

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

October 24, 2014

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

PSF: 13KD-190

Kauai

Amend Prior Board Action of May 9, 2014, Item D-1 by Request for Right-of-Entry Permit and Grant of Term, Non-Exclusive Easement to Stephanie L. Skow, Katherine L. Skow, and Matthew O. Nelson for Seawall Repair Purposes, Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-3-009:seaward of 001.

BACKGROUND:

On May 9, 2014, under agenda item D-1, the Board authorized a request for Right-of-Entry Permit and a Grant of Term, Non-Exclusive Easement for seawall repair purposes. A copy of the approved submittal is attached as Exhibit A.

REMARKS:

After preparing the right-of-entry permit, staff noticed that on the recommendation section of board submittal, no recommendation was done for the right-of-entry permit.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of May 9, 2014, under agenda item D-1 by authorizing the issuance of an immediate right-of-entry permit to Stephanie L. Skow, Katherine L. Skow, and Matthew O. Nelson for Seawall Repair Purposes, 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. The right-of-entry shall expire upon the issuance of the easement; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

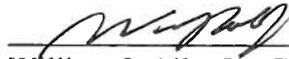
2. All terms and conditions listed in its May 9, 2014 approval to remain the same.

Respectfully Submitted,



Marvin Mikasa
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



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

May 9, 2014

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

PSF No.: 13KD-190

Kauai

Request for Right-of-Entry Permit and Grant of Term, Non-Exclusive Easement to Stephanie L. Skow, Katherine L. Skow, and Matthew O. Nelson for Seawall Repair Purposes, Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-3-009:seaward of 001.

APPLICANT:

Stephanie L. Skow, Katherine L. Skow, and Matthew O. Nelson, Joint Tenants

LEGAL REFERENCE:

Section 171-6, 13, and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Waipouli, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-3-009:seaward of 001, as shown on the attached map labeled Exhibit A.

AREA:

852 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:

Unencumbered with encroachments.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 9, 2014 CO

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 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:

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." See Exempt Notification at Exhibit B.

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 the one-time payment of consideration;
- 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 171-53(c), HRS.

REMARKS:

Applicants are the owners of property identified as Tax Map Key: (4) 4-3-009:001. They plan to repair the existing seawall which triggers the shoreline certification process. A copy of the survey map is attached as Exhibit C. A site inspection was conducted pursuant to the shoreline certification application on July 8, 2013 by the State Surveyor and Department personnel. During the site inspection, a portion of the seawall was found to be makai of the shoreline, but located within the record boundary of the property.

Applicants previously repaired the seawall after Hurricane Iniki under Federal Emergency Management Agency’s Office of Emergency Permitting thru the County of Kauai in 1993 (see Exhibit D). A previous shoreline certification done in May 1993 showed the seawall within the shoreline setback. In a letter dated April 4, 2014, attached as Exhibit E, the Office of Conservation and Coastal Lands expressed no objections to the proposed repairs of the non-conforming seawall.

Portions of seawall makai of the proposed shoreline are located on submerged land, owned by the State, notwithstanding that the subject structure once was within the recorded boundary of the parcel on private land, and are now encroachments. The applicants want to resolve the encroachment and request the Board authorize the issuance of a term, non-exclusive easement. A disposition is required to resolve the encroachment on State land.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No environmental health concerns
DLNR – Aquatic Resources	No response by suspense date
DLNR – Historic Preserv.	No historic properties identified
DLNR – OCCL	No objections, work with County of Kauai to secure approval for repair work. See Exhibit E
OHA	No response by suspense date

County Agencies:

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

Pursuant to the Board’s action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fines for the subject encroachment based on the fact that it was once within the recorded boundary of the private property. However, staff recommends the Board assess the administrative cost of \$500 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Governor’s approval pursuant to Section 171-53 (c), HRS will be pursued by staff upon approval of today’s request.

Applicant 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.

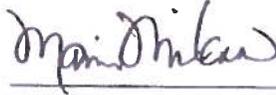
RECOMMENDATION: That the Board:

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. Access administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-3-009:001, 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.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Stephanie L. Skow, Katherine I. Skow and Matthew O. Nelson covering the subject area for seawall repair 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: (4) 4-3-009:001, 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to

best serve the interests of the State.

- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



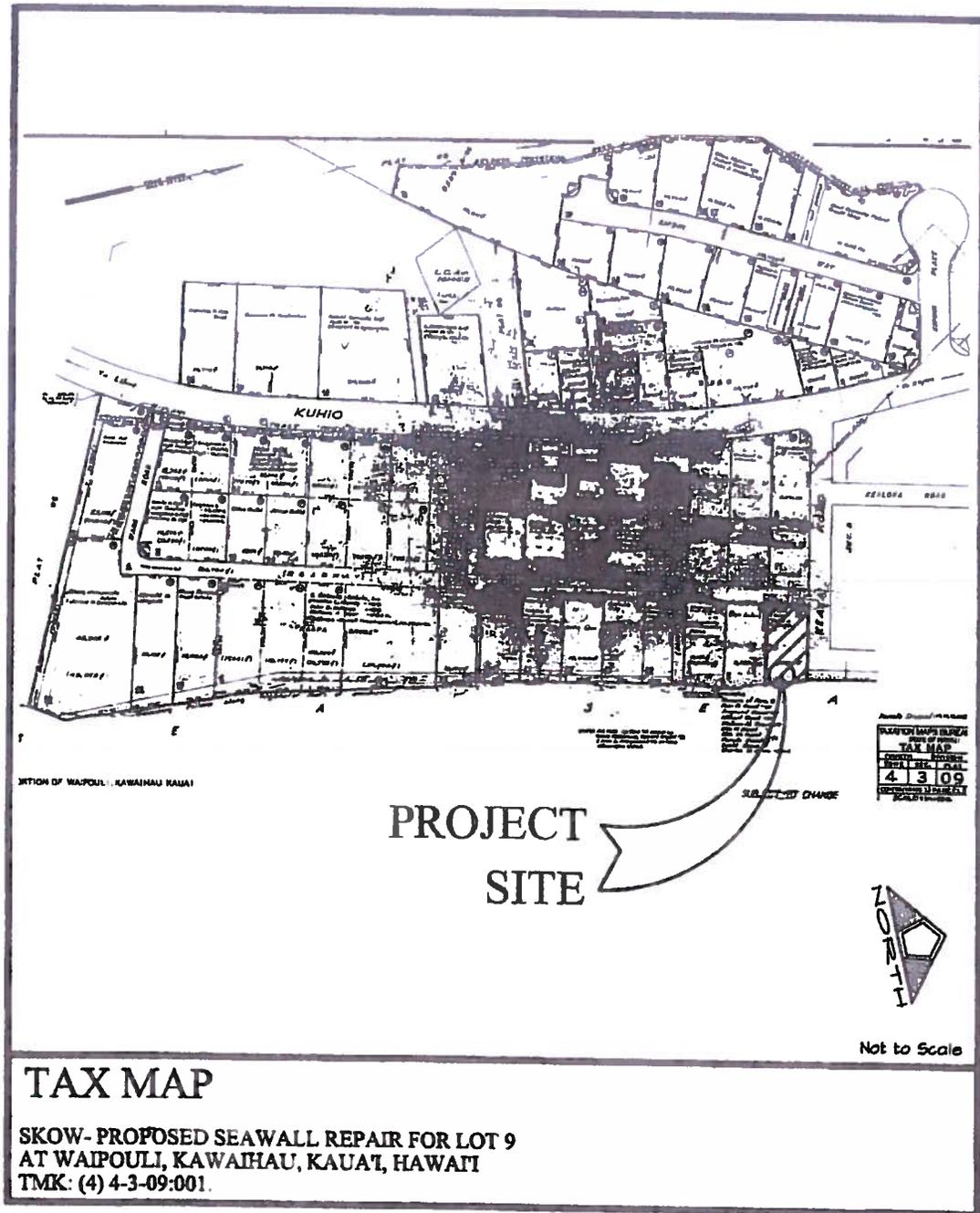
Marvin Mikasa
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





TAX MAP

SKOW- PROPOSED SEAWALL REPAIR FOR LOT 9
AT WAIPOULI, KAWAIIHAU, KAUAI, HAWAII
TMK: (4) 4-3-09:001.

