

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

October 26, 2012

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

PSF No.: 07MD-048

Maui

Grant of an After- the-Fact Term, Non-Exclusive Easement to Association of Apartment Owners of Leilani Kai, for Pool and Pool Deck, Encroachment Purposes, Assess Administrative Costs of \$590; Waiohuli-Keokea, Kula, Maui, Tax Map Key: (2) 3-9-008: Portion of 001.

APPLICANT:

Association of Apartment Owners of Leilani Kai, a Hawaii nonprofit corporation.

LEGAL REFERENCE:

Sections 171-6 and -13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiohuli-Keokea situated at Kihei, Kula, Maui, identified by Tax Map Key: (2) 3-9-008:001, as shown on the attached map labeled Exhibit A.

AREA:

Total area of 522 square feet, more or less.

Encroachments- Portions of:	Pool -	95 sq. ft.
	Pool Deck-	427 sq. ft.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	Special Management Area

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:

Waiohuli Beach Reserve, Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove portions of a Pool and Pool Deck, 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 the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>x</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u>__</u>

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) Remove patio and barbecue station from State land (beach reserve).

Exhibit A- Tax Map: (2) 3-9-008:001 (State Parcel)

Exhibit B- Leilani Kai Resort Site Plan Map (encroachments depicted)

REMARKS:

In January of 2007, the Maui District Land Office conducted site inspections of the Uluniu Beach Reserve, situated in the central Kihei area of South Maui. The primary objective of the inspections was to identify and remove all lateral obstructions which prevented public access through the beach reserve, and to identify all encroachments from the inland private properties. During this project Staff worked with approximately thirty-five property owners from Uluniu Road through the north end of Halama Street.

During our initial inspection of the beach reserve area fronting the AOA of Leilani Kai, several lateral obstructions were identified which needed to be removed in addition to a few encroachments that would require an easement if the owner desired to keep in place. Upon contacting management of the AOA of Leilani Kai, we received an immediate response. Corrective measures were taken to remove all above ground obstructions and lateral obstructions within the beach reserve.

Upon reviewing survey maps of the AOA of Leilani Kai, it was discovered that a portion of the swimming pool, the surrounding deck area, and a barbecue station were located outside of applicant's seaward property boundary and within the State beach reserve. Applicant now seeks an easement to allow portions of the pool and pool deck, which are currently within the property's fenced-in area and encroaching on State land, to remain in place. The other items such as the barbecue station and portion of a deck that are located outside the fenced area will be removed by the applicant.

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.

AGENCY COMMENTS:

Requests for comments were submitted to the following agencies:

Agency	Comments
County of Maui – Planning Dept.	Suggest moving fence and makai side of pool deck mauka to lessen the size of the encroachment. Indicated that due to the size of the pool, not recommended that it be open for public use within the easement area.
County of Maui – Public Works	No comment response received.
Office of Conservation and Coastal Lands	No Response
Office of Hawaiian Affairs	No Response
State – Historic Preservations	No Response

Since the inception of the clean- up project, the Land Division has been working with the Uluniu Beach Reserve Association towards a Memorandum of Understanding (MOU). The intent of the MOU would be to have the private property owners along the beach reserve take care of the public land area fronting their properties with specific guidelines to keep the area free of lateral obstructions and open to the public for access and use in a uniform and consistent manner.

Staff in the Maui District and Central Offices spent a total of fourteen hours in conducting site inspections, determining a resolution of the encroachment that could be presented to the Land Board, and preparing this submittal, for a total of \$590 in staff time. Staff is including a recommendation below that the AOA of Leilani Kai be assessed for these administrative costs.

The requested use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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) 3-9-008:009, 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. Assess administrative costs in the amount of \$590 against AOA of Leilani Kai as authorized by HRS Section 171-6 for staff time incurred in resolving the encroachment.
4. Subject to the applicant fulfilling all of the applicant requirements listed above, authorize the issuance of a term non-exclusive easement to AOA of Leilani kai covering the subject area for Pool and Pool Deck 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 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) 3-9-008:009, 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 the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this 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.

