

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

November 30, 2012

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

PSF No.:12MD-100

Maui

Assessment of a \$500.00 Fine Against Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for Concrete Rock Wall / Revetment, Stairway, and Yard Encroachment; Grant of Term, Non-Exclusive Easement to the Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for a Concrete Rock Wall / Revetment, Stairway, and Yard Encroachment Purposes, and Assess Administrative Costs of \$240.00; Kuau, Makawao, Paia, Maui, Tax Map Key: (2) 2-6-012: Seaward of 026.

APPLICANT:

Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kuau, Makawao, Paia, Maui, identified by Tax Map Key: (2) 2-6-012:026, as shown on the attached map labeled Exhibit A.

AREA:

1,059 square feet, more or less.

ZONING:

State Land Use District:
County of Maui CZO:

Urban
Residential and 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 X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall/revetment, stairs, and yard area 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:

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 trust is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The applicant is planning to conduct minor repairs and renovations to existing structures on the subject private property. As part of the permitting procedures, a survey was conducted of the subject parcel. During the review process it was discovered that several encroachments consisting of: 1) a concrete rock wall / revetment, 2) stairway, and 3) yard / lawn area, were located on the seaward side of the property's makai boundary. The applicant advised that these encroachments were in place when the property was purchased in 2001 and no alterations, extensions, or changes have been made to the wall or stairway in question. As for the lawn / yard area that extends out beyond the makai boundary, it is simply landscaped and maintained for beautification purposes. There are no prior government approvals for any of the aforementioned structures or uses. The total encroachment area has been determined to be 1,059square feet (see Exhibit B, Survey Map).

A correspondence of May 2, 2012 from the Office of Conservation and Coastal Lands (OCCL), stated that staff was unable to determine a non-conforming status of the encroaching structures from high resolution aerial photographs due to dense vegetation near the shoreline. Therefore, as a consequence, the DLNR was unable to prove that the encroaching rock walls and revetments are conservation district violations. As a result, the OCCL staff has determined that the issuance of an easement for the encroachments would have no adverse impacts on beach and recreational resources, and do not act as a detriment to public access (see OCCL letter, Exhibit C). The OCCL has also indicated that they will not be requiring an after-the-fact Conservation District Use Permit be obtained by the applicant to cure the encroachment. However, they are in support of an easement, which would be required for the use of public lands, for the area that the encroachments encumber.

PHOTOS:

Refer to the attached photo report depicting the unauthorized walls and stairway fronting the subject property (Exhibit D).

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

Agency	Comments
Office of Conservation & Coastal Lands	No comments received.
County of Maui – Planning Dept.	Received response of no objections.
Office of Hawaiian Affairs	No comments received.

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.

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.

Staff spent a total of six hours in conducting site inspections, determining a resolution of the encroachment that could be presented to the Board, and preparing this submittal, for a total of \$240 in staff time. Staff is including a recommendation below that applicant be assessed for these administrative costs.

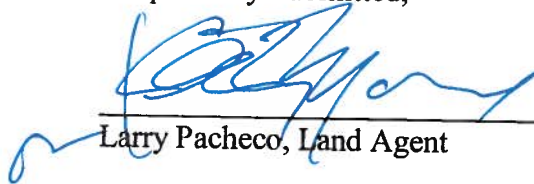
The requested use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that 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. Impose a \$500.00 fine for illegal encroachment and assess \$240.00 for staff time incurred in resolving the encroachment, as authorized by HRS Section 171-6.
2. 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: (2) 2-2-012:026, 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.

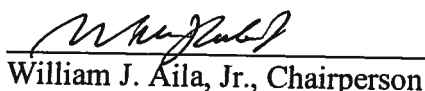
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, covering the subject area for rock wall/ revetment, stairway and lawn maintenance 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) 2-2-012:026, 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,



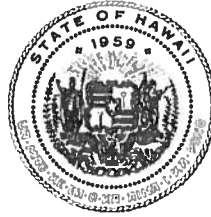
Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

EXEMPTION NOTIFICATION

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

Project Title: Assessment of a \$500.00 Fine Against Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for Concrete Rock Wall / Retement, Stairway, and Yard Encroachment; Grant of Term, Non-Exclusive Easement to Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for a Concrete Rock Wall / Retement, Stairway, and Yard Encroachment Purposes, and Assess Administrative Costs of \$240.00.

