

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

July 11, 2014

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

PSF No.:13MD-075

Maui

Grant of a 55-Year Term, Non-Exclusive Easement to Wesley and Diane Hickey for Seawall Purposes, Waiohuli-Keokea Homesteads & Beach Lots, Kihei, Maui, Tax Map Key: (2) 3-9-010: Seaward of 006.

APPLICANT:

Wesley and Diane Hickey, Husband and Wife, Tenants by the Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Waiohuli-Keokea Homesteads & Beach Lots, Kihei, Maui, identified by Tax Map Key: (2) 3-9-010: Seaward of 006, as shown on the attached map labeled Exhibit A.

AREA:

1,261 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 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 –A Tax Map of the subject property.
- Exhibit –B Response Letter from OCCL dated February 21, 2013.
- Exhibit –C Copy of Application for Building Permit from Maui County for Seawall.
- Exhibit –D Aerial photo
- Exhibit –E 2012 Photos of the proposed shoreline
- Exhibit –F Shoreline survey map dated March 20, 2012.
- Exhibit –G Updated photos of the subject area, dated 5/20/2014.

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:

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

REMARKS:

The subject property was purchased by the applicants on September 21, 2011. Upon applying to the County of Maui for permits to renovate and make improvements to their new home, they were required to obtain a certified shoreline. During the shoreline evaluation it was discovered that approximately 1,261 square feet of their CRM revetment / seawall is located on the shoreline, seaward of their private property and identified as an encroachment onto State land.

In an attempt to properly address the encroachment, the Hickeys contacted the Office of Conservation and Coastal Lands (OCCL). The OCCL conducted a review of the subject seawall and provided the following information regarding the property owners' request to resolve the existing encroachment. Documents provided by the property owners revealed that the seawall was an authorized structure based on Building Permit # 85/1435 (Exhibit C), which was issued by the County of Maui's Department of Public Works. Because the seawall was a permitted structure, an after-the-fact Conservation District Use Application (CDUA) or Conservation District Use Permit (CDUP) would not be required to cure this matter. It was also determined that the removal of the encroaching portion of the seawall could possibly destabilize seawalls and lawns at the adjacent properties. OCCL staff opined that the removal of the encroaching portions of the seawall would provide no improvement to public access along the shoreline because the adjacent properties were fronted by similar seawalls and narrow beach areas also. Therefore, the OCCL indicated that they would support a disposition (Easement) for the seawall to remain and that the land uses remain unimproved. Refer to response letter to Mr. and Mrs. Hickey dated February 21, 2013, from the OCCL labeled Exhibit (B).

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

Staff recommends no fine for the seawall encroachment. Evidence was provided which indicates that the seawall was authorized via Building Permit number 85/1435, dated August 1, 1985, issued by the County of Maui, Department of Public Works.

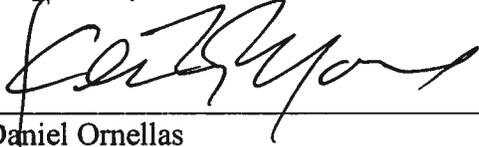
The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

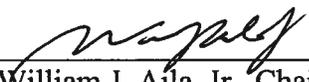
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
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) 3-9-010:006, 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 Wesley and Diane Hickey covering the subject area for seawall and rock revetment 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) 3-9-010:006, 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

Respectfully Submitted,

  
\_\_\_\_\_  
Daniel Ornellas  
District Land Agent

APPROVED FOR SUBMITTAL:

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



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 11, 2014

**EXEMPTION NOTIFICATION**

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

**Project Title:** Grant of 55-Year Term, Non-Exclusive Easement to Wesley and Diane Hickey for Seawall Purposes.

**Project / Reference No.:** PSF No. 13MD-075

**Project Location:** Waiohuli-Keokea HMSTDS. & Beach Lots, Kihei, Maui, Tax Map Key: (2) 3-9-010: Seaward of 006.

**Project Description:** Grant of a 55-Year Term, Non-Exclusive Easement for Seawall Encroachment Purposes

**Chap. 343 Trigger(s):** Use of State Lands in Conservation District (Shoreline)

**Exemption Class No. and Description:** 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."

**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:

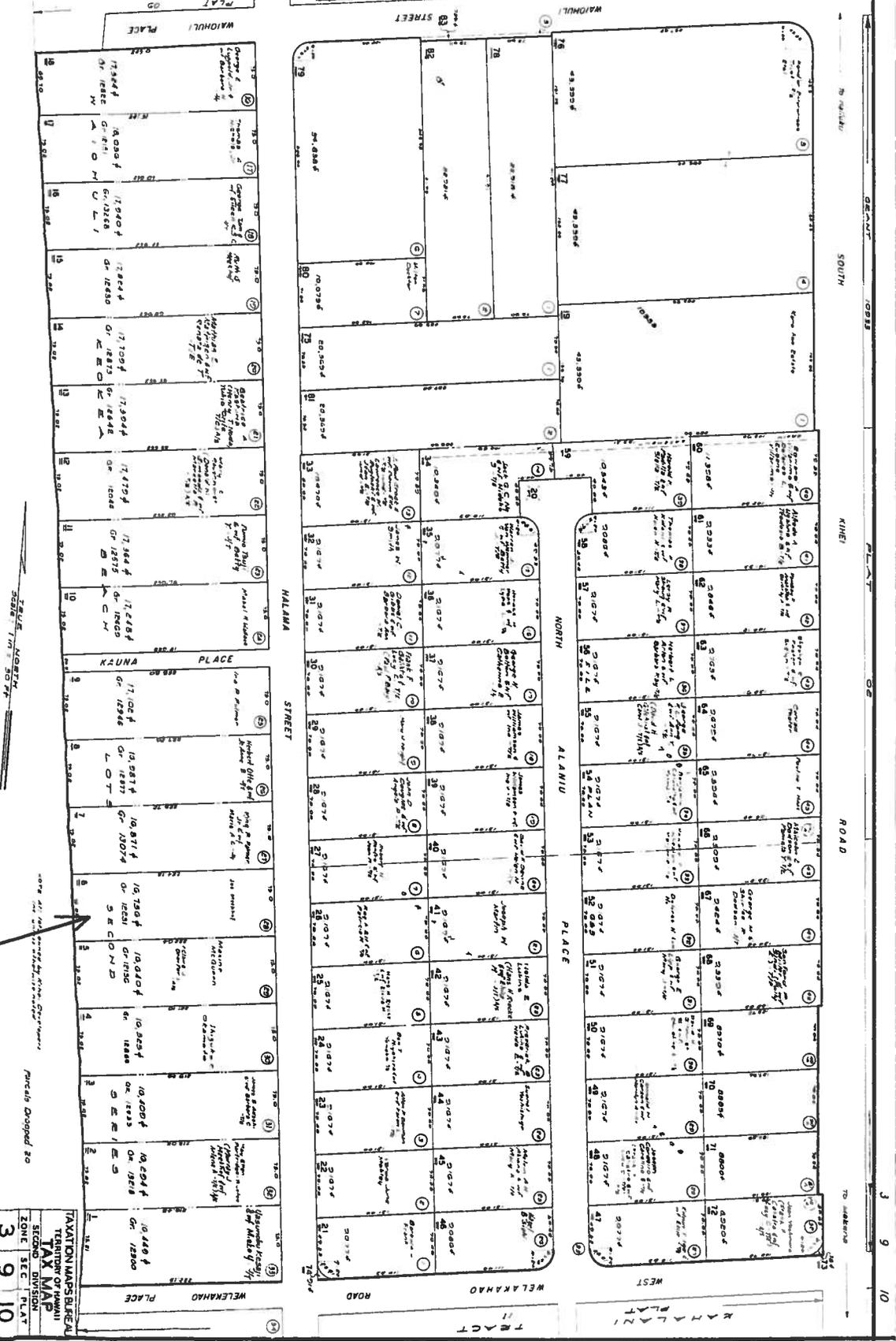
It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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

*6/23/14*  
\_\_\_\_\_  
Date

City AD 1182  
 Division Maps Bureau  
 Source By L.H. & B.L. Date November 1948

FOR MAIOWULI, REDEKA, HUSTOS & BEACH LOTS, MAUI.



