

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

June 27, 2014

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

PSF No.:14MD-083

Maui

Grant of 55-Year Term, Non-Exclusive Easement to Matthew H. and Shawneen M. Schweitzer for Seawall and Stairway Encroachment Purposes; After-the-Fact Authorization to Issue Immediate Right-of-Entry Permit for Emergency Seawall Work; Authorize Issuance of Right-of-Entry Permit to Repair Seawall, Alaeloa, Lahaina, Maui, Tax Map Key: (2) 4-3-015: Seaward of 001.

APPLICANT:

Matthew H. and Shawneen M. Schweitzer, Husband and Wife, Tenants by Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Alaeloa, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-015: Seaward of 001, as shown on the attached map labeled Exhibit A.

AREA:

546 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 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 appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

EXHIBITS:

- Exhibit #1 – Tax Map Key of the subject property.
- Exhibit #2 – February 4, 1980, Topographic and Shoreline Survey Map.
- Exhibit #3 – 1980 photos of the shoreline fronting the subject property.
- Exhibit #4 – July 14, 2009 photos of the improvements fronting the subject property.
- Exhibit #5 – Conservation District Use Permit No. MA-3689, dated February 18, 2014.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on October 8, 2013 with a finding of no significant impact (FONSI).

CONSERVATION DISTRICT USE PERMIT:

Conservation District Use Permit No. MA-3689 was issued for the Schweitzer shoreline erosion project on February 18, 2014, by the Office of Conservation and Coastal Lands.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions of encroachment area defined as filled areas seaward of the 1980 shoreline survey according to State DAGS standards and at Applicant's own cost.

REMARKS:

On March 2, 2009, an inspection was conducted of Keonenui Beach in response to a complaint of possible shoreline encroachments fronting the adjacent property to the north (Kahana Sunset). During staff's inspection of the entire shoreline, it was noted that the subject property also had improvements which included a large concrete stairway, and a rock and concrete seawall that were possibly encroaching onto the shoreline. Checks were conducted with the County of Maui's Real Property Tax Division in an attempt to identify the property's owner(s). Staff confirmed the property is currently owned by Matthew H. and Shawneen M. Schweitzer (Applicant).

An inspection report which included photos of the possible encroachments was forwarded to the Office of Conservation and Coastal Lands (OCCL) for their review and follow up actions. The County of Maui Planning Department was also contacted and informed of staff's findings in an attempt to determine if these improvements were approved and properly permitted.

A review of certified shoreline maps of 1979 and 1980 revealed that there was no seawall present. Through further investigation by the OCCL, it was determined that the subject seawall and portions of the stairway were constructed along the shoreline (Conservation District) without a permit.

On February 14, 2014, under agenda Item K-1, the Board of Land and Natural Resources approved the OCCL's recommendation to assess the landowner a \$10,000.00 fine for the Conservation District violation, pursuant to Chapter 183C, HRS, and an additional \$1,000.00 for administrative costs associated with the subject violation.

OCCL further determined that because the structure was built prior to the Board of Land and Natural Resources' "No Tolerance" policy of 1999, regarding shoreline structures, the

landowner was afforded the opportunity to apply for an after-the-fact Conservation District Use Permit (CDUP) or alternatively, remove the structure. Subsequently, on February 18, 2014, CDUP number MA-3689 was granted for the Schweitzers' seawall and stairs. The OCCL has opined that "The proposed land use will not cause substantial adverse impact to the existing natural resources within the surrounding area, community or region". The OCCL also indicates that the structure does not significantly interfere with existing recreational and waterline activities.

This request requires approval of the Governor and the prior authorization of the Legislature by concurrent resolution.

AGENCY COMMENTS:

Requests for comments were submitted to the following agencies:

Agency	Comments
County of Maui – Current Planning	No comments received
County of Maui – ZAED	No comments received
Office of Conservation and Coastal Lands	No objections
Office of Hawaiian Affairs	No comments received

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.

To date, the County of Maui has informed staff that they have no record of any permits being applied for or approved with regards to improvements on the Schweitzer property within the Shoreline Setback Area.

