

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.:12MD-019

Maui

Grant of a Term, Non-Exclusive Easement to the Puamana Community Association for Five (5) Shoreline Encroachment Areas, and Assessment of a \$500.00 Fine and \$940.00 in Administrative Costs Against the Puamana Community Association for Shoreline Encroachments, Puamana, Lahaina, Maui, Tax Map Key: (2) 4-6-028: seaward of 001.

APPLICANT:

Puamana Community Association, a Hawaii Nonprofit Corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of the Puamana Community Association lands at Lahaina, Maui, identified by Tax Map Key: (2) 4-6-028: 001, as shown on the attached map labeled Exhibit I.

AREA:

| | | |
|--------------|-------|---------|
| Easement "1" | 1,115 | sq. ft. |
| Easement "2" | 57 | sq. ft. |
| Easement "3" | 300 | sq. ft. |
| Easement "4" | 223 | sq. ft. |
| Easement "5" | 200 | sq. ft. |

Combined total area of 1,895 square feet, more or less.

ZONING:

State Land Use District: Conservation
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: YES _____ NO
X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawalls, footings and concrete groin 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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall 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 x NO ___
Registered business name confirmed: YES x NO ___
Applicant in good standing confirmed: YES x NO ___

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Comply with all County of Maui Special Management Area rules and regulations.

EASEMENT DESCRIPTIONS:

Easement "E-1" – Portion of a Concrete Rubble Masonry (CRM) Seawall: Easement "E-1" totals 1,115 sq. ft. and is comprised of a portion of a CRM seawall located along the northernmost shoreline of TMK (2) 4-6-028:001. The CRM seawall provides stability for the Puamana property and serves to protect nearby residences from coastal erosion and high waves. See **Exhibit III** identifying approximate location of Easement "E-1" in yellow and Photo No. 1 of **Exhibit II**.

Easement "E-2" – Portion of a Concrete Groin: Easement "E-2" totals 57 sq. ft. and is comprised of a portion of a concrete groin at the north side of the Puamana swimming pool. The concrete groin represents part of the historic swimming pool that was constructed in the 1930's. A saltwater pump that once fed water from the ocean into the swimming pool was located within this structure. At a later date, the pump was removed from the concrete groin as the pool was no longer a saltwater pool. The removal of the groin may affect the structural integrity of the pool foundation. See **Exhibit III** identifying approximate location of Easement "E-2" in green and Photo No. 2 of **Exhibit II**.

Easement "E-3" – Portion of the Pool Structure and Revetment Footings: Easement "E-3" totals 300 sq. ft. and is comprised of a portion of the concrete pool structure and its

revetment footings. The Puamana swimming pool is a historic structure constructed in the 1930's and is located just north of the Kauaula Stream on the Puamana property. See **Exhibit III** identifying approximate location of Easement "E-1" in red and Photo No. 3 of **Exhibit II**.

Easement "E-4" – Portion of a CRM Seawall: Easement "E-4" totals 223 sq. ft. and is comprised of a portion of a CRM seawall located along the shoreline, south of the Kauaula Stream. The CRM seawall provides stability for the Puamana property and serves to protect nearby residences from coastal erosion and high waves. See **Exhibit III** identifying approximate location of Easement "E-4" in purple and Photo No. 4 of **Exhibit II**.

Easement "E-5" – Portion of a CRM Seawall: Easement "E-5" totals 200 sq. ft. and is comprised of a portion of a CRM seawall located along the shoreline, south of the Kauaula Stream. The CRM seawall provides stability for the Puamana property and serves to protect nearby residences from coastal erosion and high waves. See **Exhibit III** identifying approximate location of Easement "E-5" in blue and Photo No. 4 of **Exhibit II**.

EXHIBITS:

Exhibit- I- Tax Map of (2) 4-6-028:001

Exhibit- II- Photos of easement areas 1 through 5.

Exhibit- III- Puamana Community Shoreline Encroachment Map with color key.

REMARKS:

In an attempt to certify the shoreline area fronting the Puamana Condominium complex, a shoreline inspection was conducted on June 3, 2010. The shoreline certification application was submitted by the Puamana Community Association (PCA) as part of the permitting process to undertake necessary structural repairs to the community's aging swimming pool structure. During the shoreline inspection, several improvements from the PCA were determined to be encroaching onto the shoreline or government submerged land.

Refer to the previous section, EASEMENT DESCRIPTIONS for a specific details and the purpose for each encroachment.

