STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i

February 14, 2014

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REGARDING:	After-The-Fact Conservation District Use Application (CDUA-MA3689) for a Seawall and Stairs
BY:	Henry and Diane Schweitzer 4885 Lower Honoapi'ilani Road Lahaina, Hawai'i 96761
LANDOWNER:	State of Hawaii, Unencumbered Land
LOCATION/ **Tax Map Key:**	Keonenui Beach, 'Alaeloa, Island of Maui (2) 4-3-015:001
SUBZONE:	Resource

DESCRIPTION OF AREA:

The subject area is located on the shore of Keonenui Beach, 'Alaeloa, West Maui, TMK: (2) 4-3-015:001 (**Exhibits 1, 2 & 3**). This is a northwest-facing coastline just south of Kapalua Resort. The property is located in the State Land Use Urban District down to the highest wash of the waves. Lands seaward of the shoreline are located in the Conservation District, Resource subzone.

The U.S. Geological Survey's *Atlas of Natural Hazards in the Hawaiian Coastal Zone* publication describes this area as a Rocky Beach Embayed Coast and notes the subject area has an overall high hazard assessment rating of 5 on a scale of 1 to 7 (**Exhibit 4**). Erosion and tsunami potential are within the highest hazard assessment rating.

Keonenui Beach has a narrow, wet beach with a low slope in the middle section of the bay. The beach shows signs of long-term erosion and has disappeared at the north end of the bay. The shoreline is eroding at a rate of around 1.15 feet per year in front of the subject parcel (**Exhibit 5**). The middle and south end of the bay has a transient, wet beach, which is submerged at high tide (**Exhibit 6**).

Coastal armoring has fixed the shoreline location along much of the bay. Upland substrate is generally a basalt base with overlying clay bank. The basalt base has numerous wave cut notches and caves, where coastal armoring has not covered them. There is no significant sandy resource mauka of the shoreline such as dune systems.

Though the coastal armoring is not impounding any significant sand resource, it is serving as a wave reflective surface and is likely having a negative impact on what is left of the sandy beach. Additionally, the beach area is a known turtle haul out location, with numerous turtles found in the bay on most days.

PROPOSED USE:

The Schweitzer's are seeking an after-the-fact Conservation District Use Permit (CDUP) for a seawall and stairs that were constructed without Department of Land Natural Resources (DLNR) permits (**Exhibit 7**).

On September 28, 2012, the Board of Land and Natural Resources (BLNR) fined the Schweitzers for the unauthorized construction of the seawall and stairs. The Schweitzers paid a $5,000 fine and $1,000 in administrative costs. The Schweitzers were given the option of either removing the seawall and stairs or alternatively, applying for an after-the-fact CDUP **(Exhibit 8).** The Schweitzers chose to pursue an after-the-fact CDUP.

The seawall and stairs occupy an area of less than 500 square feet. The seawall is a Cemented Masonry Unit (CMU) with a cemented rock face. It was constructed on a concrete footing embedded 30" into the substrate. It is generally in good condition, with most of the rock facing intact. Some undermining of the footing has occurred. The wall is approximately 40-50 feet in length and six feet high. A large concrete stairway completes the northern section of the structure. There are seawalls to the north and south side of the structure. The Lusardi seawall (south side) has an easement and a CDUP. The Kahana Sunset condominiums has a seawall (north side), and is currently in the process of repairing it.

COASTAL EROSION MANAGEMENT PLAN:

In 1999, the Board of Land and Natural Resources (BLNR) adopted the Hawaii Coastal Erosion Management Plan (COEMAP) and approved specific criteria to guide DLNR staff in the prosecution of cases involving unauthorized shoreline structures. In assessing cases involving unauthorized shoreline structures, specific 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. Implement a "no tolerance" policy for recent or new unauthorized shoreline structures.

