

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

June 13, 2014

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

PSF: 14MD-053

Maui

Grant of Term, Non-Exclusive Easement to Lanai Resorts, LLC; dba Pulama Lanai for Tide Pool Stairs Encroachment Purposes, Pulawai, Lanai, Seaward of Tax Map Key: (2) 4-9-017:002.

APPLICANT:

Lanai Resorts, LLC; dba Pulama Lanai

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of parcel 002, Pulawai, Lanai, identified by Tax Map Key: (2) 4-9-17, as shown on the attached map labeled Exhibit A.

AREA:

200 square feet, more or less.

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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

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

During a site visit on February 26, 2014, Office of Conservation and Coastal Lands (OCCL) staff observed the subject stairs and determined it appeared to be 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
Registered business name confirmed:	YES <u> x </u>	NO
Applicant in good standing confirmed:	YES <u> x </u>	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;
- 3) Obtain concurrent resolution from the Legislature pursuant to HRS 171-53(c).

REMARKS:

In connection with an application by Pulama Lanai for shoreline certification, the State Survey Office conducted a ground inspection on September 19, 2013 and identified two shoreline encroachments along Parcel 2 of TMK 4-9-17. One of encroachments is a portion of the concrete stairs leading to a tide pool, which is the subject of this request for easement. See letter from State Land Surveyor Reid K. Siarot to Ryan M. Suzuki dated October 1, 2013, attached as Exhibit B.

The stairs and the tide pool were created by the International Longshore and Warehouse Union (ILWU) to provide workers and their families with recreational opportunities during the seven-month Lanai pineapple strike of 1951. The stairs were reconstructed in 2006 and a hand rail was added as a safety feature. The tide pool, which lies at the bottom of the stairs, continues to be a popular recreational and educational spot for children. Without the stairs, it would be difficult and dangerous for children to access the tide pool.

To resolve any conservation district use violations with respect to the tide pool stairs, Pulama Lanai, through its attorney, first sought an after-the-fact site plan approval from the Office of Conservation and Coastal Lands (OCCL) on November 14, 2013. Because it was uncertain whether a site plan approval was the appropriate permit for this, Pulama Lanai, again through its attorney, subsequently filed an application for an after-the-fact conservation district use permit on January 21, 2014.

After conducting a site visit on February 26, 2014, OCCL staff determined that the tide pool stairs structure qualifies as a nonconforming use in that it was constructed prior to October 1, 1964. The 2006 repairs are consistent with Section 13-5-7(e) (Repairs or maintenance of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964, or at the time of its inclusion in the conservation district). Therefore, OCCL concluded that no after-the-fact permits are required. See letter from OCCL Administrator Sam Lemmo to Yvonne Izu, dated March 7, 2014, attached as Exhibit C.

Further, staff is recommending that the Board authorize the acceptance of a security deposit from the Applicant in the form of a performance bond. This will allow the

Applicant to process the shoreline certification which is needed for the Applicant to pursue Special Management Area Use Permit for a development within the same TMK, but at a distance from the location of the tide pool stairs. As standard practice, staff does not allow a shoreline certification to be processed until all encroachments have been resolved through the full execution of legal documents or removal of the encroachments. In the past, shoreline certifications or other approvals were released prior to full document execution and staff found it difficult to compel the Applicant to execute the documents and make payment. Therefore, staff offers this alternative method of collecting a deposit to enable the Applicant to pursue permits and approvals with less risk that the Applicant will not execute the documents. While such a deposit does not completely ensure that the documents will be executed, it does show a strong commitment by the Applicant to enter into an agreement with the State.

Staff discussed the deposit amount with the Applicant, who expressed willingness to provide a deposit in the amount of \$1 million for both encroachments in this area. Staff believes that a deposit of \$500,000 for both encroachments should be adequate based on the land area involved, or \$250,000 for each encroachment. Accordingly, staff recommends a security deposit in the amount of \$250,000 for the stairs. The actual consideration for the easement will be determined by a full independent appraisal pursuant to Board approval. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposit amount is more than the total, then the Applicant shall be reimbursed any difference (and vice versa). If the Applicant does not execute the document, the Applicant shall be required to remove the encroachments to the satisfaction of the Department or to forfeit the deposit in full which the Department may then use to remove the encroachments.

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.