Project / Reference No.: 12MD-100

Project Location: Kuau, Makawao, Paia, Maui, Tax Map Key: (2) 2-6-012: Seaward of 026.

Project Description: Concrete Rock Wall / Retement, Stairway, and Yard Encroachment Purposes

Chap. 343 Trigger(s): Use of State Land


Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Section 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."

Recommendation: The exemption is appropriate because the proposed easement would only document and permit existing encroachments. No

new construction will be undertaken on the subject State land. It is therefore 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.

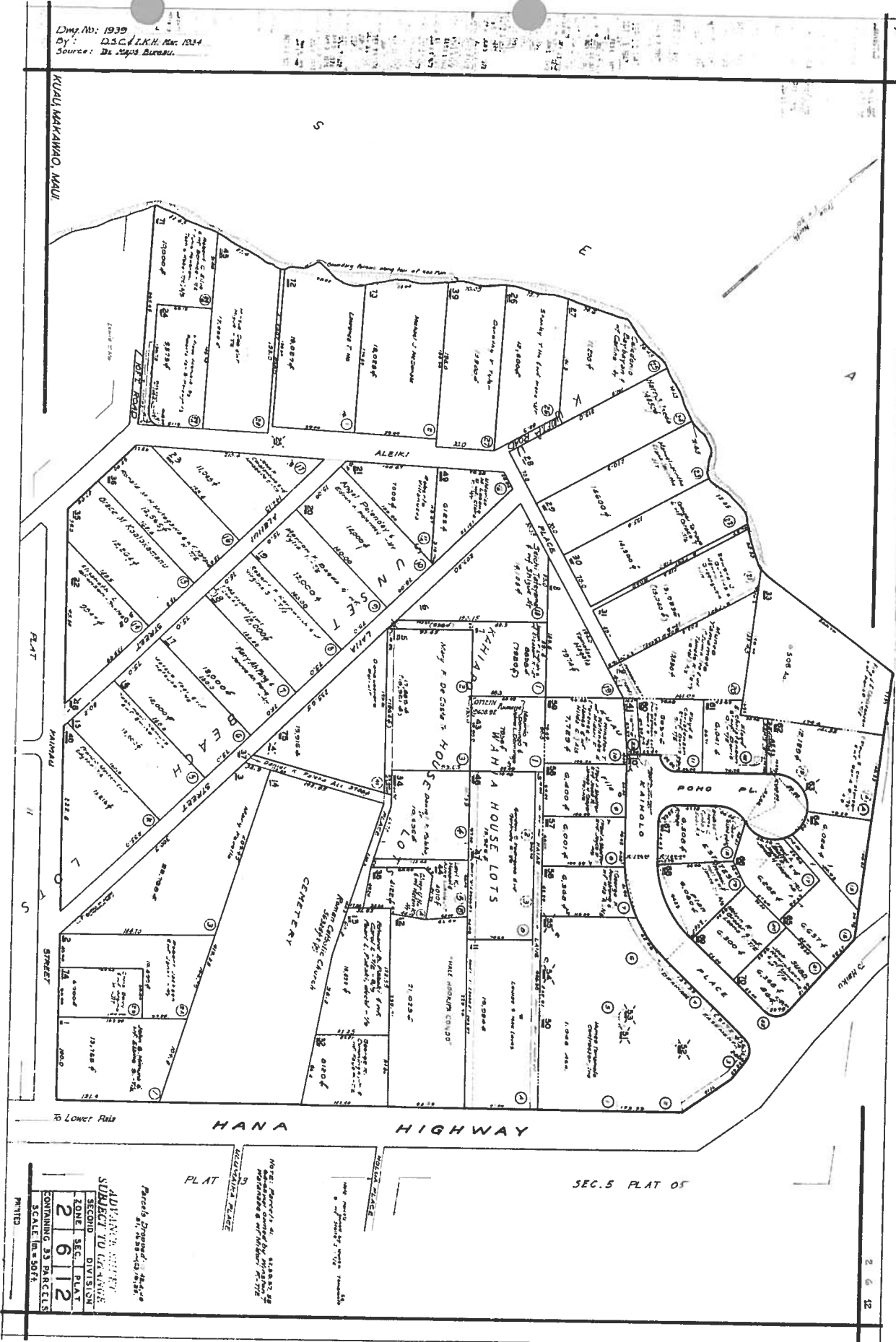


William J. Aila Jr., Chairperson

 11/8/12

Date

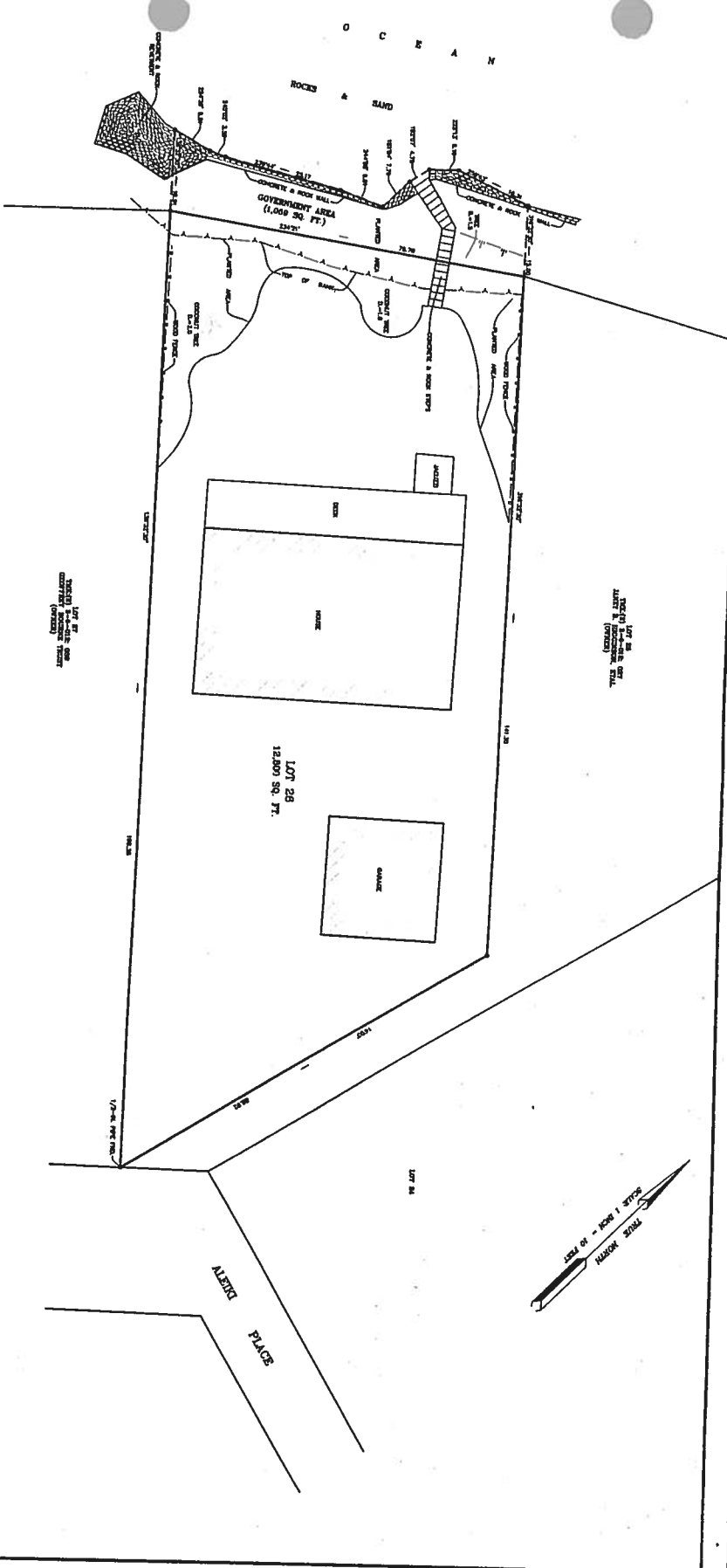
Div. No: 1939
 By: D.S.C. L.K.H. No: 1934
 Source: De. Sigs Bureau.



