

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

December 13, 2013

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

PSF No.: 13KD-174

Kauai

Issuance of Right-of-Entry Permit to Graham Chelius and Marisa Chelius on State Unencumbered Beach Lands for Emergency Temporary Shore Protection, Kikiaola, Waimea, Kauai, Tax Map Key: (4) 1-2-013:031.

APPLICANT:

Graham Chelius and Marisa Chelius, Married, Tenants by the Entirety.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kikiaola, Waimea, Kauai, identified by Tax Map Key: (4) 1-2-013:031, as shown on the attached maps labeled Exhibit A & B.

AREA:

800 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Temporary Shoreline Protection purposes.

TERM OF RIGHT-OF-ENTRY:

Renewable one-year periods from November 2013 to October 2018 as per OCCL (see Exhibit C).

CONSIDERATION:

Gratis. This requested use is for a non-commercial purpose. Additionally, staff understands that the placement of the geotextile sandbags will take place within the record boundary of the private property, though the inland movement of the shoreline results in the area now being deemed public lands.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) 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."
(see Exhibit F).

DCCA VERIFICATION:

Applicant is sole proprietorship and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to comply with the:

- 1) Terms and Conditions of Emergency Authorization Permit KA-14-03 issued by OCCL on July 15, 2013 (see Exhibit C).
- 2) Terms and Conditions of the Right-of-Entry Permit to be issued hereunder.

REMARKS:

Department of Land and Natural Resources, Office of Conservation and Coastal Lands, received a request on July 9, 2013 for emergency temporary shore protection at Kekaha, Kauai identified as Tax Map Key: (4) 1-2-013:031 (see Exhibit A).

The applicant requests to place geotextile (“SEAbag” or “Elcorock”) sandbags along approximately 80 feet of erosion scarp at aforementioned Tax Map Key. A long-term trend of beach erosion, due in large part to interruption of alongshore sediment transported by Kikiaola Harbor, has created an erosion scarp that is now within approximately 10 feet of the single-family residence on the subject property. The erosion is exposing previously buried sandbags and netting, which is slumping onto the active beach.

The applicant will use approximately 1,000 cubic yards of sand that will be sourced from the updrift (east) side of Kikiaola Boat Harbor for filling sand bags, creation of an access ramp, and shaping the erosion scarp prior to installation of the erosion control structure. This area where the sand is being taken from is part of the Kikiaola Sand Bypass Project to move approximately 80,000 cubic yards of sand to nourish the eroded west-side of the harbor (see Exhibit D).

Final approval of this emergency project was granted by OCCL on September 30, 2013, (see Exhibit E), subject to a right-of-entry permit issued by Department of Land and Natural Resources, Land Division.

This project is expected to take 10 days to install geotextile bags.

Staff has no objections to the request. Staff is recommending that the Chairperson be delegated authority to extend the right-of-entry for additional one-year periods up to a total of five years, upon timely request by applicants.

Comments were solicited from:

State Agencies:

DOH	Monitor Community Noise Control, Air Pollution Control and Best Management Practices for Water Quality Standards
DLNR – DOBOR	No comments
DLNR – Historic Preserv.	No response by suspense date
DLNR – OCCL	Approved Emergency Shoreline Protection KA-14-03
OHA	No response by suspense date

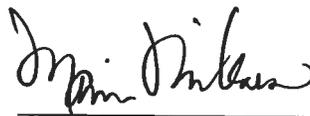
County Agencies

County Planning	No response by suspense date
Public Works	No response by suspense date

RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by 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 issuance of a right-of-entry permit to Graham Chelius and Marisa Chelius 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 right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - C. Authorize the Chairperson to issue one-year extensions of this right-of-entry permit.