Respectfully Submitted,



Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



DWG. NO. 3788
 SOURCE: Taxation Maps Bureau
 DATE: October 1944

SUBJECT AREA

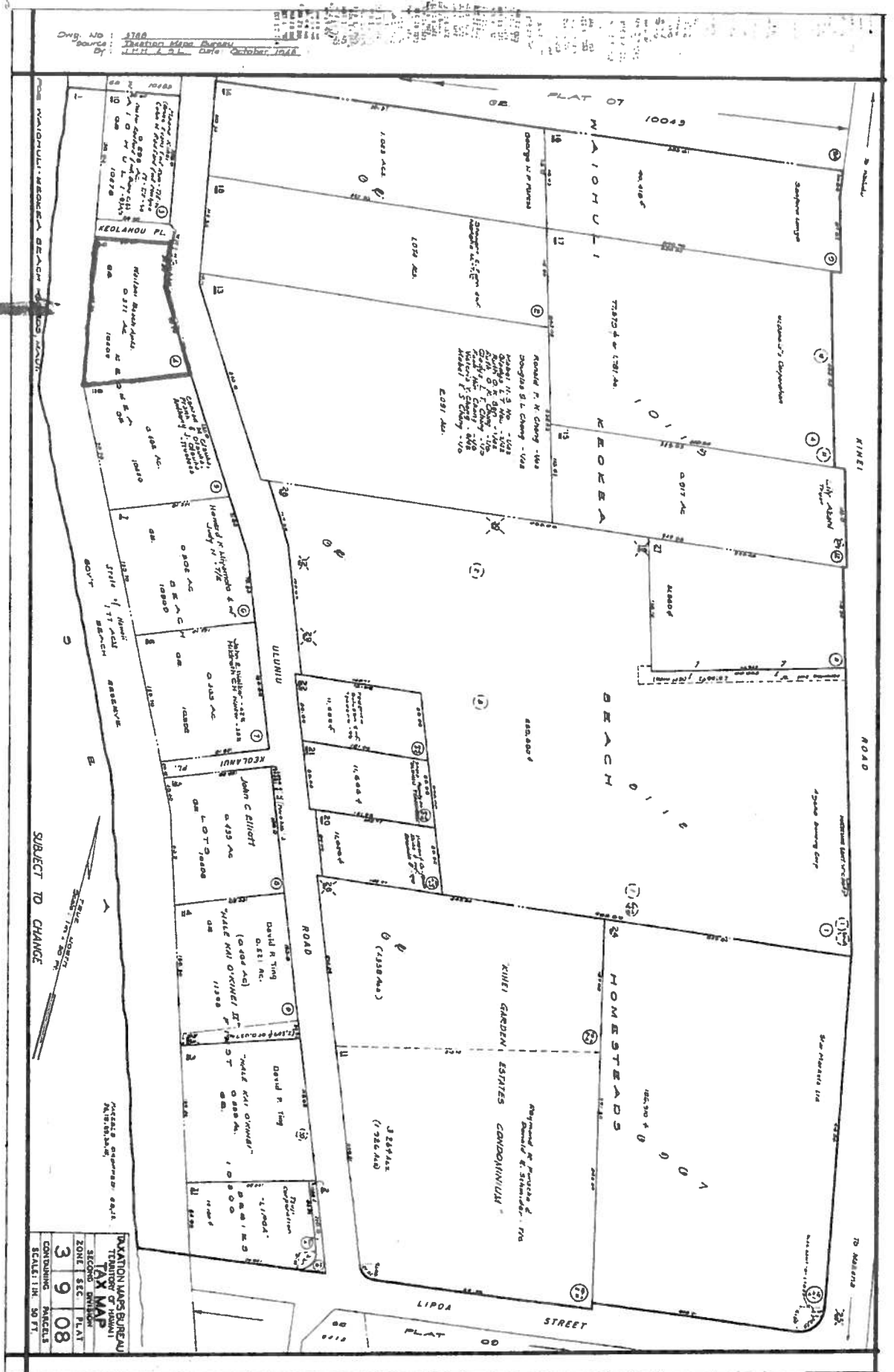
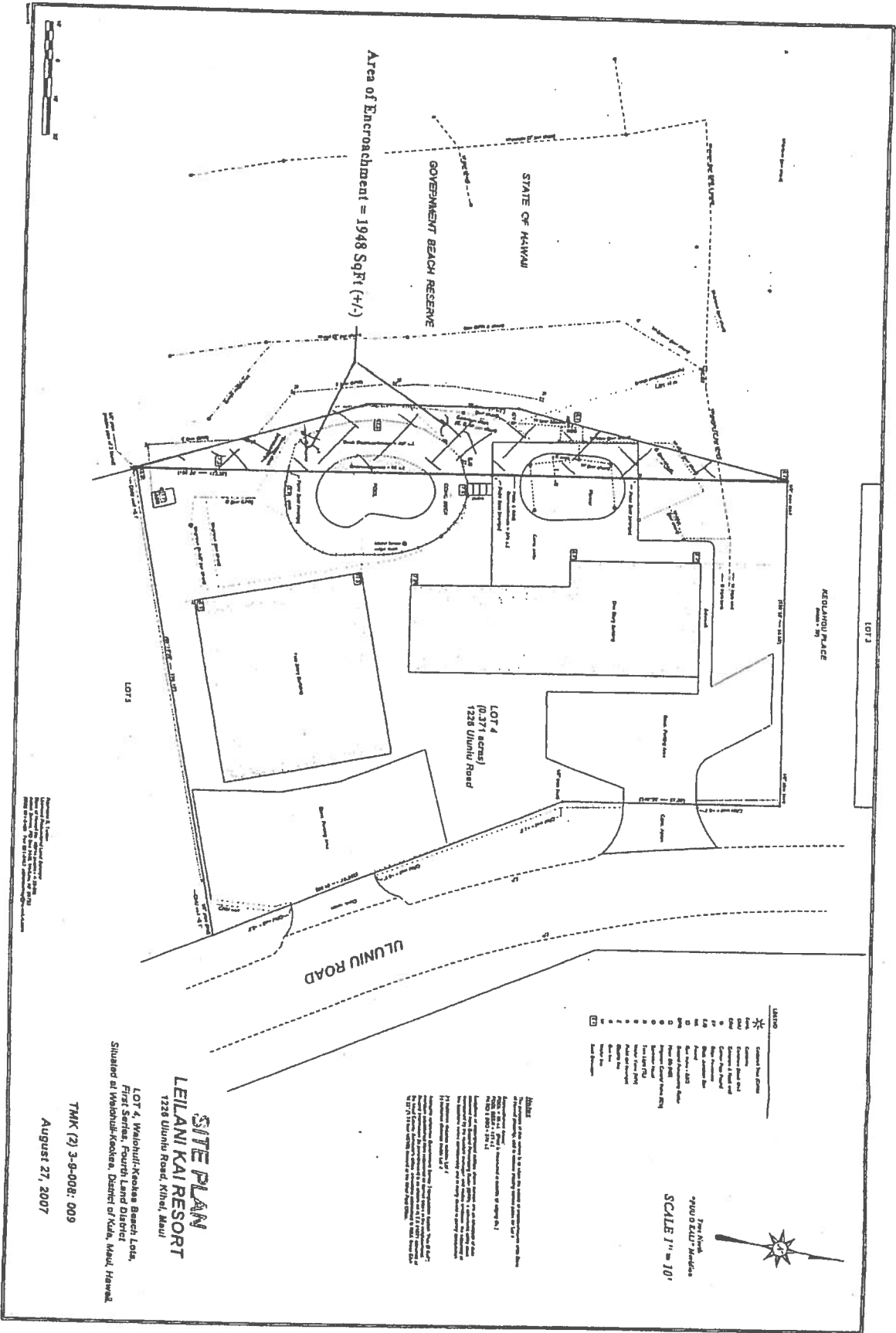