The Office of Conservation and Coastal Lands (OCCL) has determined that all five shoreline structures in question are Non-Conforming (A structure constructed or existed prior to the subject land area being designated as a Conservation District). Therefore, a Conservation District Use Permit would not be required. Refer to Exhibit (2), letter dated November 16, 2012, to Erin Mukai of Munekiyo & Hiraga, Inc. (PCA Consultant) from OCCL Administrator Mr. Sam Lemmo.

It has also been determined that these easement areas will not have a negative impact to the surrounding shoreline or public access. Therefore, OCCL agrees that the structures may remain in place with a proper disposition from the State for the use of the subject land areas that are being encumbered by PCA's encroachments.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet. Additionally, Land Division staff has incurred administrative costs of \$440, and OCCL staff has incurred costs of \$500, in bringing this matter to the Board. Staff therefore seeks recovery of a total of administrative costs of \$940 from PCA as permitted under HRS Section 171-6.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

| Agency | Comments |
|--|--|
| Office of Conservation & Coastal Lands | No objections |
| County of Maui – Planning Dept. | Received letter of with comment of no objections. |
| Office of Hawaiian Affairs | No comment received |
| State of Hawaii – DAR | No objections. Noted that the area has a history of accelerated erosion. |

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.

Pursuant to Section 171-53(c), HRS, “the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter.” Staff will have to work with the Applicant in obtaining the legislative concurrent resolution.

The Puamana community encumbers two separate parcels of beach front property, 1- (2) 4-6-028:001 and 2) (2) 4-6-032:001. The above easement request is strictly related to the shoreline areas seaward of Tax Map Key: (2) 4-6-028:001. Per the request of the applicant, the encroachment fronting Tax Map Key (2) 4-6-032:001 will be addressed

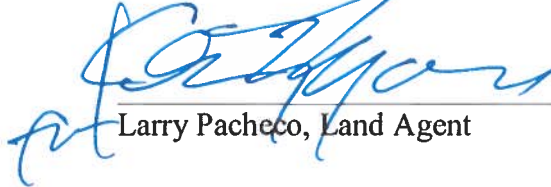
separately. This encroachment consists of rubble rocks which were dumped along the shoreline as an unpermitted revetment as a means to stop further loss of their private property during a large storm event which occurred in the 1980's. The OCCL is requiring the PCA to complete a Conservation District Use Application (CDUA) to address the unauthorized rock revetment situate on the shoreline seaward of Tax Map Key: (2) 4-6-032:001. A CDUA is not a requirement for the encroachments fronting (2) 4-6-028:001.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachments, and assess \$940 in administrative costs against the Applicant, pursuant to HRS Section 171-6.
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) 4-6-028:001, 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of term, non-exclusive easements to the Puamana Community Association covering the subject area for Seawall and 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 easements shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (2) 4-6-028:001, provided however: (1) it is specifically understood and agreed that the easements 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 assign 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,



Larry Pacheco, 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

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Term, Non-Exclusive Easement to the Puamana Community Association.

Project / Reference No.: PSF No. 12MD-019

Project Location: Puamana, Lahaina, Maui, Hawaii

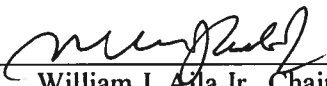
Project Description: Granting of a Term, Non-Exclusive Easement for Encroachment Purposes.

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

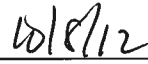
Exemption Class No. and Description: In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant 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)].

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.