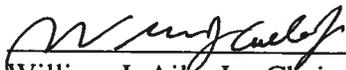
Respectfully Submitted,



Marvin Mikasa
Land Agent



APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



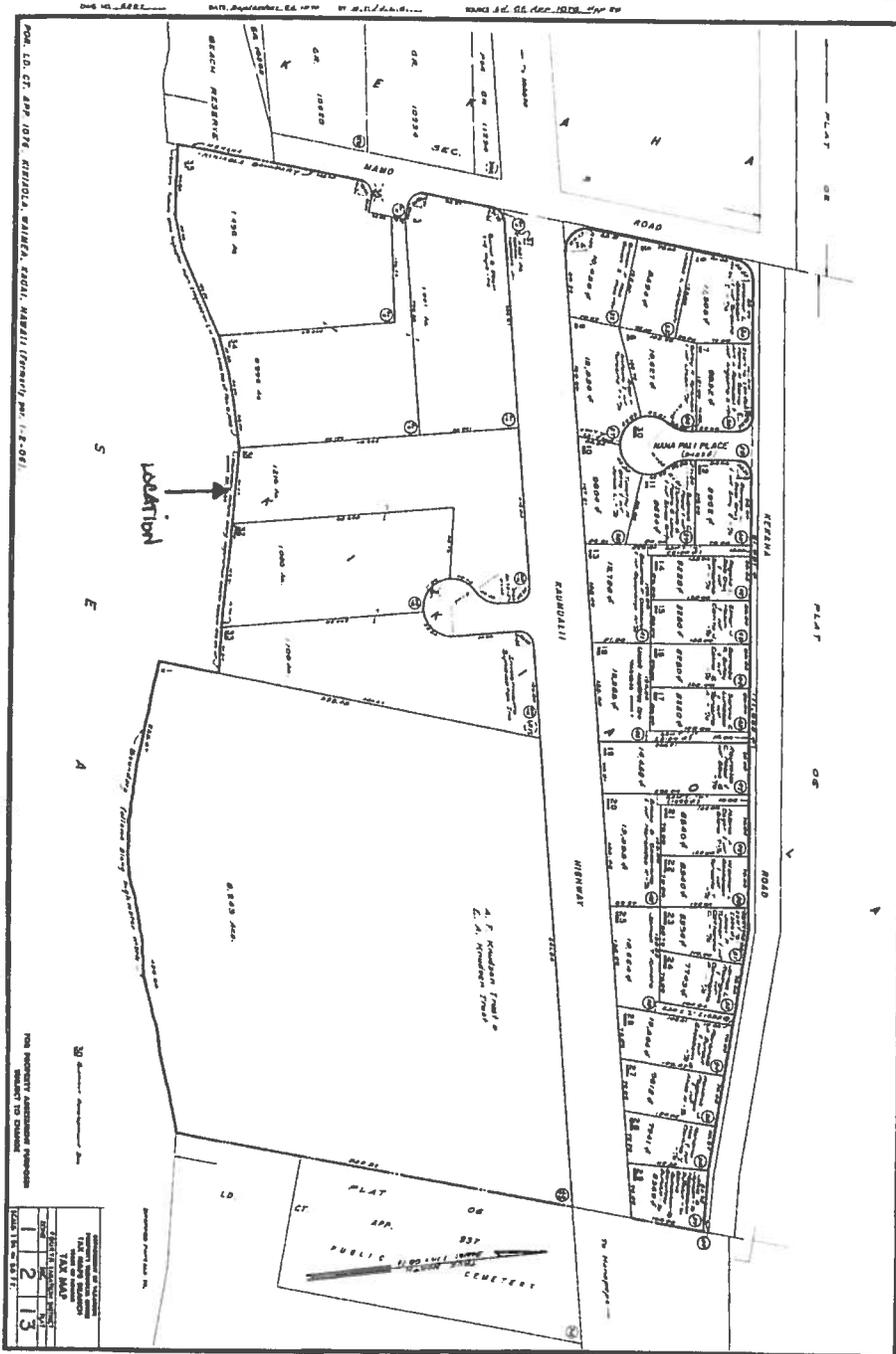


EXHIBIT "A"

COMMISSIONER OF REVENUE	
TAX MAPS SECTION	
TAX MAP	
DATE	12/13
BY	2/13
FOR	

NTIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ESTHER KIA'AINA
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 RESOURCE ENFORCEMENT
FISH FARMING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAPU + LAAWE ISLAND RESERVE COMMISSION
LANDS
STATE PARKS

DLNR.OCCLES:BR

Emergency KA-14-03

JUL 5 2013

Mr. Graham Chelius

Waimea, HI 96796

Dear Mr. Chelius,

SUBJECT: RE: Request for Emergency Temporary Shore Protection at
Kekaha, Kauai, Hawaii, TMK (4) 1-2-013:031.

