honokowai, Kaanapali, Lahaina, Maui, Tax Map Key: (2) 4-1-001: Seaward of 055. The Amendment is to Include an Additional 943 Square Foot Seawall Encroachment Area, and to Allow the Easement to "Run with the Land".

APPLICANT:

Barry Franzen, Stuart Gray, and Ken Rice, As Trustees of the Papakea Seawall Easement Trust, for and on Behalf of the Papakea Association of Apartment Owners, an unincorporated association organized under the Hawaii Condominium Property Act.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Honokowai, Kaanapali, Lahaina, Maui, identified by Tax Map Key: (2) 4-1-001: Seaward of 055, as shown on the attached map labeled Exhibit A.

AREA:

943 square feet, more or less (in addition to existing Easement (A) of 6,820 sq. ft. and Easement (B) of 2,038 sq. ft.)

EXHIBITS:

- Exhibit – 1: Original Easement map of the subject seawall encroachment (C.S.F. No. 21315) dated August 21, 1990.
- Exhibit – 2: New Easement map which includes easements A, B, and C, dated September 18, 2012, by Valencia Land Surveying.
- Exhibit – 3: Metes and bounds description for the newly discovered encroachment area identified as Easement C.
- Exhibit – 4: Letter dated June 22, 2012 from counsel for the Papakea Association of Apartment Owners

ZONING:

State Land Use District:      Conservation

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 & CHARACTER OF USE:

Encumbered by Land Office Deed No. S-27836 to The Trustees of the Papakea Seawall Easement Trust for and on behalf of the Papakea Association of Apartment Owners, for a Perpetual Non-Exclusive Easement for Repair and Maintenance of Existing Seawall and Landscape the Easement Area purposes.

CHARACTER OF USE:

Right, privilege and authority to maintain and repair the existing seawall and to landscape the easement areas in, over, under and across State lands.

CONSIDERATION:

One-time payment of \$12,070.40.

EASEMENT TERM:

Perpetual.

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 <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 the consideration for the easement in full; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

By Land Board action of February 23, 1990, under agenda item F-6, the Board authorized the direct sale of a non-exclusive, perpetual easement to the Trustees of the Papakea Seawall Easement Trust, for and on Behalf of the Papakea Association of Apartment Owners (Applicant), for maintenance and repair of an existing seawall and landscaping purposes. Subsequently, Land Office Deed (LOD) No. 27836 was issued on December 27, 1990, for the encroachment abutting Tax Map Key: (2) 4-1-001:055.<sup>1</sup>

Recently, Applicant submitted a shoreline certification application for the subject private property. During the certification process an additional encroachment area of 943square feet of seawall was discovered. This section was located beneath the footing of the seawall and had been inadvertently omitted in the preparation of LOD 27836. Refer to the attached survey map dated September 18, 2012, which depicts the omitted area as Easement (C) (see

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<sup>1</sup> As noted, the easement was issued as a perpetual one. Land Division no longer recommends perpetual easements for seawalls because of the dynamics of the State's shorelines. The current practice is to issue term easements not exceeding 55-years. That way, the need for the easement can be reassessed periodically.

Exhibit 3). According to counsel for the Papakea AOA, this newly discovered area had been covered with sand at the time the easement was originally surveyed, but was exposed at the time of the more recent shoreline survey. See Exhibit 4 attached.

Grant of easement LOD 27836 permits the seawall as it existed in 1990, and the size of the seawall has not changed since that time. Applicant desires to correct this recently discovered discrepancy by amending the existing easement to include the encroachment area of 943 square feet. Applicant has also requested that the valuation of the additional area be based upon the 1990 assessment since it should have been included in the original easement document. Applicant originally paid \$35,455.00 for 8,858 square feet at time the easement was executed, or \$4.00 per square foot (rounded). When multiplied by the additional easement area of 943 square feet, the result is \$3,772. Applicant is also proposing to pay interest at the rate of 10% per annum for 22 years on this amount since January 1, 1991, which staff calculates at \$8,298.40 in interest. The easement value plus interest yields a total consideration of \$12,070.40 (exclusive of mapping and document fees, which are charged separately).