Governor's approval and Legislative Concurrent Resolution will have to be obtained after obtaining Board approval for this disposition. Upon approval of today's request, the applicant is reminded of the requirement for a concurrent resolution from both houses of the legislature under Section 171-53(c), HRS, prior to the issuance of the requested easement.

RECOMMENDATION: That the Board:

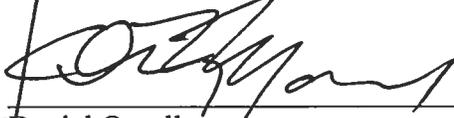
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
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) 4-9-017:002, 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 Lanai Resorts, LLC covering the subject area for tide pool stairs 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 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) 4-9-017:002, 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; 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

4. Authorize the Department to accept a deposit in the amount of two hundred fifty thousand dollars (\$250,000) from the Applicant as an estimated easement consideration pursuant to the conditions set forth in the Remarks section above.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

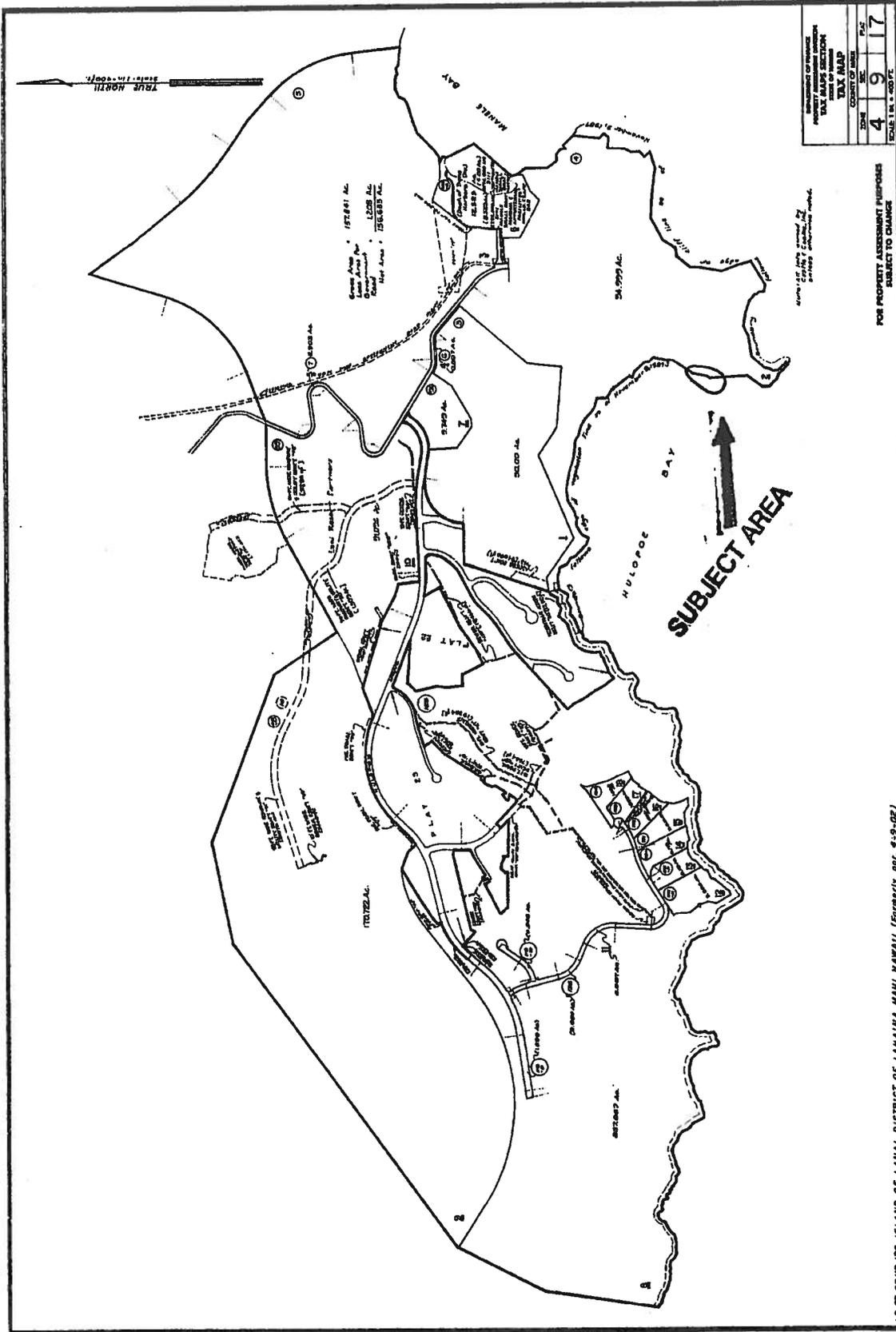


EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR



DEAN H. SEKI
COMPTROLLER
MARIA E. ZIELINSKI
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