On May 30, 2014, an engineering consultant advised Applicant that urgent action was required to address the erosion undermining the seawall. Applicant requested an immediate right-of-entry to shore up the wall. Under the circumstances, staff recommended that the Chairperson issue an immediate right-of-entry under the authority delegated to him by the Board's action of June 14, 2013, item D-11. The right-of-entry was limited to placing jacks under the seawall to provide support. Staff now seeks the Board's after-the-fact approval of the right-of-entry.

Finally, staff is including a recommendation below for the issuance of a construction right-of-entry to allow the Applicant to repair the seawall in accordance with the conditions of

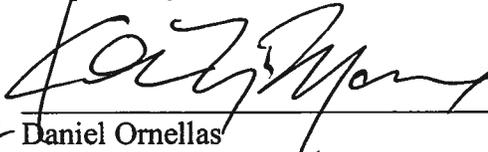
Conservation District Use Permit No. MA-3689, dated February 18, 2014.

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) 4-3-015:001, 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 issuance an immediate right-of-entry permit for seawall repairs, and issuance of a 55-year term, non-exclusive easement to Matthew H. and Shawneen M. Schweitzer covering the subject area for Seawall 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 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) 4-3-015:001, 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
3. Authorize, after-the-fact, the issuance of an immediate right-of-entry onto to subject lands for purposes of conducting emergency work to shore up the seawall using jacks, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

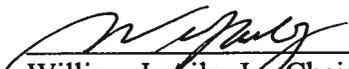
- a. The standard terms and conditions of the most current Right-of-Entry permit form, as may be amended from time to time;
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate construction right-of-entry covering the subject area for purposes of repairing the seawall 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.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