REMARKS:

The Applicant has indicated that no additions were made to the wall and the newly discovered footing area existed at the time the original easement was granted. Staff agrees that the additional area as shown in Exhibit 2 should have been included in the original easement and that it is a continuation of the same structure, and its omission from the easement was apparently a result of shoreline conditions at the time. Staff has no objections to the subject request and supports the calculation of proposed consideration as set forth above. Staff is also recommending that the easement instrument be amended to run with the land to be consistent with the current seawall easement form approved by the Department of the Attorney General.

An after-the-fact Conservation District Use Application of the subject seawall was approved by the Board at its meeting of March 10, 1989 under agenda Item H-3. At that time, the Board imposed a \$2,000.00 fine for having violated the provisions of Title 13, of the Hawaii Administrative Rules.

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.

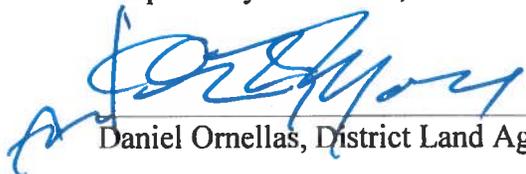
There are no other pertinent issues or concerns.

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) 4-4-001:055, 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 amendment of Land Office Deed No. 27836 to include an additional area of 943 square feet covering the subject area, 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 amendment of shoreline encroachment easement document form, as may be amended from time to time;
  - B. The easement shall be amended to run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-4-001:055, 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 Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - C. Review and approval by the Department of the Attorney General;
  - 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; and

- F. Obtain Governor's approval and Legislative concurrence in accordance with section 171-53(c) of the Hawaii Revised Statutes.

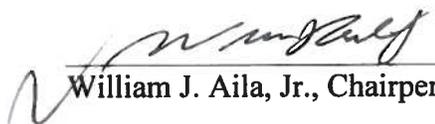
Respectfully Submitted,



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Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 26, 2013

**EXEMPTION NOTIFICATION**

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

**Project Title:** Amendment of Perpetual, Non-Exclusive Land Office Deed No. S-27836 to Trustees of the Papakea Seawall Easement Trust, on Behalf of the Papakea AOA, FOR Repair and Maintenance of the Existing Seawall, and Landscaping of the Easement Area Purposes.

**Project / Reference No.:** PSF# 12MD-102

**Project Location:** Honokowai, Kaanapali, Lahaina, Maui, TMK: (2) 4-1-001: Seaward of 055.

**Project Description:** This amendment is for the inclusion of an additional 943 square feet to the seawall encroachment area (newly discovered footing area which encroaches onto public land).