EXHIBIT A

NEIL ABERCRUMBIE
GOVERNOR OF HAWAII



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

WILLIAM J. AILA, JR.
COMMISSIONER
DEPARTMENT OF LAND AND NATURAL RESOURCES
CHIEF OFFICE FOR WATER RESOURCES MANAGEMENT
JESSE K. SOUAI
DEPUTY COMMISSIONER
WILLIAM H. TAM
DEPUTY COMMISSIONER
AQUATIC RESOURCES
BOATING APPLICANT REGISTRATION
BUREAU OF ENVIRONMENTAL
PLANNING AND WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DIVISION 1311A1
EAGLE BOND
FLORIDA AND WILDLIFE
HAWAIIAN ISLAND BIRDS AND WILDLIFE
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

- Project Title:** Request for Right-of-Entry Permit and Grant of Term, Non-Exclusive Easement to Stephanie L. Skow, Katherine L. Skow, and Matthew O. Nelson for Seawall Repair Purposes
- Project / Reference No.:** PSF 13KD-190
- Project Location:** Waipouli, Kawaihau, Kauai, Tax Map Key. (4) 4-3-009.seaward of 001.
- Project Description:** Seawall Repair Purposes
- Chap. 343 Trigger(s):** Use of State Land
- Exemption Class No.:** 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."

Office of Conservation and Coastal Lands are reviewing the CDUA application for repair of the existing seawall. The applicant is not planning to enlarge the existing seawall. As such, staff believes that the request would involve negligible or no expansion or change in the use of the subject area beyond the previous existing.

Consulted Parties Office of Conservation and Coastal Lands

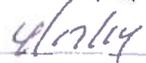
EXHIBIT B

Recommendation:

That the Board and Chairperson find 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.