EXHIBIT A



RELIANOU PLACE
 1228 Uluniu Road

LOT 3

Area of Encroachment = 1948 SqFt (+/-)

STATE OF HAWAII
 GOVERNMENT BEACH RESERVE

LOT 4
 (0.277 acres)
 1228 Uluniu Road

LOT 3

ULUNIU ROAD

LEGEND

★	Corner Iron Nail
○	Corner Iron Stake
□	Corner Aluminum Stake
△	Corner Wood Stake
◇	Corner Plastic Stake
▽	Corner Concrete Stake
●	Corner Metal Stake
○	Corner Glass Stake
□	Corner Rubber Stake
△	Corner Paper Stake
◇	Corner Cloth Stake
▽	Corner Fabric Stake
●	Corner Metal Stake
○	Corner Glass Stake
□	Corner Rubber Stake
△	Corner Paper Stake
◇	Corner Cloth Stake
▽	Corner Fabric Stake

NOTES:
 1. All dimensions are in feet and inches.
 2. All bearings are in degrees, minutes and seconds.
 3. All corners are marked with iron nails.
 4. All corners are marked with iron stakes.
 5. All corners are marked with aluminum stakes.
 6. All corners are marked with wood stakes.
 7. All corners are marked with plastic stakes.
 8. All corners are marked with concrete stakes.
 9. All corners are marked with metal stakes.
 10. All corners are marked with glass stakes.
 11. All corners are marked with rubber stakes.
 12. All corners are marked with paper stakes.
 13. All corners are marked with cloth stakes.
 14. All corners are marked with fabric stakes.

True North
 9900 S KULU Road
 SCALE 1" = 10'

SITE PLAN
LEILANI KAI RESORT
 1228 Uluniu Road, Kihali, Maui

LOT 4, Waiohuli-Kaheoas Beach Lots,
 First Series, Fourth Land District
 Situated at Waiohuli-Kaheoas, District of Kula, Maui, Hawaii

TMK (2) 3-9-008: 009
 August 27, 2007



The above photos of the encroaching sections of the Leilani Kai barbecue station, deck and swimming pool areas. The line in the photos are not to scale but acts as a representation of the makai property boundary between the Leilani Kai property and the State beach reserve.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 23, 2012

EXEMPTION NOTIFICATION

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

Project Title: Issuance of an After-the-Fact, Term, Non-Exclusive Easement to AOA of Leilani Kai.

Project / Reference No.: PSF No. 07MD-048


Project Location: Waiohuli-Keokea, Kihei, Kula, Maui, Hawaii

Project Description: Issuance of an After-the-Fact, Term, Non-Exclusive Easement for Pool, Pool Deck, Patio, and Barbecue Station Encroachment Purposes (901 sq. ft.).

Chap. 343 Trigger(s): Use of State Lands (Beach Reserve)

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, 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 [HAR 11-200-8 (a)(1)].

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

10/10/12

Date