**Chap. 343 Trigger(s):** Use of State Land

**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.

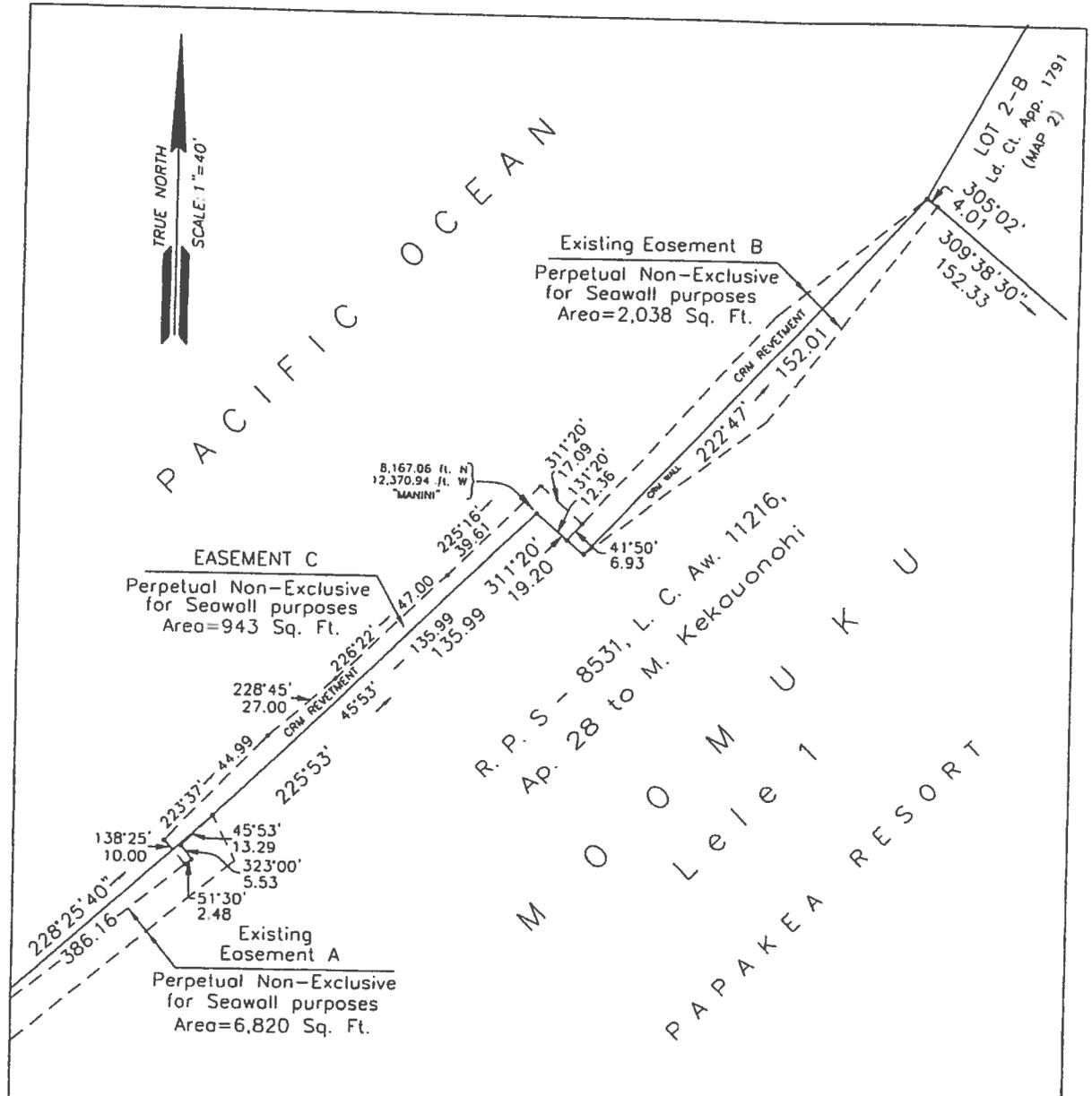
  
\_\_\_\_\_  
William J. Aila Jr., Chairperson



**JUL 26 2013**  
\_\_\_\_\_

Date



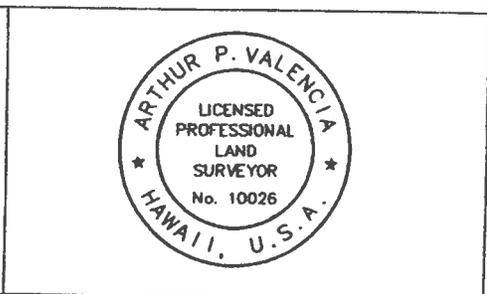


PERPETUAL NON EXCLUSIVE EASEMENT  
FOR SEA WALL PURPOSES  
EASEMENT C

Honokowai, Lahaina, Maui, Hawaii  
Scale: 1 inch = 40 feet

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

Arthur P. Valencia  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. 10026  
Exp. Date: 4-30-14



PAPAKEA RESORT  
TMK : (2) 4-4-01:055

Prepared by:  
VALENCIA LAND SURVEYING  
Sept. 18, 2012

**PERPETUAL NON-EXCLUSIVE EASEMENT  
FOR SEAWALL PURPOSES**

**EASEMENT C**

**Honokowai, Lahaina, Maui, Hawaii**

**Being the Reclaimed (FILLED) Lands fronting Royal Patent S-8531, Land  
Commission Award 11216, Apana 28 to M. Kekauonohi**

Beginning at the southeast corner of this easement, being also the northwest corner of Royal Patent S-8531, Land Commission Award 11216, Apana 28 to M. Kekauonohi, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 8,167.06 feet North and 12,370.94 feet West and running by azimuths measured clockwise from True South:

1. 45° 53' 00" 135.99 feet along R. P. S-8531, L. C. Aw. 11216,  
Ap. 28 to M. Kekauonohi ;
2. 45° 53' 00" 13.29 feet along existing Easement A ;
3. 323° 00' 00" 5.53 feet along same ;
4. 51° 30' 00" 2.48 feet along same ;

Thence along the toe of the concrete rock masonry revetment for the next six (6) courses, the direct azimuths and distances between points being:

5. 138° 25' 00" 10.00 feet ;
6. 223° 37' 00" 44.99 feet ;
7. 228° 45' 00" 27.00 feet ;
8. 226° 22' 00" 47.00 feet ;
9. 225° 16' 00" 39.61 feet ;
10. 311° 20' 00" 17.09 feet ;

11. 41° 50' 00" 6.93 feet along existing Easement B ;
12. 131° 20' 00" 12.36 feet along R. P. S-8531, L. C. Aw. 11216,  
Ap. 28 to M. Kekauonohi to the point of  
beginning and containing an area of 943  
square feet, more or less.