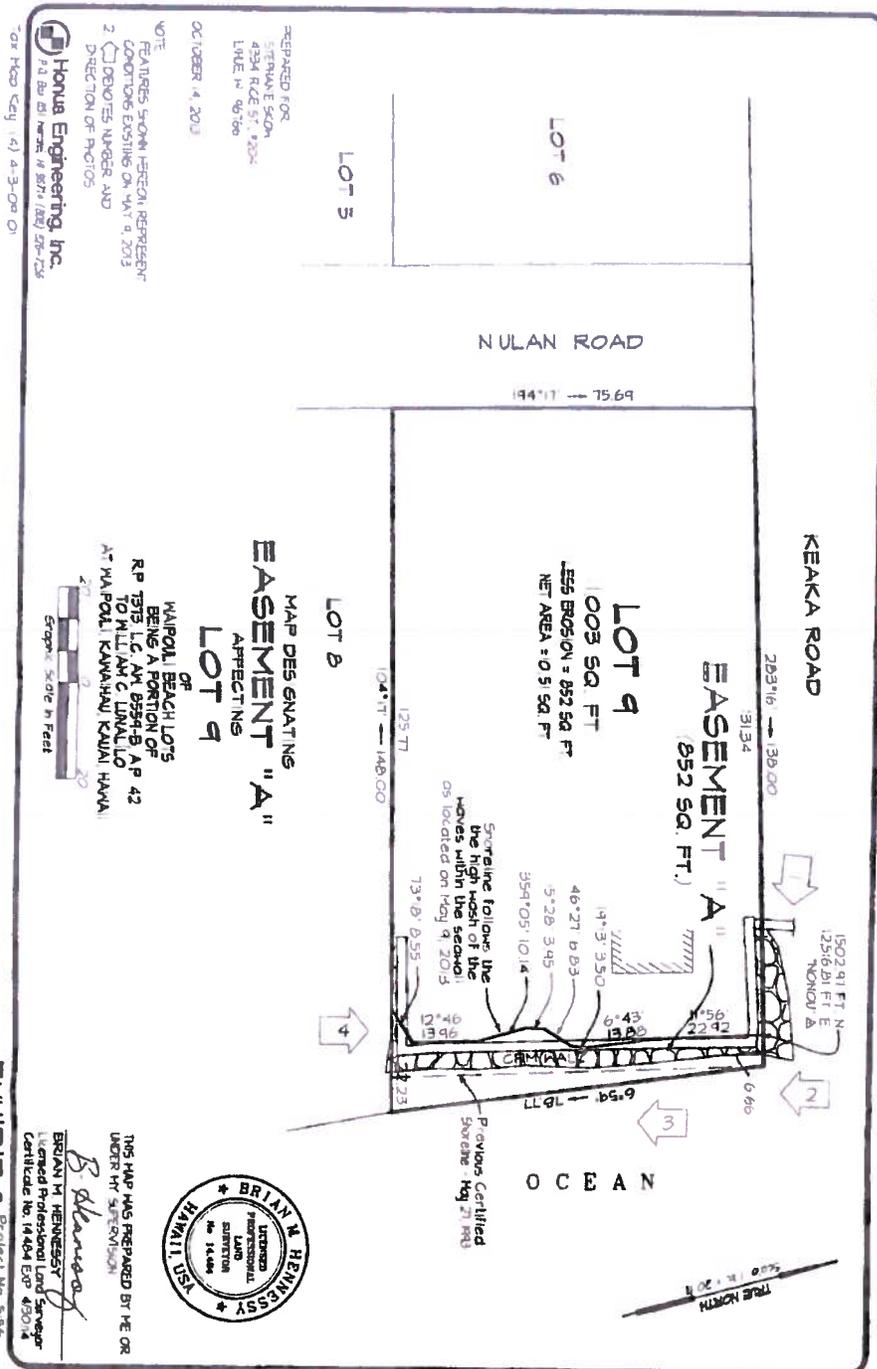


William J. Aila, Jr., Chairperson



Date





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COUNTY OF KAUAI

OFFICE OF EMERGENCY PERMITTING
1111 KEELE STREET
LILA, KAPAA, HAWAII

REGISTRATION NO.: R14059 (MULTI-REGISTRATION FORM) TRAC ID: 4 3 9 1

APPLICANT: JAMES BOLDT (KAWAII) Zone: _____ Sec: _____ Plat: _____ Parcel: _____ Lot: _____
 ADDRESS: KAPAA WK: 822191

PROPERTY OWNER: KAY GAMMAGE TYPE: OWNER CONTRACTOR ESTATE AUCTION/2ND AGENT

311 ADDRESS: KAPAA

MAILING ADDRESS: _____

STRUCTURE NO.: _____ ZONING: _____

EXISTING USE: SINGLE-FAMILY DWELLING MULTI-FAMILY DWELLING
 HOTEL INDUSTRIAL COMMERCIAL OTHER: _____

A DESCRIPTION OF DAMAGE: SEAWALL DAMAGE

DESCRIPTION OF PROPOSED REPAIRS: REPAIR OF SEAWALL 7
BACKFILL (LESS THAN 100 CU.YD)

REPAIRS INCLUDE CHANGES FROM ORIGINAL BUILDING:
 ADDITIONAL ROOMS ALTERATION OF SIZE LOCATION OF LOT

PLEASE DESCRIBE: _____

B. REQUIRING PERMITS FOR BUILDING ELECTRICAL PLUMBING DEMOLITION
 WORK TO BE DONE BY: OWNER/BUILDER CONTRACTOR: JAMES BOLDT
 LICENSE NO: PC-15802

C. POOL OR OPTIC SYSTEM DAMAGED? NO YES (yes please describe damage: _____)

I certify that the information provided above is correct, and that the above repairs are for damages incurred during Hurricane Iniki. I understand that this work must comply with all applicable codes and ordinances. I also understand that this work will be subject to inspections by the County and/or State at any time and agree to pay for all costs associated with any remedial work that may be required, to have the work conform to Kauai County and/or State standards. I recognize that Kauai County may or may not inspect the repair work to be done. This emergency permit process. I agree to indemnify and hold the County of Kauai harmless from all claims for damages by the applicant and third parties resulting directly or indirectly from the repairs as proposed, or as actually built. I am either the owner or authorized by the owner to apply for this permit.

In issuing this Emergency Authorization, the O.E.P. has relied on the information and data which the applicant(s) has provided in connection with this application. If, subsequent to the issuance of this authorization, such information or data prove to be false, incomplete or inaccurate, this authorization may be modified, suspended or revoked, in whole or in part.

SIGNATURE: James Boldt DATE: 5/27/93
 PRINT: JAMES BOLDT

OFFICIAL USE ONLY:
 Applicant's response:
 SMA Flood Shoreline Protection Pre-Notification #
 Historic District Violation Non-Compliance Finding
 Deviation from Ordinal Map More than 50% changed
 Other: _____