The Department of Land and Natural Resources (DLNR) has received your July 9, 2013 request letter to place geotextile ("SEAbag" or "Elcorock") sandbags along approximately 80 feet of erosion scarp at TMK (4) 1-2-013:031. A long-term trend of beach erosion, due in large part to interruption of alongshore sediment transport by Kikiaola Harbor¹, has created an erosion scarp that is now within approximately 10 feet of the single-family residence on the subject property. The erosion is exposing previously buried sandbags and netting, which is slumping onto the active beach.

The request is to place geotextile sandbags stacked to form a 1.5:1 to 2:1 slope fronting the subject parcel. Final project plans are being developed and will be forwarded to DLNR when available. The shoreline will be accessed from the adjacent property (4480 Mamo Road), which has also recently applied for a temporary erosion control structure. Approximately 1,000 cubic yards of sand will be sourced from the updrift (east) side of Kikiaola Boat Harbor for filling sand bags, creation of an access ramp, and shaping the erosion scarp prior to installation of the erosion control structure.

DLNR authorizes the placement of geotextile sandbags and sand covering as described above, fronting the subject properties, in an effort to protect public health, welfare, and safety on the subject property under Hawaii Administrative Rules §13-5-35, Emergency Permits (a) "Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the

¹ University of Hawaii Coastal Geology Group (2011), Kauai Shoreline Study Erosion Maps.
<http://www.soest.hawaii.edu/coasts/kauaicontry/KCounty.html>

EXHIBIT "c"

TMK (4) 1-2-013:031

7/12/2013

threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department.”

This authorization is conditional on DLNR’s receipt of the final work plan from the applicant. Project work may not begin until DLNR has approved the final project plans.

In addition, the proposed project is minor in scope and may be considered an exempt action under State environmental laws under Section 11-200-8(A)(1), Hawaii Administrative Rules (HAR) “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.”

Your July 2013 letter also seeks funding for the project. DLNR cannot provide funding for the temporary erosion control structure as proposed by the applicant.

Terms and Conditions

The DLNR has no objections to the placement of geotextile sandbags and beach sand covering to create a 1:5 to 2:1 slope along the erosion scarp fronting the subject properties, at TMK (4) 1-2-013:031, provided that you adhere to the following terms and conditions:

1. That in issuing this letter, the Department and Board has relied on the information and data that the applicant has provided in connection with this letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. It is understood that the sand bag structure is a temporary response to prevent the loss of the existing residence, which is threatened by both chronic and seasonal wave run-up and erosion. The material is authorized as a temporary erosion control measure for five (5) years from the date of acceptance by the landowner. Subsequent erosion control efforts that call for modification, other than maintenance or expansion of the proposed structure will require a new application. At the end of five years the materials shall be removed or you must apply for a Conservation District Use Permit under Hawaii Administrative Rules §13-5-22, Shoreline Erosion Control;
3. The Contractor shall confine all construction activities to areas defined by the final approved drawings and specifications;
4. The Contractor shall perform the work in a manner that minimizes environmental pollution and damage as a result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the construction period;
5. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson;

TMK (4) 1-2-013:031

7/12/2013

6. The Applicant will prepare a completion report for the project. It will summarize the construction and detail any deviation from the proposed plans;
7. The activity/use shall not adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
8. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
9. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
10. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual activity/use or activities conducted under this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard;
12. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses;
13. No motorized construction equipment is to be operated in the water at any time;
14. In the event there is a petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach;
15. 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, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this letter;
16. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for authorized projects;

TMK (4) 1-2-013:031

7/12/2013

17. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
18. The applicant shall ensure that excessive siltation and turbidity are contained or otherwise minimized through the use of silt containment devices or barriers;
19. The applicant shall take measures to ensure that the public is adequately informed of the project activities/work once it is initiated and the need to avoid the project area during the operation;
20. Public access along the shoreline during construction shall be maintained so far as practicable and within the limitations necessary to ensure safety;
21. All construction material including sand shall be free of contaminants of any kind including: excessive silt, sludge, anoxic or decaying organic matter, turbidity, temperature or abnormal water chemistry, clay, dirt, organic material, oil, floating debris, grease or foam or any other pollutant that would produce an undesirable condition to the beach or water quality; and
22. The applicant shall implement standard Best Management Practices (BMPs), such as daily inspection of equipment for conditions that could cause spills or leaks; cleaning of equipment prior to operation near the water; the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses; and implementation of adequate spill response procedures, stormy weather preparation plans, and the use of silt curtains and other containment devices. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCI staff shall be contacted immediately at 587-0381, to conduct a visual inspection and to provide appropriate guidance;