The Department considers each case based on its specific circumstances/history. For instance, the age of the unauthorized structure, the quality of the surrounding beach resources, the nature of the surrounding development, and the risk to life and limb are all evaluated to help formulate a position with respect to the disposition of the matter.

When staff presented this matter to the BLNR as a violation, staff recommended that the seawall and stairs be removed or alternatively, that the landowner apply for an after-the-fact CDUP since the construction of the seawall and stairs occurred prior to the Board's adoption of the "No Tolerance Policy" towards illegal shoreline structures.

Impact on Coastal Lands

Many beaches in Hawaii have been degraded or lost due to coastal armoring. In a 2012 study by Romine/Fletcher published in the Journal of Coastal Research, 70 percent of all beaches measured in the Hawaiian Islands (244 km) indicated an erosion trend. More than 21 km or 9 percent of the total length of the beaches studied were lost to erosion. In nearly all cases, the beaches were replaced with seawalls or other coastal structures. This process is nowhere else more evident than at Keonenui Beach where much of the shoreline has been replaced with seawalls.

According to the applicant's consultant, four of the five properties in Keonenui Bay are fronted by seawalls. Keonenui Bay is a "pocket beach" approximately 500 feet long and constrained by rocky headlands. A soft mudstone formation underlies much of the sand. The white sandy beach is essentially trapped between the headlands, although extreme wave conditions may cause sand movement in or out of the pocket beach. The University of Hawaii Coastal Geology Group (HCGG) erosion rate data indicates a one-foot average yearly erosion rate between 1912-1997 and an average decrease in beach width of 42 % between 1949 and 1997. A 2000 analysis of shoreline change conducted by Sea Engineering Inc. (SEI) highlights the importance of the large seasonal changes in sand volume at Keonenui Bay.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated February 14, 2013, that:

1. The proposal to retain the seawall and stairs is an identified land use within the Conservation District pursuant to Hawaii Administrative Rules (HAR) §13-5-23, P-15 SHORELINE EROSION CONTROL (D-1), "Seawall, revetment, groin, or other coastal structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public roads) critical to public health, safety and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives

(e.g., relocation). Requires a shoreline certification[1]. Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to HAR §13-5-40 Hearings, a public hearing will not be required; and

3. In conformance with §343, Hawaii Revised Statutes (HRS), as amended, and HAR, §11-200-8 this project will require the filing of an Environmental Assessment (EA).

A Finding of No Significant Impact (FONSI) to the environment was issued on September 24, 2013. Notice of the FONSI was published in the October 8, 2013 edition of the Environmental Notice.

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. The proposed land use is consistent with the purpose of the Conservation District.

   The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

   The seawall and stairs have been in place for over 30 years. While removal of the structure could potentially result in minor beach widening, there are some potential downsides to removal. The main concern is the potential for the flanking of the neighboring Lusardi and Kahana Sunset shoreline structures. In addition, it is likely the backshore area is composed of mudstone substrate, and therefore of little benefit to the white sandy beach; however, there has been no geotechnical study to confirm or deny the nature of the backshore substrate.

   Allowing the structure to remain via an after-the-fact permit will result in a continuance of the status quo – i.e., a beautiful white sandy beach that is undergoing chronic narrowing. Removal of the structure could result in minor beach widening in the short term, but would not change the long-term trend of chronic beach narrowing. There are also potential downsides to removal as discussed above.

2. The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.

   The objective of the Resource (R) subzone is "to develop, with proper management, areas to ensure sustained use of the natural resources of those areas.

[1] The DLNR is not requiring a current shoreline certification for this case. A shoreline certification for this property was completed in 1980, which was used as the basis to prosecute the enforcement action and is therefore being used as the delineation of the Conservation District area for the purposes of this action. If the CDUA is approved by the BLNR, the applicant will be required to obtain an easement for the area delineated below the 1980 Certified Shoreline, which is more landward than the anticipated current shoreline which would generally follow the face of the existing seawall structure. A proper shoreline certification cannot take place until the CDUA process is completed and we know whether or not the wall and stairs can remain in place.