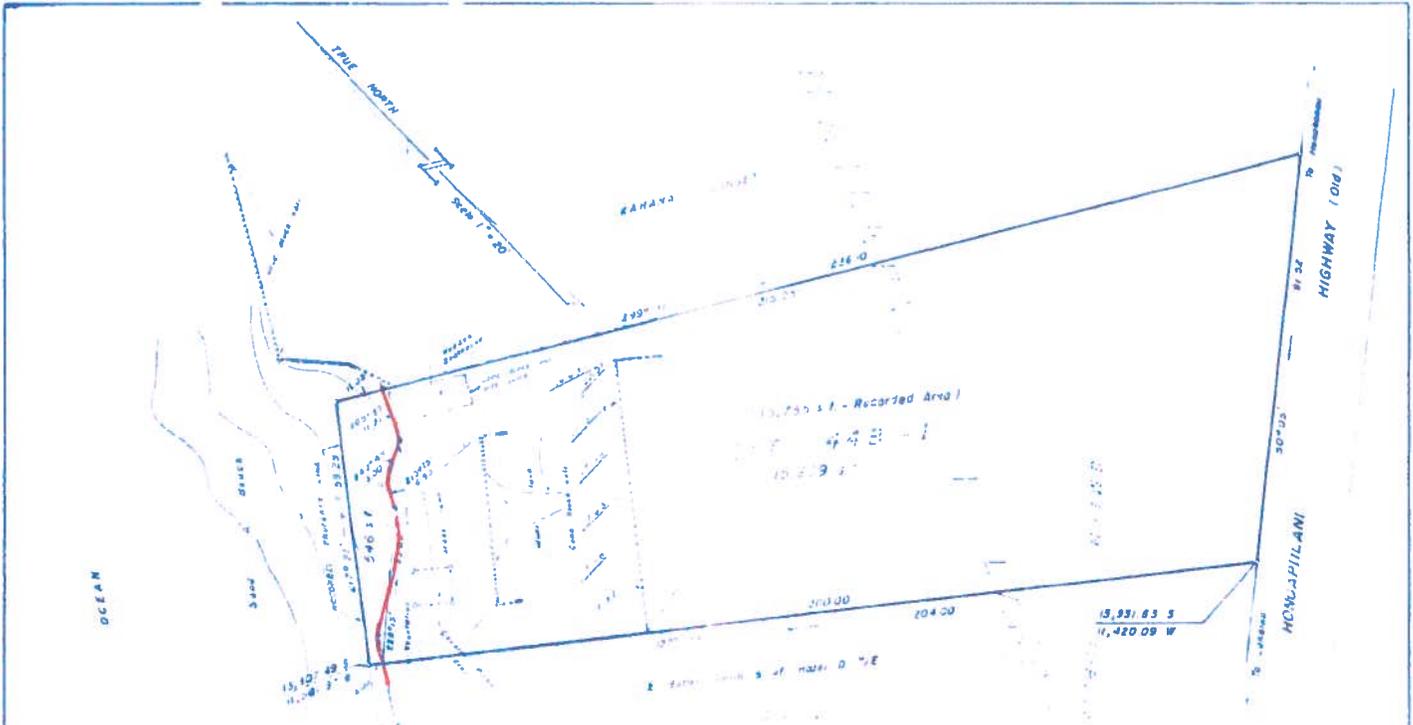
William J. Aila, Jr., Chairperson



TAX MAP KEY (2) 4-3-015:001



EXHIBIT " 1 "



The shoreline as located and outlined and delineated in red is hereby confirmed as being the actual shoreline as of **FEB 4 1980**

William C. ...
 Chairman, Board of Land and Natural Resources

TOPOGRAPHIC AND SHORELINE SURVEY
 OF
LOT 44B-1 OF THE SMITH SUBDIVISION, MAILEPAI HUI LANDS
PORTION OF R.P. 1863, L.C. 44 5524 TO L. KONIA
AT ALAELUA, KAHANAWALE, MAUI, HAWAII

Scale: 1" = 20' feet
 Prepared at Honolulu, Hawaii
 February 24, 1979
 Revised - MARCH 3, 1979
 Rechecked - JANUARY 23, 1980

Prepared by
GEORGE R. NEWCOMER
 LAND SURVEYOR
 Kahala Building, Suite 350
 Kahala, Maui, Hawaii

George R. Newcomer
 REGISTERED PROFESSIONAL LAND SURVEYOR
 LICENSE NO. 1113

NOTES

1. Allowing surveys from the Map Records
2. Coordinates referred to WADSWORTH
3. Actual being carried from January 4, 1979
4. Notes see pp. 20-21
5. Shoreline from 1979-1980 survey is approximate

Handwritten notes:
 1. 10/10/79
 2. 10/10/79
 3. 10/10/79

SURVEY OFFICE COPY



11/10/80

Table top of 11/10/80 wall - Korman's Court



11/10/80

Table top edge - Korman's Court



11/10/80

Table top edge - Korman's Court



11/10/80

Table top edge - Korman's Court

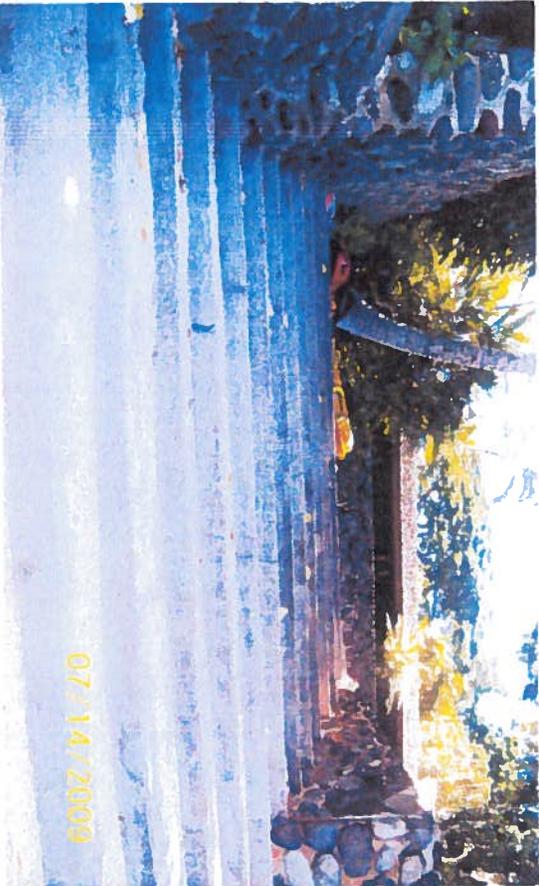
EXHIBIT " 3 "