TMK (4) 1-2-013:031

7/12/2013

Should you have any questions, please contact Sea Grant Extension Agent Brad Romine, Bradley.M.Romine@hawaii.gov, at the OCCL.

Sincerely,



William J Aila, Jr, CHAIRPERSON
Board of Land and Natural Resources

CC: DLNR Land Div., Kauai, Kevin Mikasa
Kauai Planning Dept.

I concur with the conditions of this letter:

Applicant

Date _____



March 28, 2013

Graham & Marisa Chelius

Waimea, HI 96796

Subject: Department of Land and Natural Resources
Division of Boating and Ocean Recreation (DLNR-DOBOR)
Kikiaola Small Boat Harbor Sand Bypass Project
TMK: (4) 1-02-006:3, 17, 41, (4) 1-02-013: 1, 31-35, 39-41
Preconsultation for Environmental Assessment (EA)

The Department of Land and Natural Resources - Division of Boating and Ocean Recreation (DLNR-DOBOR) has contracted Oceanit to plan and design the sand bypass program in the vicinity of Kikiaola Small Boat Harbor. The project involves 1) Preparation and approval of plans, specifications, an Environmental Assessment and permits for a program to transport sand from the beach west (up drift) of Kikiaola Harbor to the beach west (down drift) of the harbor. This includes an initial transport of 80,000 cubic yards of sand to nourish the eroded down drift beach and an annual sand bypassing scheme to nourish the down drift beach with 5,000 cubic yards of sand. 2) Preparation and approval of plans, specifications and permits to repair the erosion damaged west breakwater root. 3) Preparation of a wave penetration report to investigate the wave conditions at the dock within the harbor.

We would appreciate any comments or concerns you may have regarding this project and assistance in identifying any permits, approvals or notifications required for this project. Please submit your comments to us no later than April 28, 2013.

Sincerely,

Cris Takushi
Project Manager

cc: Mr. Eric Yuasa
DLNR-DOBOR

attachments

EXHIBIT "D"