**SUBJECT AREA**

SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERMINUS OF HAWAII			
TAX MAP			
ZONE	SEC	DIVISION	PLAT
3	9	10	
CONTAINING PARCELS			
STANDARD IN 30 FT.			

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



RECEIVED  
DISTRICT  
DIVISION  
FEB 25 PM 12:35

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  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

REF:DLNR:BR

File Number Encroachment: MA-13-7

FEB 21 2013

Wesley J. Hickey and Diane M. Hickey

Kihei, Hawaii 96753

Dear Mr. and Mrs. Hickey,

SUBJECT: Request to Resolve State Land Encroachment at Kihei,  
Maui, Hawaii; Tax Map Key (2) 3-9-010:006; Owners: Wesley J. Hickey and Diane M. Hickey

This is in response to your February 2013 request to resolve the shoreline encroachments at Tax Map Key (2) 3-9-010:006. According to information and maps contained with your request, you have identified approximately 1,261 square feet of encroachment (CRM revetment, "seawall") makai of the subject property onto State land.

The existing seawall appears to be an authorized structure based on a picture of County of Maui, Department of Public Works Building Permit (#85/1435, dated August 1, 1985) provided by the applicant. As a consequence, the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) will not be asking for an after-the-fact Conservation District Use Application to cure this matter. OCCL may reconsider this finding should we find that the seawall was built without permits, within the Conservation District after 1964.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

**EXHIBIT " B "**

In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

*The surrounding land uses are primarily residential. The adjacent properties are fronted by similar seawalls. Halama Street runs along the mauka side of the property.*

Beach Resources:

*Due to a trend of long-term beach erosion (shoreline recession), little or no dry beach remains fronting the seawalls at the subject property and adjacent properties.*

Public Access:

*This section of coast has limited access along the beach fronting this property and adjacent properties with waves breaking against the base of the seawalls, except during low tides and low wave conditions. Beach access is available approximately 1,000 feet to the north from Waiohuli Place.*

Effect of Removing the Encroachment on:

*Beach Resources: The encroaching seawall and seawalls on adjacent properties are fronted by a narrow beach that is submerged during all but the lowest tides. Therefore, removal of the encroachment would not result in a substantial improvement to beach resources fronting the property.*

*Public Access: OCCL staff has determined that no improvement would be gained by removing encroaching portion of the seawall because the adjacent properties are fronted by similar seawalls and narrow beach.*

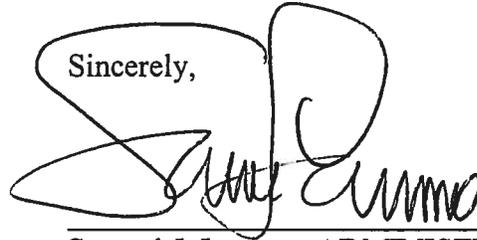
*Affect on Adjacent Properties: Removal of the encroaching portion of the seawall may destabilize seawalls and lawns at the adjacent properties.*

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachment. OCCL suggests that any disposition require the land uses remain unimproved.

Please feel free to contact Sea Grant Extension Agent Brad Romine at OCCL at (808) 587-0049 or Bradley.M.Romine@hawaii.gov should you have any questions pertaining to this letter. Please contact DLNR Land Division at (808) 984-8103 should you wish to pursue an easement for the subject shoreline encroachment.