1980

Photos taken: 7/14/09

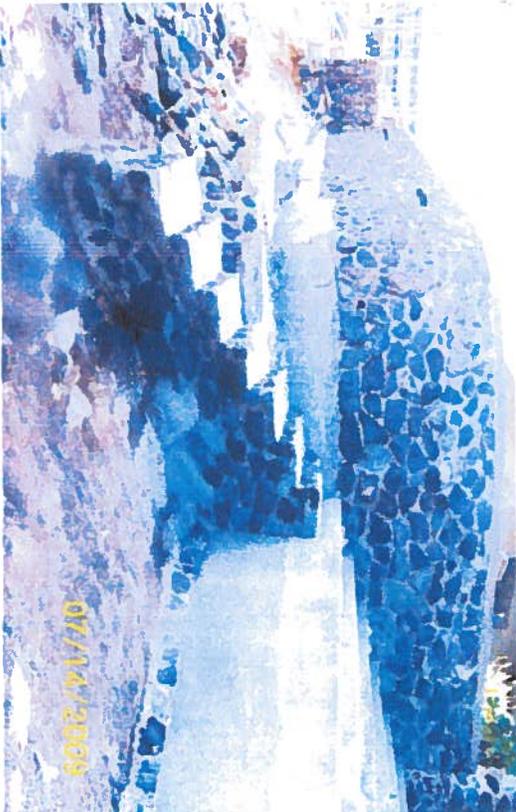


Photos of improvements made along the shoreline and within the SMA area at the Schweizer property



Concrete stairway leading to the shoreline line of Kahana Bay.

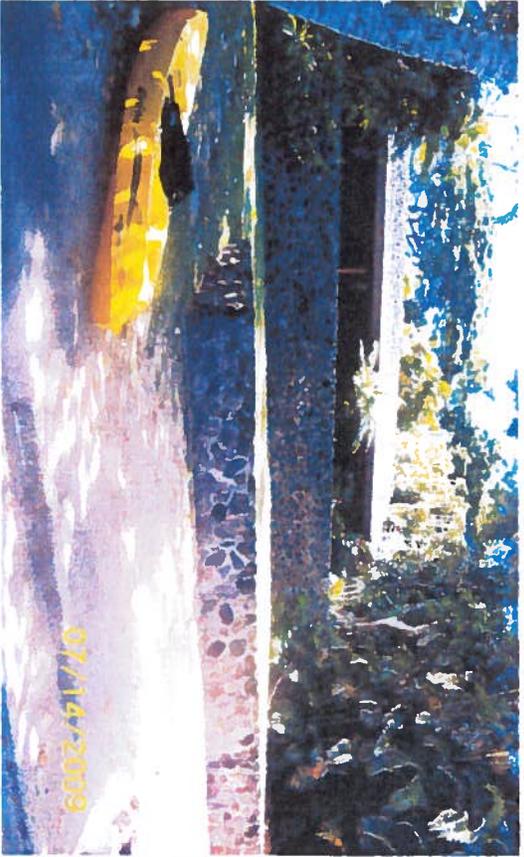
Henry Schweizer, TMK: (2) 4-3-015:001



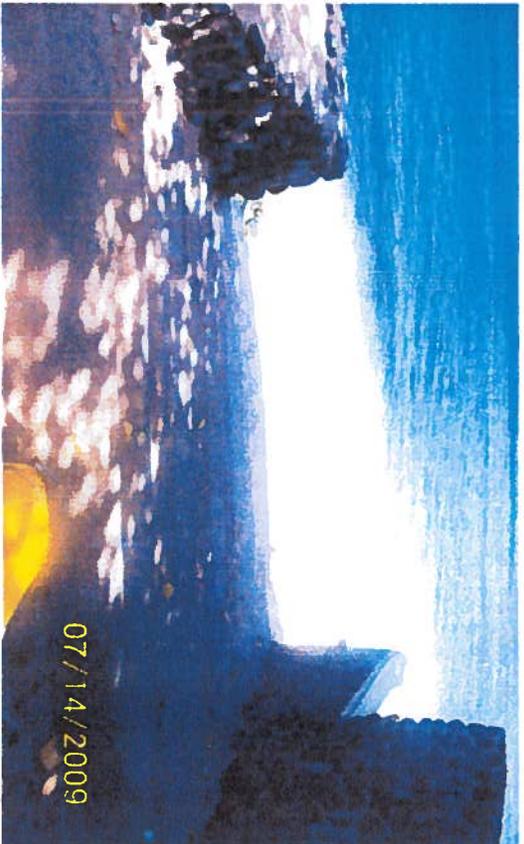
Terraced area filled with sand with a wood gazebo.