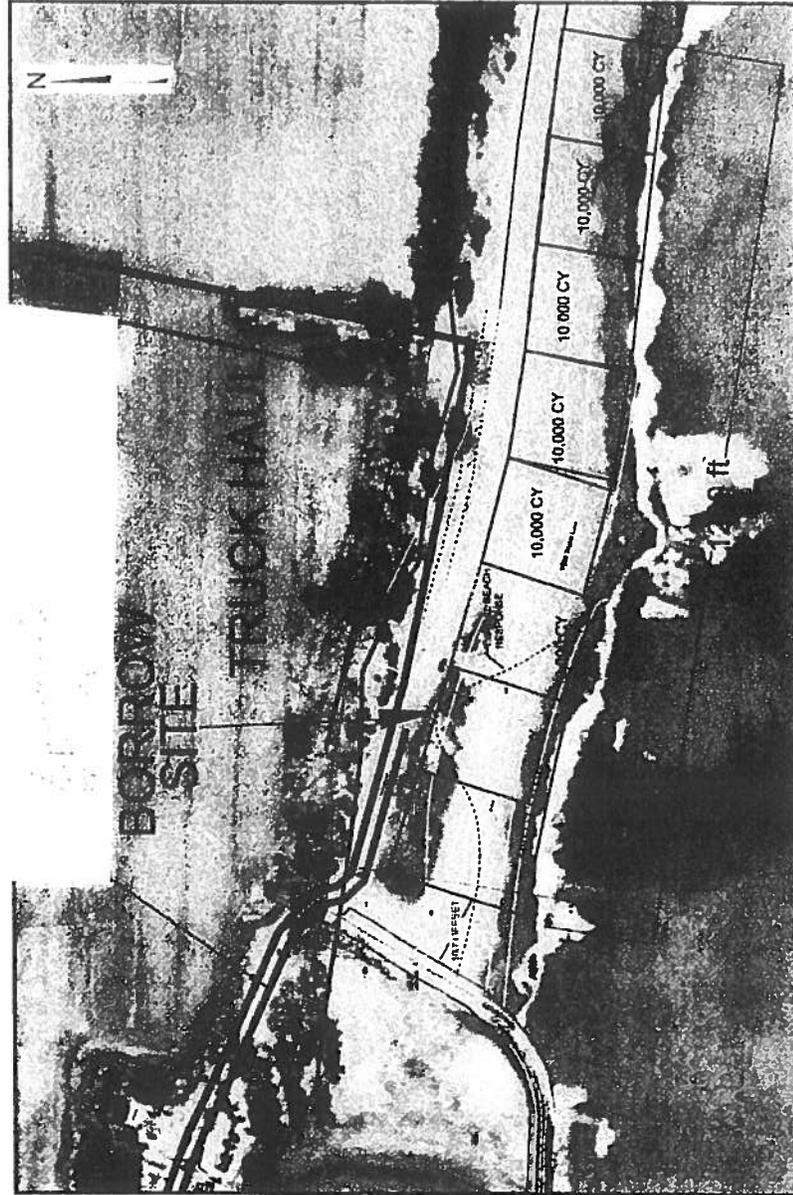


Figure 2.4-5 Overview of borrow site for 80,000 cy project

NEIL ABLERCHROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

ESTHER KAWANA
PRESIDENT

WILLIAM TAM
DEPUTY DIRECTOR - WATER

AGRICULTURE
BOARDS AND COMMISSIONS
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES SURVEILLANCE
LANDS
FORESTRY AND WILDLIFE
HONOLULU, HAWAII
KAPOLAHE ISLAND RESERVE COMMISSION
LAND
STAFF PAPERS

DLNR:OCCL:BR

Emergency KA-14-03

DEC 30 2013

Mr. Graham Chelius

Waimea, HI 96796

Dear Mr. Chelius,

SUBJECT: RF: Final Design and Work Plans for Emergency Temporary Shore Protection at Kekaha, Kauai, Hawaii, TMK (4) 1-2-013:031.

The Department of Land and Natural Resources (DLNR) received your final design and work plan on September 25th, 2013 for Temporary Shore Protection at TMK (4) 1-2-013:031. The shore protection project was authorized under DLNR Emergency Authorization KA-14-03, conditional on DLNR's receipt of the final work plan from the applicant. DLNR has no objections to the proposed Temporary Shore Protection final design and work plan and finds they are consistent with the purpose, terms, and conditions of the existing Emergency Authorization KA-14-03. Please note that a right-of-entry permit or other approval may be required from the State of Hawaii, Kauai Land Division office, (808) 274-3491, prior to the inception of project work.

Should you have any questions, please contact Sea Grant Extension Agent Brad Romine, Bradley.M.Romine@hawaii.gov, at the OCCL.

Sincerely,

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

CC: DLNR Land Div., Kauai, Kevin Mikasa

EXHIBIT " E "



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AHA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
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VICE DEPUTY
WILLIAM M. TANI
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND CRAFT REGISTRATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
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GEOLOGY AND WATER
HISTORIC PRESERVATION
KAPU HAWAIIAN RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title:	Issuance of Right-of-Entry Permit to Graham and Marisa Chelius
Project / Reference No.:	PSF 13KD-174
Project Location:	Kikiaola, Waimea, Kauai
Project Description:	Issuance of Right-of-Entry Permit on State Unencumbered Beach Lands for Emergency Temporary Shore Protection purposes for a period of five (5) years subject to the annual renewal of Right-of-Entry Permit.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "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)]."
Exemption Item Description From Agency Exemption List:	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.

Recommendation:

It is recommended that the Land Board find that issuance of a Right-of-Entry Permit for emergency temporary shore protection purposes is exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment. This permit is for a period of five (5) years subject to the annual renewal of Right-of-Entry Permit.



William J. Alla, Jr., Chairperson 

11/25/13

Date