Sincerely,



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

cc: Maui Land Division, Daniel Ornellas



# LAND USE & CODES ADMINISTRATION

DEPARTMENT OF PUBLIC WORKS

## Application for Building Permit

2nd Division				
Z	S	PL	PAR	LOT
3	9	10	6	

PERM  
NO

TOTAL VALUATION \$

PERMIT FEE \$

Legal Owner James Meekhof Address \_\_\_\_\_  
 Lessee/Tenant n/a Address n/a  
 Owner's Agent n/a Address n/a  
 Plans By Robert K. Rogers Address \_\_\_\_\_  
 Builder DNL Construction Address \_\_\_\_\_  
 Plumbing Contractor n/a License # AEC-10166 Address P O Box 211, Kula, HI  
 Electrical Contractor n/a Address n/a  
 Address n/a

To construct and/or repair, etc. all in accordance with State Laws, and Ordinances of the County of Maui, to-wit:

New Building n/a Occupancy \_\_\_\_\_ Type n/a Constr. Stories n/a Repairing n/a Reconstruction n/a  
 Old Building n/a Addition 08 Alteration n/a Demolition n/a Moving n/a Misc Structure X

House Number \_\_\_\_\_ Town Kihai District \_\_\_\_\_

Now Occupied as n/a To Be Occupied as Seawall Lot Area \_\_\_\_\_ Zone \_\_\_\_\_

Dimensions \_\_\_\_\_ Floor Area \_\_\_\_\_ Sq. Ft. Ceiling \_\_\_\_\_  
 Walls Rock Floors n/a Basement Floor \_\_\_\_\_  
 Partitions n/a Roof n/a Connection to Sewer or Cesspool \_\_\_\_\_  
 Foundation n/a Roof Overhang n/a

Distance between walls of this and the nearest building on the same property \_\_\_\_\_  
 Distance to nearest interior lot boundary (right) n/a (left) n/a (rear) n/a (front) \_\_\_\_\_

James Meekhof PRINT - APPLICANT'S NAME [Signature] APPLICANT'S SIGNATURE 7/18/85 DATE OF APPLICATION

I hereby certify that I am a bona fide contractor licensed in the State of Hawaii.  
EDUARDO TALARES PRINT NAME [Signature] SIGNATURE OF CONTRACTOR

I claim an exemption under Section 444-2(7) of the Hawaii Revised Statutes and hereby certify that this structure is for my personal use and not for use or occupancy by the general public. I further certify that such building or structure will not be offered for sale or lease within 1 year after completion.