Response refer to:
L-197(13)
LA-010

October 1, 2013

Mr. Ryan M. Suzuki
R. M. Towill Corporation
2024 N. King Street, Suite 200
Honolulu, Hawai'i 96819

Dear Mr. Suzuki:

Subject: Shoreline Certification Application
TMK 4-9-17: Por. 02 & 08
Owner: Pulama Lanai
Lana'i, Hawai'i

This shoreline was inspected on the ground on September 19, 2013 and as a result, the proposed shoreline was determined to be in an acceptable location for certification. However, two shoreline encroachments were identified along Parcel 2 of TMK 4-9-17 (see enclosed photos). Encroachments include pier pilings (identified in a 2008 site inspection) and a concrete stairway with metal handrails and a concrete foundation. Before we can proceed, DLNR's Hawai'i Administrative Rules Section 13-222-19 require the encroachments be resolved. Please contact the Maui District Branch of the Department of Land and Natural Resources Land Division at 984-8103 to resolve these encroachments.

After resolving the encroachments, please provide documents confirming the resolution of the encroachments so that the certification process can be completed.

Should you have any questions on this application, please call me at 586-0390.

Very truly yours,

Handwritten signature of Reid K. Siarot in black ink.
REID K. SIAROT
State Land Surveyor

Enclosure

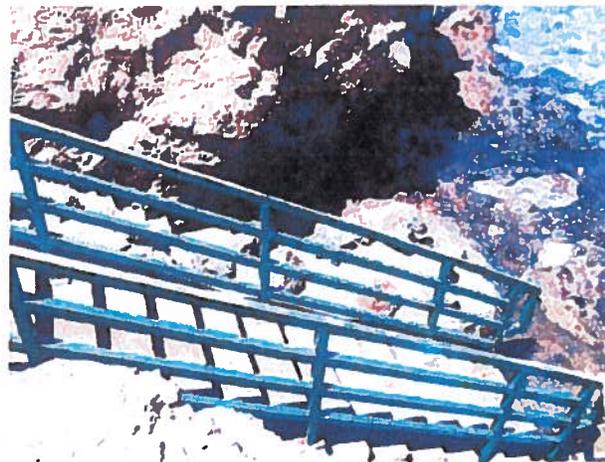
cc: Ian Hirokawa
Andy Bohlander
Maui District Land Office, DLNR

Exhibit B

Photos:



Top left: Looking north at the pier pilings, circled in red. Right: looking makai at the pilings, located in the tide pools.



Top left: looking north along the western side of the headland, toward the beach at Hulopoe Bay. Top right: looking down at the stairs and the concrete foundation in the tide pools.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

WILLIAM J. AHL, 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 OUTDOOR RECREATION
BUREAU OF CONSERVATION
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CONSERVATION AND RESOURCES STRATEGIC
PLANNING
FISH AND WILDLIFE
HISTORIC PRESERVATION
KAIHO'ŌIWA ISLAND SURVEY COMMISSION
LAND
STATE PARKS

REF:OCCL:MC

Correspondence LA-14-96 (b)

Yvonne Izu
Moriyama Lau & Fong LLP
400 Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

MAR - 7 2014

Dear Ms. Izu,

SUBJECT: PŪLAMA LĀNA`I TIDE POOL STAIRS
Pālāwai ahupua`a, Mānele-Hulopo`e Marine Life Conservation District, Lāna`i
offshore of TMK (2) 4-9-017:002

The Office of Conservation and Coastal Lands (OCCL) conducted a site visit to the Pūlama Lāna`i Tide Pool stairs on February 26, 2013. A portion of the stairs might lie on submerged lands that are part of the Mānele-Hulopo`e Marine Life Conservation District, which is in the Protective Subzone of the State Land Use Conservation District.

The site does not have an associated certified shoreline, so OCCL is unable to determine what portion of the stairs are in conservation land.