TYPE OF PERMIT:
 Exempt Negligent Expedited Normal Permit

Official Signature: [Signature] Date: 5/27/93

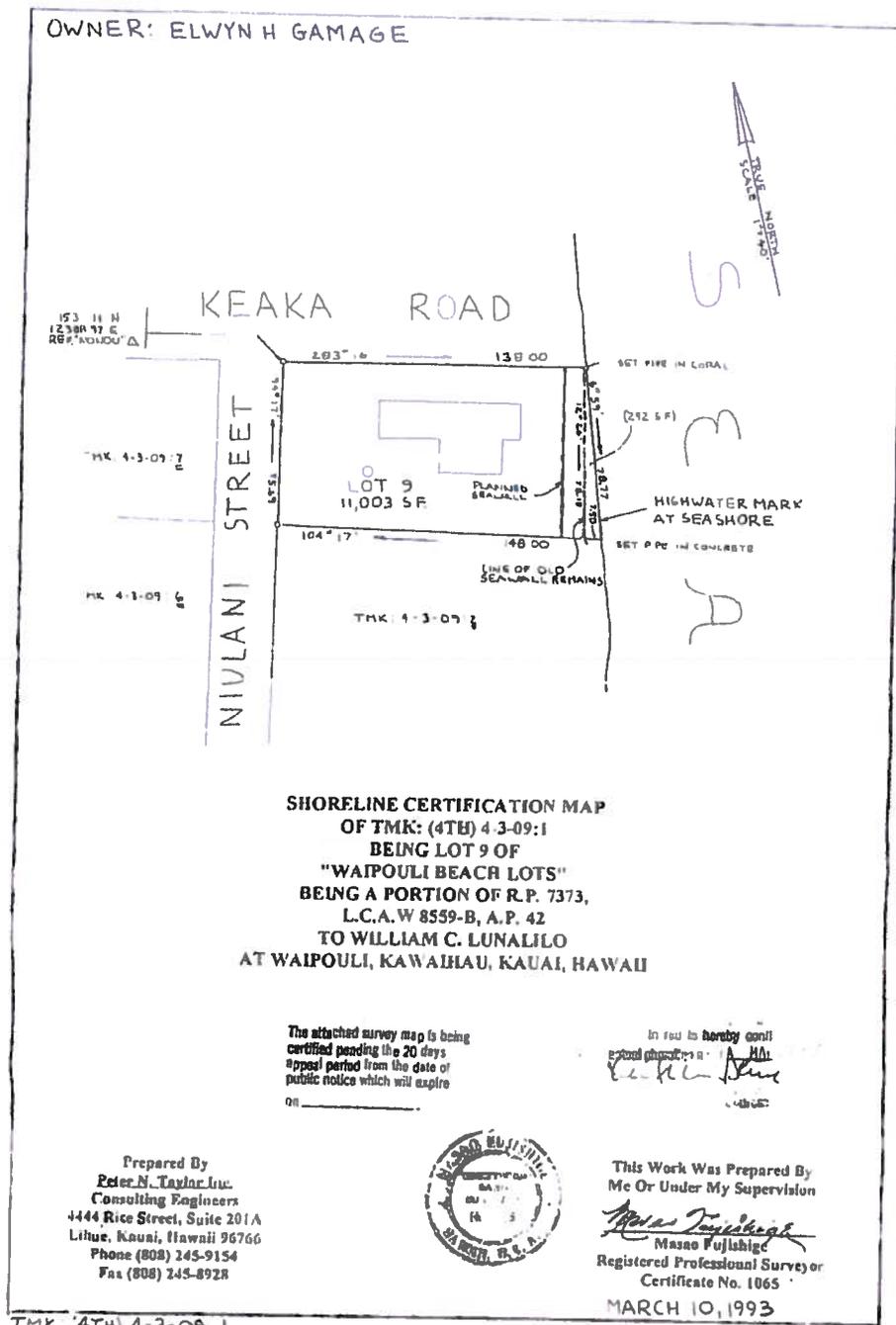


EXHIBIT D

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
GOVERNOR
JESSIE H. SOLOMON
GOVERNOR
WILLIAM J. TAM
GOVERNOR
ALL THE RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

OCCL MC

Brian Hennessy
Honua Engineering
PO Box 851
Hanalei, HI 96714

corr KA-14-124

APR - 4 2014

Dear Mr. Hennessy,

SUBJECT: SEAWALL REPAIR
Kapa'a, Kawaihau, Kaua'i
TMK (4) 4-3-009:001

The Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided regarding proposed repairs to an existing, non-conforming seawall that has become undermined. The seawall was approved by the County in 1993.

The wall is approximately 75 feet long. It has been undermined between one and two feet along most of its length. Based upon the information you provided, the repair work will involve placing 50 to 75 cubic yards of cemented rubble at the base of the wall.

The work will not increase the dimensions or the footprint of the wall.

OCCL has no objections to the work, and recommends that you work with the County to secure approval for the repair work under their administrative process.

If you have any additional questions, please feel free to contact Michael Cain at 587-0048.

Sincerely,

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

c. Kaua'i Planning

EXHIBIT " E "