This work was prepared by me  
or under my direct supervision

Arthur P. Valencia  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. 10026  
Exp. Date:4-30-14

DAMON KEY LEONG KUPCHAK HASTERT  
A LAW CORPORATION

June 22, 2012

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Harry A. Jorman

Charles W. Key  
(1929-2008)

Admitted in Texas  
Admitted in Hawaii and California  
Admitted in District of Columbia

Re: 3543 L. Honoapiilani Rd., Lahaina, Hawai'i 96761  
Request for Expedited Easement

Dear Mr. Pacheco:

We represent the Papakea Association of Apartment Owners ("Papakea"), which owns and manages the property located at 3543 L. Honoapiilani Rd., Lahaina, Hawaii 96761 that is identified as Tax Map Key No. (2) 4-4-01:055 ("Property"). The Property is an oceanfront parcel with a seawall along its *makai* boundary. We write to request the amendment of an existing seawall easement to include a small area that was inadvertently omitted from the original easement.

More specifically, the seawall *makai* of Papakea's Property is a permitted structure pursuant to a Grant of Non-Exclusive Easement (Bureau of Conveyances Doc. No. 91-002182) that Papakea executed with the State in or around December 1990 ("Easement"). A copy of the Easement is enclosed as Exhibit "1." At that time, Papakea paid \$35,400.00 (not including the \$55 processing fee) for the "[r]ight, privilege, and authority to maintain the repair **the existing seawall** and to landscape the easement areas[.]" Easement, at pg. 1 (emphasis added). *See also id.* at pg. 2 (describing Easement A as "containing an area of 6,820 square feet, **more or less**" and Easement B as "containing an area of 2,038 square feet, **more or less**") (emphasis added). Clearly, the State, as well as Papakea, intended that the Easement would legalize the entire seawall as it existed in or around 1990.

The seawall is located exactly where it was in 1990 and, since that time, no additional construction has been done to change or otherwise enlarge the seawall. However, natural erosion occurring along the base of the seawall has removed sand that may have obscured a portion of the seawall's footing during the original survey. In particular, Papakea recently discovered that 875 square feet beneath the footing of the seawall had been inadvertently omitted from the area described in the Easement. A survey showing this area as Easement "C" is enclosed as Exhibit "2."



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DAMON KEY LEONG KUPCHAK HASTERT

Mr. Larry Pacheco  
June 22, 2012  
Page 2

Even though the Easement expressly permits the seawall as it existed in 1990 and despite the fact that the size of the seawall has not changed since then, Papakea desires to correct this recently discovered discrepancy by amending the existing Easement to include this area. Further, because this area should have been included in the Easement, Papakea respectfully requests that payment for the additional 875 square feet be at the 1990 valuation, *i.e.* \$3,500.00, plus the \$55 processing fee. (Papakea originally paid \$35,455.00 for 8,858 square feet at the time the Easement was executed, or approximately \$4.00 per square foot.). Moreover, because this amount should have been paid in 1990, Papakea also proposes to pay \$7,524.52 in interest at 10% per annum since January 1, 1991 through June 30, 2012, for a total payment in the amount of \$11,079.52.

In summary, Papakea requests that its request to amend the existing Easement by corrective, lump sum payment of \$11,079.52, which including interest at the statutory rate and the Department's processing fee, be put before the Board of Land and Natural Resources at the earliest possible time. Two copies of Papakea's application are enclosed as Exhibit "3." Because this request addresses an inadvertent error in the existing Easement, Papakea asks that its application be processed on an expedited basis.

Thank you in advance for your anticipated cooperation in this matter. If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle

GWK/CIHKC:ja  
169898.2  
Enclosures

cc: Cindy Amano, General Manager of the  
Papakea Association of Apartment Owners