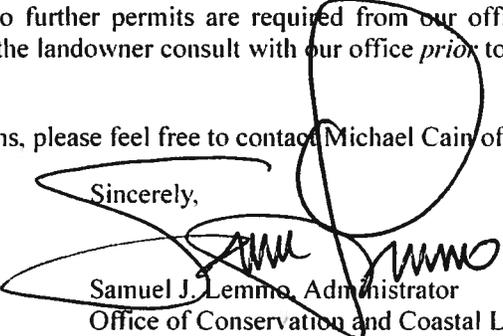
The stairs, and an associated swimming hole bombed out of the reef, were created by the International Longshore and Warehouse Union (ILWU) to provide workers and their families with recreational opportunities during the seven month Lāna`i pineapple strike of 1951. The stairs were reconstructed in 2006, and a guard rail was added. There was no change in the size, dimensions, or capacity of the stairs during the reconstruction.

The portion of the stairs in the Conservation District qualify as a non-conforming use as provided for in Hawai`i Administrative Rules (HAR) §13-5-7 NONCONFORMING USES AND STRUCTURES (a) *This chapter shall not prohibit the continuance, or repair and maintenance, of nonconforming land uses and structures as defined in this chapter.* The 2006 repairs appear to be consistent with §13-5-7 (e) *Repairs or maintenance of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964, or at the time of its inclusion into the conservation district.*

OCCL has concluded that no further permits are required from our office for the stairs or their 2006 repair. However, we request the landowner consult with our office *prior* to any future repair or restoration work.

Should you have any questions, please feel free to contact Michael Cain of OCCL at 587-0048.

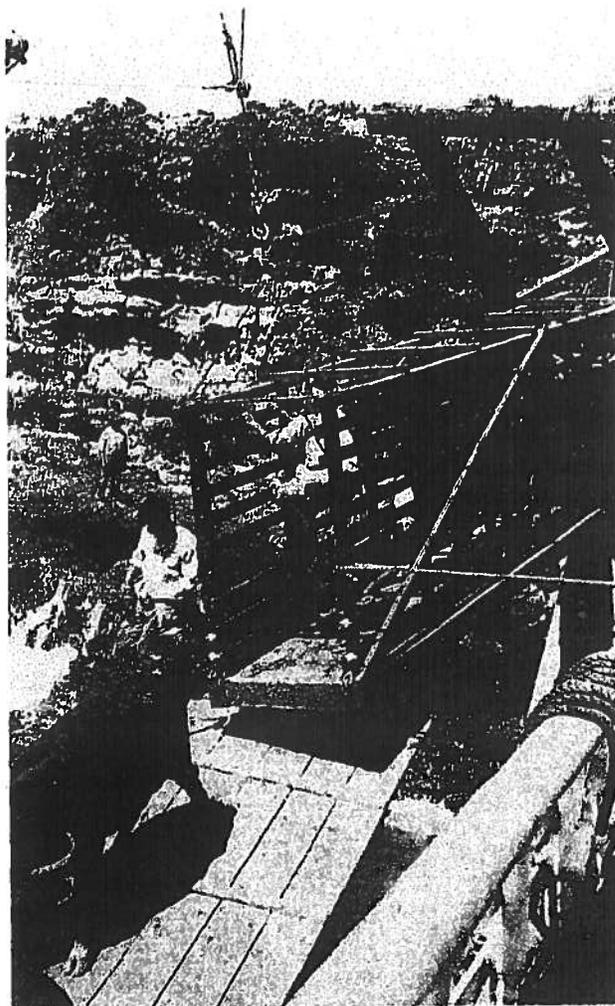
Sincerely,


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

c: Chair: Survey: Land Division

EXHIBIT "C"

S.S. Likelike being
loaded with cattle
(Kenneth Emory album,
Munro family collection)