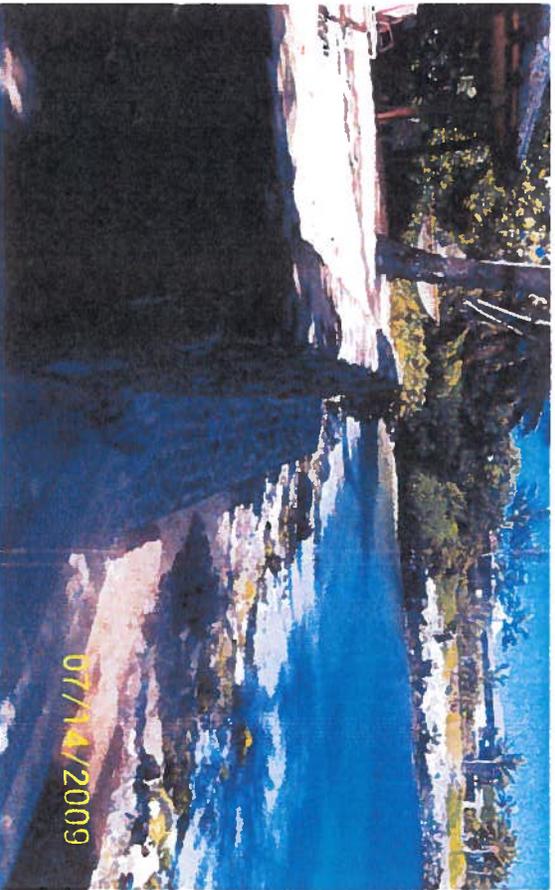
Photos taken: 7/14/09



Henry Schweizer, TMK: (2) 4-3-015:001



Improvements at the makai side of the Schweizer property. Property overlooks Kahana Bay.



NEIL 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 RESOURCES ENFORCEMENT
ENFORCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

CDUP: MA-3689
FEB 18 2014

Paul R. Mancini
Mancini, Welch & Geiger LLP
RSK Building 305 E. Wakea Avenue, Suite 200
Kahului, HI 96732

Dear Mr. Mancini,

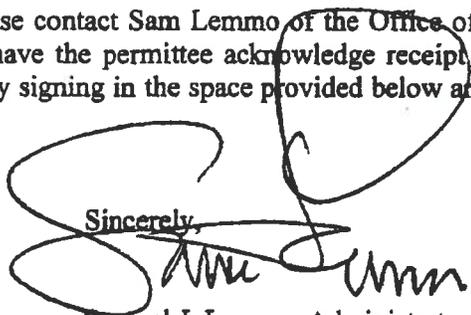
This letter is to inform you that on February 14, 2014, the Board of Land and Natural Resources (BLNR) approved after-the-fact Conservation District Use Application (CDUA) MA-3689 for the Schweitzer shoreline erosion project, located at Alaeloa, Lahaina. Island of Maui – TMK: (2) 4-3-015:001, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, 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 this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands;
4. The permittee shall comply with all applicable department of health administrative rules;
5. Before proceeding with any work authorized by the department or the board, the permittee shall submit two copies of the "as built" plans to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. One copy will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
6. All representations relative to mitigation set forth in the accepted Conservation District Use Application (CDUA) and Environmental Assessment (EA) for the proposed use are incorporated as conditions of the permit;

EXHIBIT " 5 "

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please have the permittee acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,



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

Receipt acknowledged:

Date:

c: Chairperson
MDLO
County of Maui Planning Department