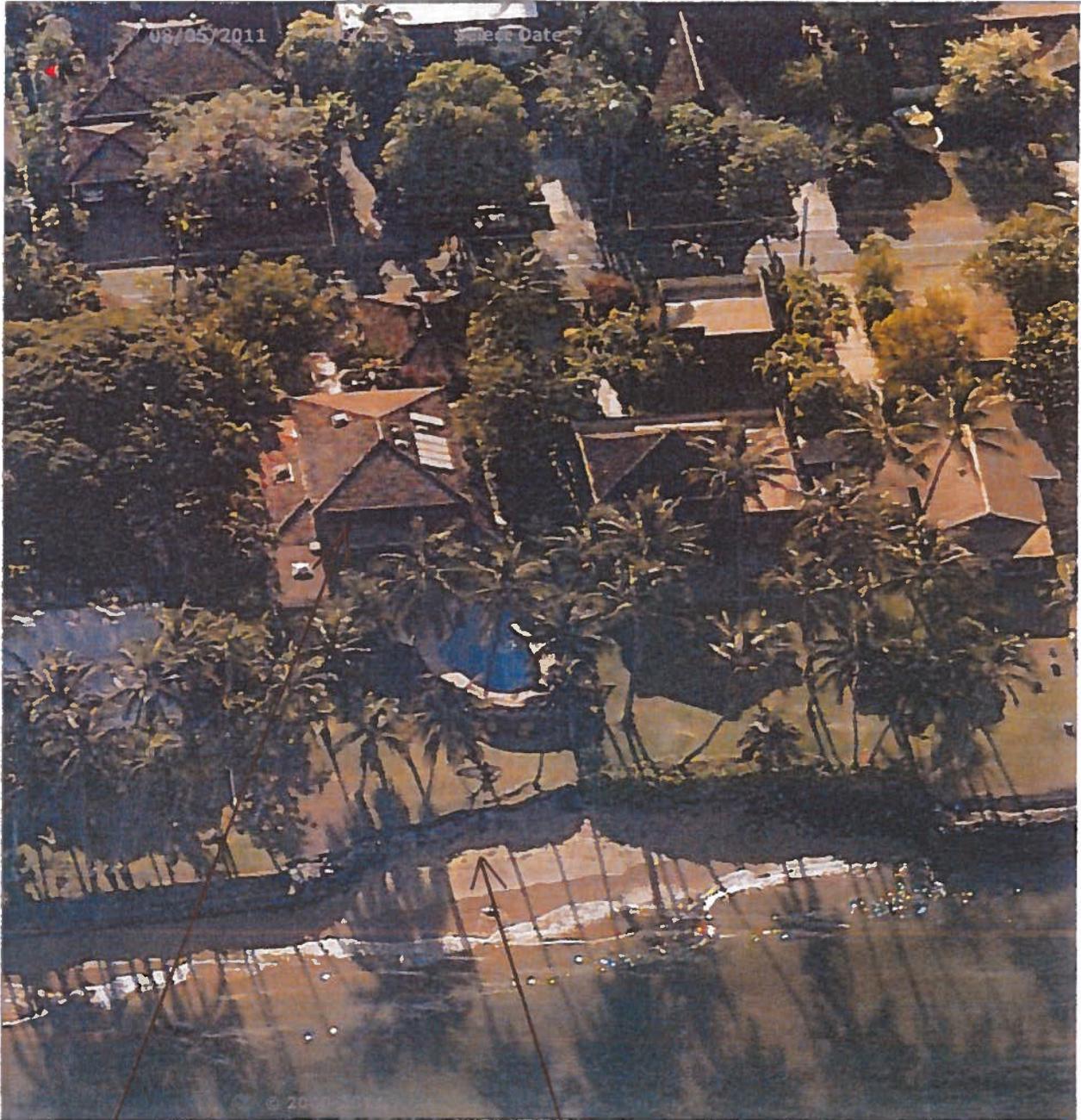
I claim exemption from the provisions of Chapter 464 HRS, requiring certification and stamping of plans by a registered architect or structural engineer as permitted under Sec. 464-13(b). I further certify that I will record this exemption with the Bureau of Conveyances as required by Sec. 464-13(c).

Approval is granted subject to compliance with the use regulations set forth in Chapter 205, Hawaii Revised Statutes and the Land Use Commission's Rules and Regulations. The owner will provide notice of these use regulations to future owners, heirs, and assigns.  
 Owner acknowledges that he has received from the County of Maui a copy of Section 205-4.5, Hawaii Revised Statutes.

PRINT NAME \_\_\_\_\_ SIGNATURE OF OWNER \_\_\_\_\_ DATE \_\_\_\_\_

**LOAD ZONE** n/a  
 ARKS. 5

**EXHIBIT " C "**



*Eosmint Area*

*Tmk: (2) 3-4-010:006*

**EXHIBIT " D "**



PHOTO 1 TMK:(2)3-9-10:06 FEBRUARY 22, 2012 @ 10:30 A.M.