Munro, George C. (2007) The Story of Lanai

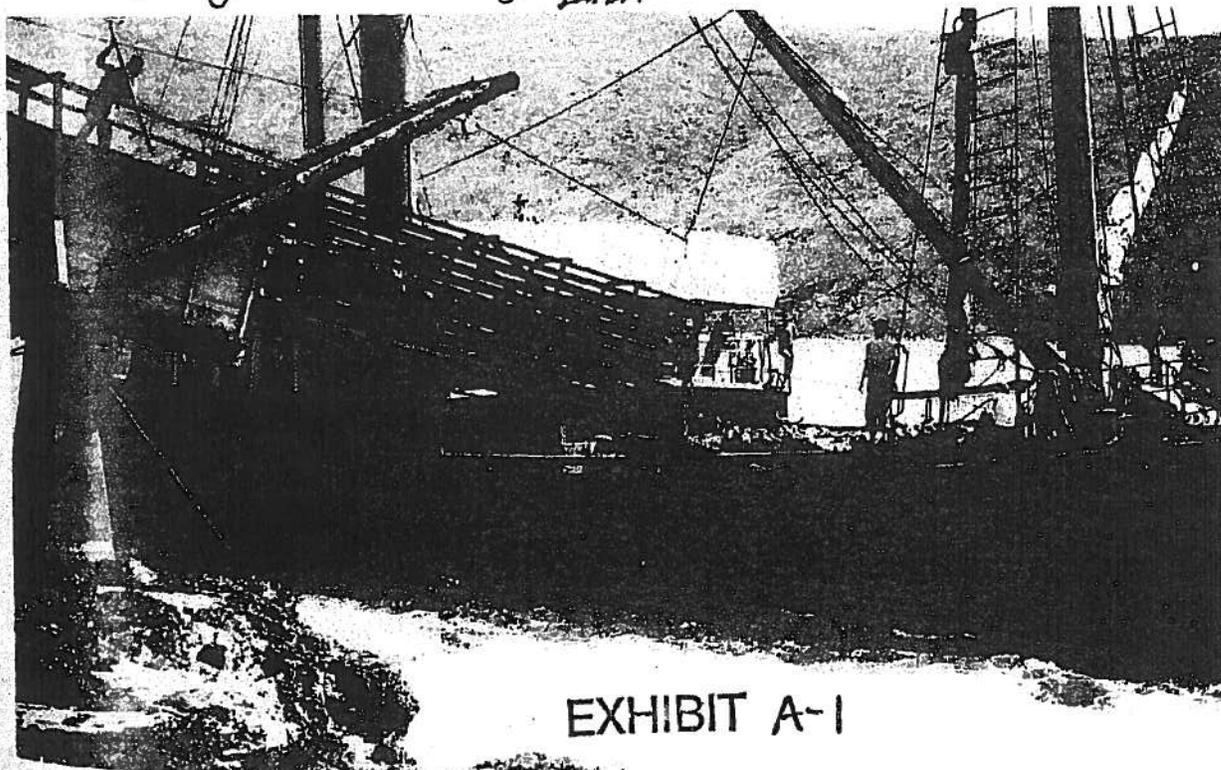
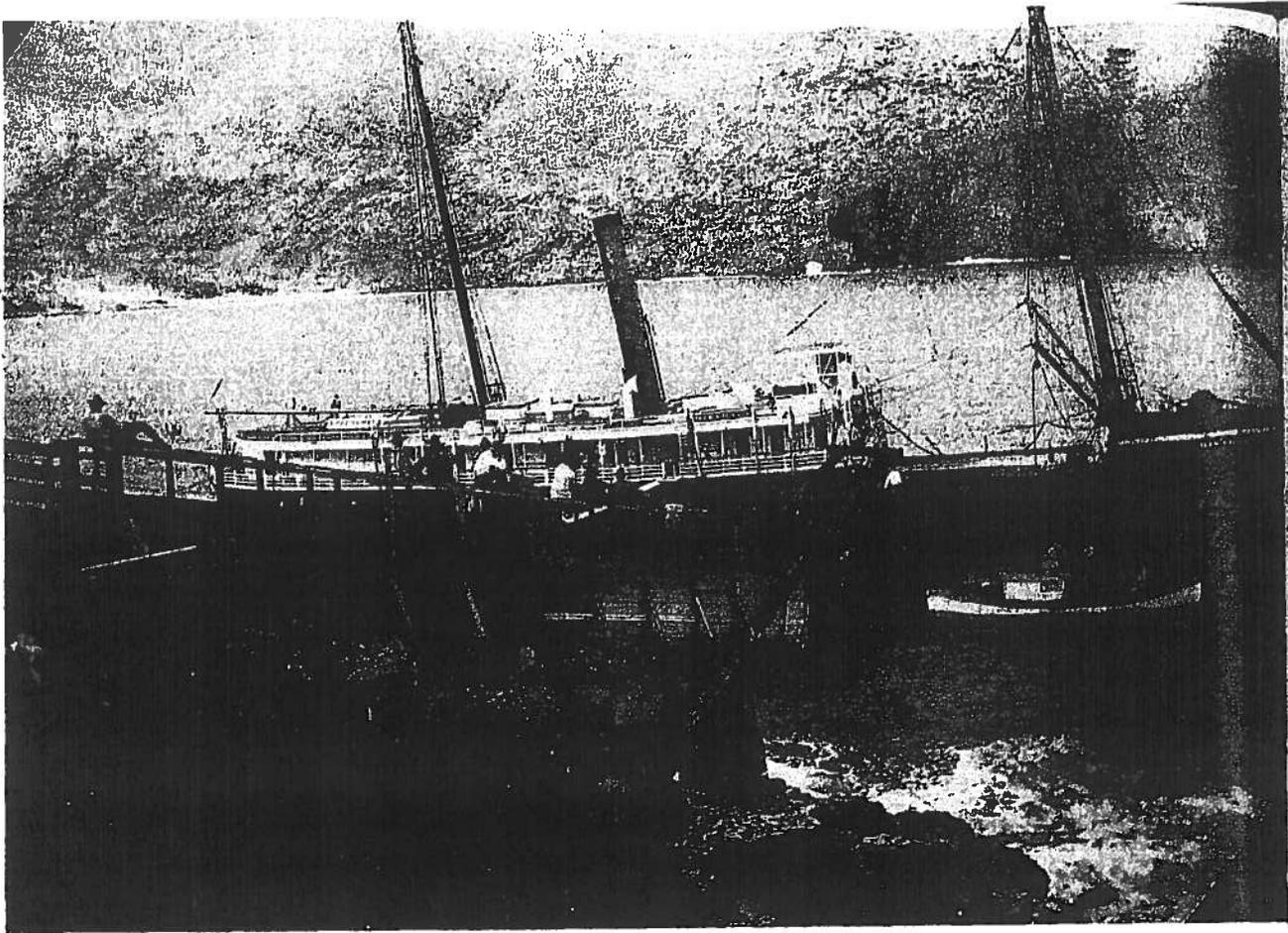