Parcels Shaded in Red are
 ADJUTANT GENERAL'S OFFICE
 SUBJECT TO DEEDS
 ZONE SEC. DIVISION
 2 6 12
 CONTAINING 33 PARCELS
 SCALE 1 in = 30 ft.
 PRINTED

HANA HIGHWAY
 PLAT 13
 HANA HIGHWAY
 HANA HIGHWAY

SEC. 5 PLAT 05



ENGROACHMENT ONTO STATE OF HAWAII LAND
PROMPTING LOT 28 OF THE
KUAAU SUNSET BEACH LOTS, FILE PLAN 302
 SITUATED AT KUAAU, MAUI, HAWAII

Plotted by:
 David M. Hester
 1200 ALBERT ST.
 MAUI, HI 96793
 Scale: 1 inch = 40 feet
 Date: March 27, 2003



This plat was prepared from a survey of the above described land and was prepared by me or under my direct supervision and I am a duly Licensed Professional Land Surveyor in the State of Hawaii.
 David M. Hester
 Professional Land Surveyor
 License No. 1200

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:.BR

File Number Encroachment: MA-12-11

Gerry Champagne

Paia, HI 96779

MAY 2 2012

Dear Applicant,

SUBJECT: Request to Resolve State Land Encroachment at Paia,
Maui, Tax Map Key (2) 2-6-012:026. Owner Gerry Champagne

This is in response to your April 2012 request to resolve the shoreline encroachments at Tax Map Key (2) 2-6-012:026.

According to information and maps contained with your request, you have identified approximately 1,059 square feet of encroachment (concrete and rock wall, stairway, and revetment; and yard) makai of the subject property onto State land.

OCCL staff was unable to locate any construction permits or other land use authorization permits at the State for the subject improvements. Non-conforming status of the encroaching structures cannot be determined from high resolution aerial photographs from the University of Hawaii Coastal Geology Group due to dense vegetation near the shoreline.

As a consequence, DLNR cannot prove the encroaching rock walls and revetments are Conservation District violations at this time and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that the encroaching structures were built without permits, within the Conservation District after 1964, the OCCL may reconsider this finding.

EXHIBIT "C"

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, the Department 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

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

Surrounding Land Uses:

The surrounding coastal uses along the coastline are primarily residential with shoreline armoring structures (rock walls and revetments, legality undetermined) fronting adjacent properties.

Beach Resources:

There is no sand beach resource fronting the encroachment. The property is fronted by rocky shoreline with a coral and basalt coble beach.

Public Access:

This section of coast has fair access at low-tide, fronting this seawall and others. There are public shoreline accesses in the immediate area.

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the rock wall, revetment and stairway will not improve beach resources.

Public Access: OCCL staff has determined that no improvement would be gained by removing either the encroaching portion of rock wall, stairway or revetment.

Affect on Adjacent Properties: Removal of the encroaching rock wall, revetment and stairway would not impact any adjacent properties. Removal of the encroaching structures might destabilize the vegetated slope mauka, but it will not impact an inhabited dwelling.

It has been a general policy and practice of the 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.

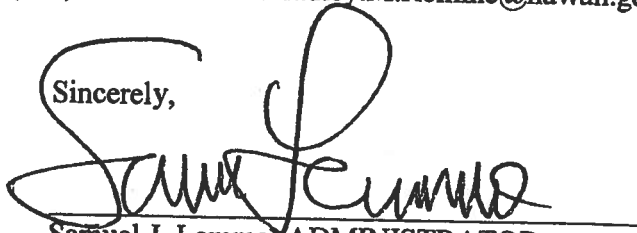
Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the encroaching

rock wall, revetment and stairway. The OCCL suggests that any disposition require the land uses remain unimproved. The OCCL also recommends that, in accordance with HRS § 115, a transit corridor be maintained along the seaward extent of the rock walls and revetments.

Please contact our Maui Land Division office at (808) 984-8103 should you wish to pursue an easement for the subject area. If you do not wish to pursue an easement, please remove the structures and remediate the area.

Please feel free to contact Sea Grant Extension Agent Brad Romine, at the Office of Conservation and Coastal Lands at (808) 587-0049 or Bradley.M.Romine@hawaii.gov with any questions.

Sincerely,



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

cc: Maui Land Division
County of Maui Planning Dept.
DLNR Chairperson

Photos taken: 11/4/11



Aleiki Nominee Trust, 123 Aleiki Pl., TMK: (2) 2-6-012:026

Concrete / rock walls and stairways located on the seaward side of the subject property. Improvements possibly encroaching onto State land.