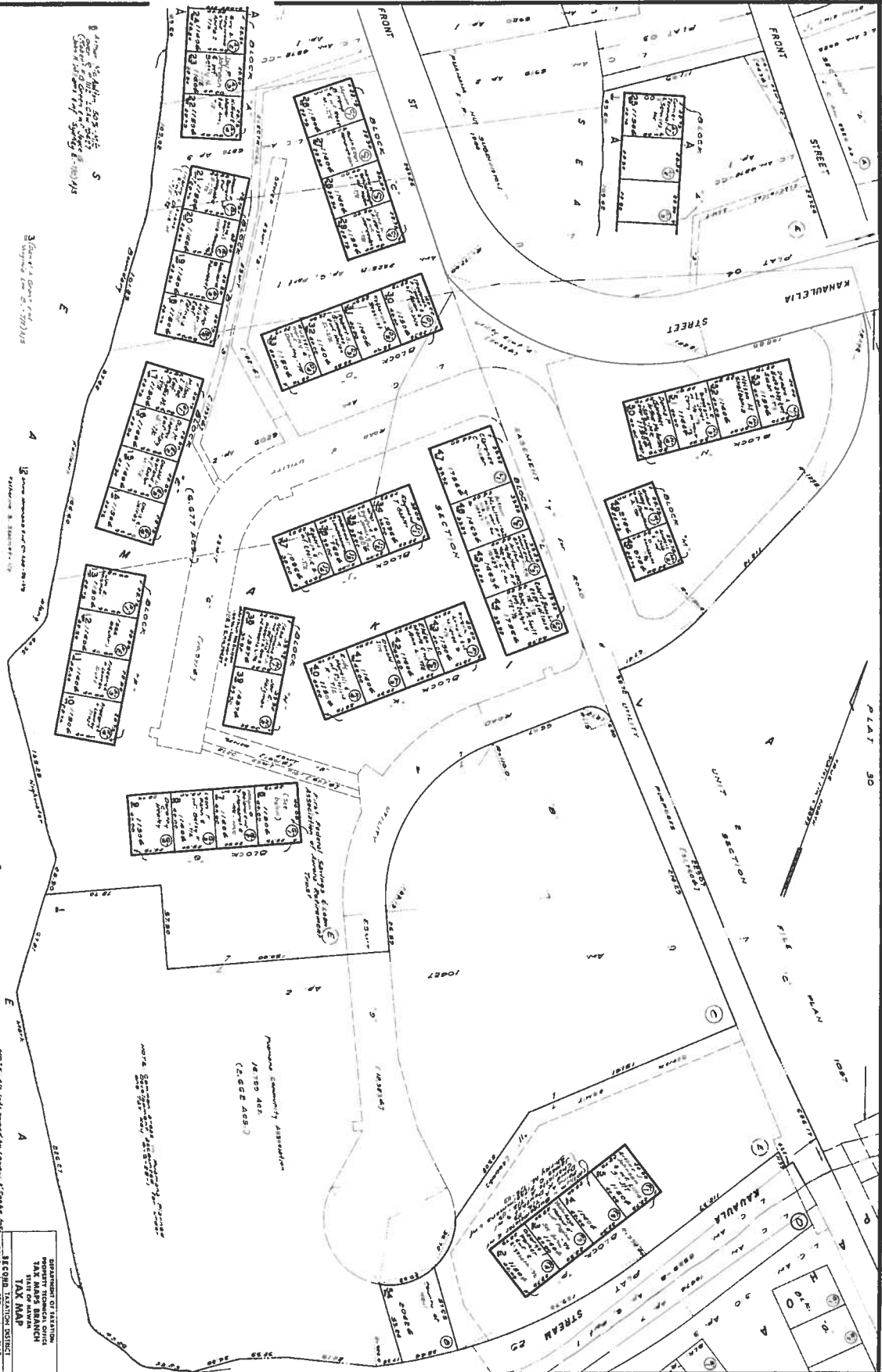


William J. Aila Jr., Chairperson



Date

UNIT
FOR PULAHANA PLANNED DEVELOPMENT, UNIT 1, F. R. 1086, MAHILA, PAHOA, & KAUALA, LAHAINA, MAUI, HAWAII (formerly par. 4-6-02)



NOTE: All lots shown on this plan are subject to the provisions of the applicable zoning ordinance and the rules and regulations of the Planning Commission.

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| | | | |
|----------------------------------|----------------|-------------|-------------|
| DEPARTMENT OF TAXATION | DATE OF MAP | TAX MAP NO. | SCALE |
| TAX MAPS BRANCH | APRIL 16, 1988 | 4-6-02 | 1" = 50 FT. |
| FOR PROPERTY ASSESSMENT PURPOSES | | | |
| | | | |



Photograph No. 1: Seawall on north side of property (Easement "E-1")



Photograph No. 2: Concrete groin at north side of swimming pool (Easement "E-2")



Photograph No. 3: Revetment footings of swimming pool (Easement "E-3")



Photograph No. 4: View towards seawall encroachment south of the drainage channel (Easements "E-4" and "E-5")

Approximate Location of Easements

- Easement "E-1"
- Easement "E-2"
- Easement "E-3"
- Easement "E-4"
- Easement "E-5"