EXHIBIT A-1



*Drawing against the tidal shelf cattle chute and loading honey
(Kenneth Emory album, Munro family collection)*

deep water and supported there by posts. Into this another chute was telescoped which, when run out over the water, reached to the deck of the steamer. By using a calf led down the chute, the large cattle were induced to follow, and the loading was done in a few minutes. The calf was brought ashore ready for the next shipment. The steamer then pulled out, and the cattle were tied up as she proceeded on her way.

Even with this method, the work could still prove more or less harassing with changes of weather. On one occasion the steamer pitched as the cattle were in the chute. As the ship rose, her side caught the end of the chute; it buckled, and chute and cattle were precipitated into the water. One or two animals were drowned. One landed at the foot of the cliff and could not be brought out so had to be killed where it was. Another swam seaward and, chased by the steamer, was eventually overhauled and taken aboard. The purser said it was interesting to see it swim. When it tired, it lay on its side and rested awhile, starting off again as it got its wind.

After the Hawaiian Pineapple Company built the Kaumālapa'u Harbor and wharf, the cattle were shipped from the wharf through a chute. The pen and chutes were movable and, when not in use, kept out of the way of other work.

Munro, George C. (2007) The Story of Lāna'i

EXHIBIT B-1



EXHIBIT MAP

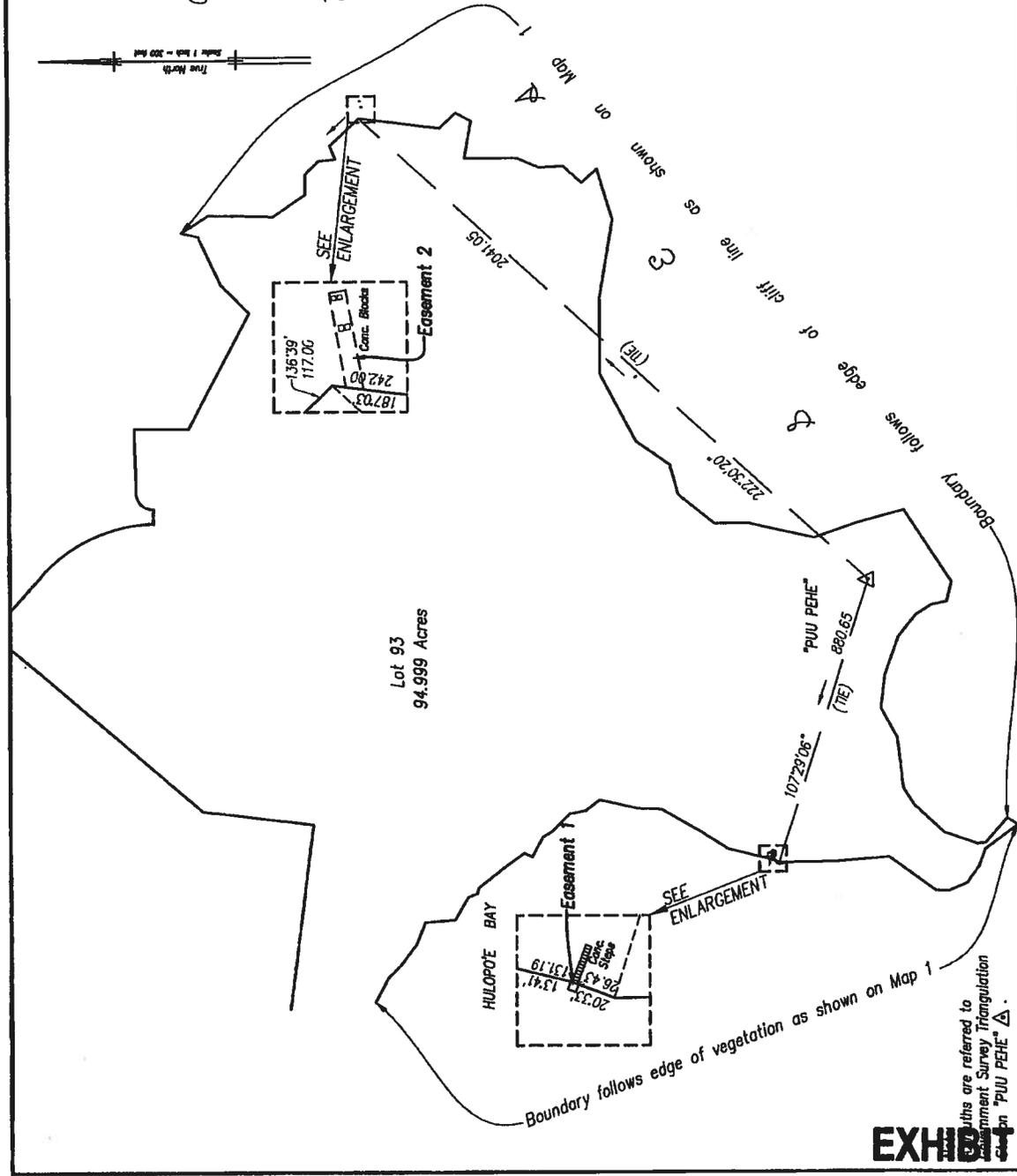
LOTS 93 AS SHOWN ON MAP 12
OF LAND COURT CONSOLIDATION 170

ISLAND OF LANAI, HAWAII

TAX MAP KEY: (2)4-9-17: POR. 02

Owner: Pujama Lanai
733 Bishop Street, Suite 200
Honolulu, Hawaii 96813

Property Address: Island of Lanai



2024 N King Street, Suite 200
Honolulu, Hawaii 96817
March 24, 2013

R. M. TOWILL CORPORATION
SINCE 1888

Dimensions are referred to
Government Survey Triangulation
Station "PUU PEHE" Δ.

EXHIBIT "D"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 13, 2014

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

JESSE K. SOUKI
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

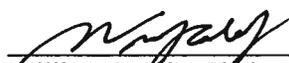
Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of a Term Non-Exclusive Easement to Lanai Resorts, LLC
Project /Reference No.: PSF No. 14MD-053
Project Location: Pulawai, Lanai, Hawaii
Project Description: Granting a long-term easement for tide pool stairs encroachment purposes.
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, which 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: Mr. Sam Lemmo of the Office of Conservation and Coastal Lands was consulted as a source of authority having jurisdiction or expertise in this matter, and concurs that the exemptions identified above are applicable to, and appropriate for, the proposed request, and that the encroachment does not obstruct public access.

Recommendation: It is anticipated that 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, Chairperson




Date