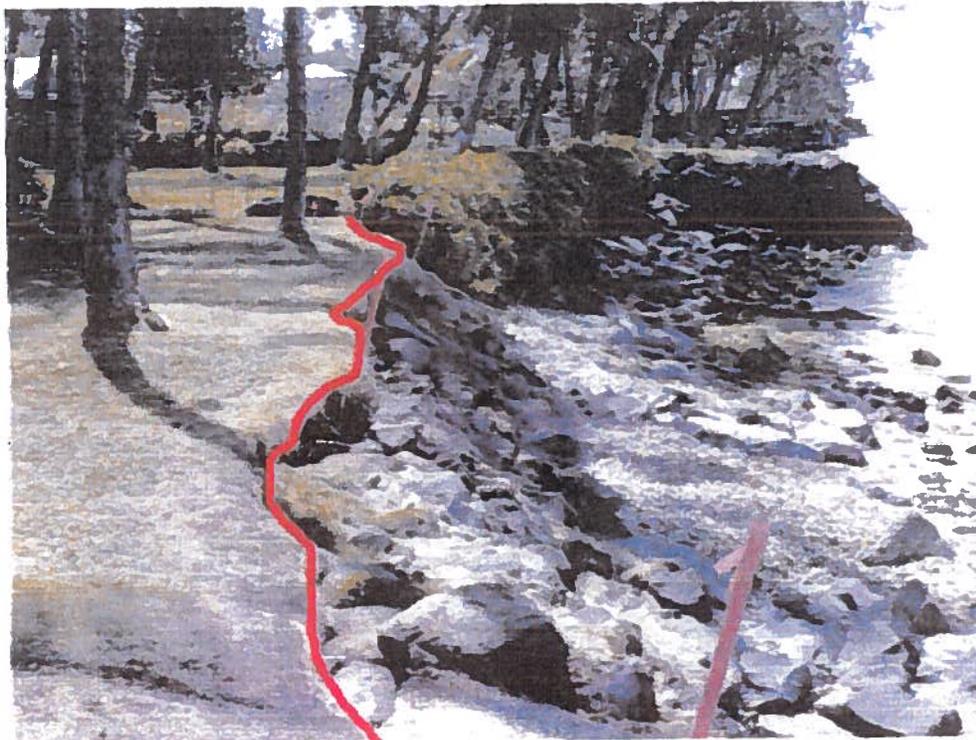


PHOTO 2 TMK:(2)3-9-10:06 FEBRUARY 27, 2012 @ 10:30 A.M.

**EXHIBIT "E"**



PHOTO 3 TMK:(2)3-9-10:06

FEBRUARY 22, 2012 @ 10:30 A.M.



PHOTO 4 TMK:(2)3-9-10:06

FEBRUARY 27, 2012 @ 10:30 A.M.

**EXHIBIT " E "**

Pg. 2 of 3



PHOTO 5 TMK:(2)3-9-10:06

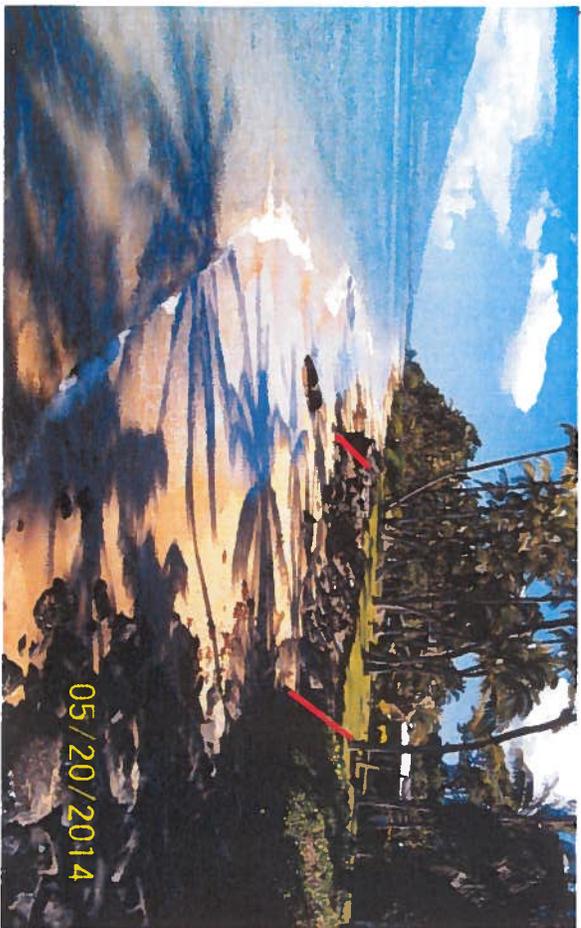
FEBRUARY 22, 2012 @ 10:30 A.M.

**EXHIBIT "E"**

Pgs. 3 of 3



Photos taken: 5/20/2014



Hickey, TMK: (2) 3-9-010-006



Photos of the rock revetment fronting the Hickey property. Red markings depicts the north and south ends of the revetment belonging to the Hickeys.