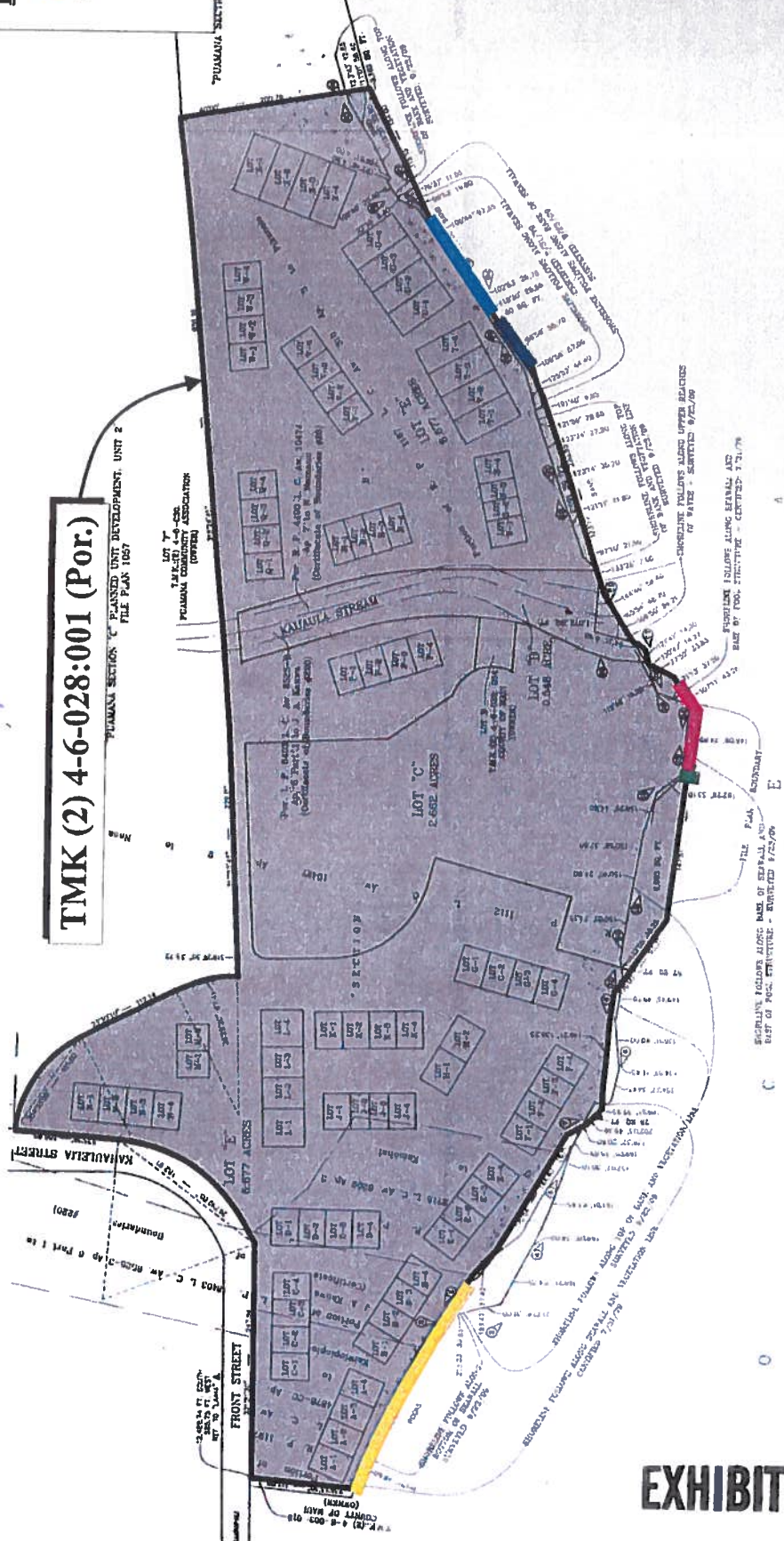
PUAMANA SECTION 'D' PLANNED UNIT DEVELOPMENT, UNIT '5'
FILE P.U.A.D. 1130

LOT 7
T.M.K. (2) 4-6-028
PUAMANA COMMUNITY ASSOCIATION
(OPTION)

TMK (2) 4-6-028:001 (Por.)

PUAMANA SECTION 'C' PLANNED UNIT DEVELOPMENT, UNIT 2
FILE P.U.A.D. 1057

LOT 7
T.M.K. (2) 4-6-028
PUAMANA COMMUNITY ASSOCIATION
(OPTION)



Pacific Ocean

**Puamana Community Shoreline Encroachment
2009 Shoreline Survey Map**

NOT TO SCALE



EXHIBIT "III"

Source: Newcomer-Lee Land Surveyors, Inc.