3. The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.

It is a Coastal Zone Management policy to "prohibit construction of private erosion-protection structures seaward of the shoreline, except where they result in improved aesthetic and engineering solutions to erosion and do not interfere with existing recreational and waterline activities."

It is not abundantly clear whether the current seawall and stairs represents a significantly poorer esthetic or engineering solution to erosion in Keonenui Bay. Whether the structure represents a "betterment" or "detriment" could be argued either way based on the surrounding facts e.g. - it is very likely that the underlying substrate is mud rock, and erosion of the beach will continue whether or not the Schweitzer seawall is permitted. OCCL is not necessarily of the opinion that "all" shoreline armoring is inimical to beach processes.

Staff believes that the structure does not significantly interfere with existing recreational and waterline activities. In the absence of the wall, a clay bank or beach rock would most likely take its place. Natural erosion of this beach appears to be unavoidable given sea level rise projections with or without coastal armoring. Thus, our analysis of weather this project meets the prohibition test or results "in improved aesthetic and engineering solutions to erosion" is difficult to conclude either way, *under the present or projected circumstances at Keonenui Bay.*

4. The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.

Staff does not believe that the effects of allowing the wall to remain would rise to the level of "adverse."

5. The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.

The Schweitzer seawall is located in a bay fringed by a beautiful sandy beach. The backshore area of the bay is substantially developed with a major condominium complex and residences, which all have a seawall, except for one parcel on the southern side of the bay.

Given the highly developed nature of the bay, the question of whether the Schweitzer seawall is compatible with the locality, or appropriate to the physical conditions or capabilities of the parcel, is subjective. In this case, the wall has been in existence for over 30 years. It has become part of the landscape of Keonenui Bay along with the other seawalls. Allowing the Schweitzer's to retain the seawall by approving the CDUA would maintain the status quo as it has been for the past 33 years. Disapproval and removal

would not substantially change the status quo (e.g., change the fact the beach will likely be lost in the future due to sea level rise), but WOULD affirm our general aversion to shoreline hardening.

It is our opinion that the primary threat to the beach at Keonenui Bay is the inappropriate siting of some of the Kahana Sunset Condominium facilities (next door), and accelerated sea level rise. The Kahana Sunset was developed decades ago. It does not appear that anyone in government or non-government considered coastal processes or hazards in the design review process of the Kahana Sunset. The major consequence of this is that the shorefront is lined with a large seawall. Although government is learning from these mistakes (e.g., Maui County now bases setbacks on erosion rates), there are many beaches around the Hawaiian Islands that have already been lost, or that are severely threatened by inappropriate development and climate change (e.g., sea level rise). As noted in the 2012 report by Fletcher/Romine, "In nearly all cases [beach loss and narrowing], the beaches were replaced with seawalls or other coastal structures." Staff notes that this destructive cycle can be avoided in many cases when coastal structures are located an appropriate distance from the shoreline.

6. The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.

The shoreline at Keonenui Bay is substantially lined with seawalls. Staff believes that seawalls do not generally improve upon or improve the natural beauty of the land.

7. Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.

The proposed action does not involve a subdivision action. If the BLNR approves this after-the-fact CDUA, the landowner will be required to obtain an easement for the portion of the seawall and stairs located on state submerged land.

8. The proposed land use will not be materially detrimental to the public health, safety and welfare.

Staff believes that approval of the after-the-fact CDUA will not be detrimental to the public health, safety and welfare.

DISCUSSION:

Based on the preceding discussion, staff has no major objections to the granting of an after-the-fact CDUP for the subject shoreline structures:

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources (Board) APPROVE this after-the-fact application for the Schweitzer shoreline erosion

project, located at Alaeloa, Lahaina. Island of Maui – TMK: (2) 4-3-015:001, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;

2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;

3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands;

4. The permittee shall comply with all applicable department of health administrative rules;

5. Before proceeding with any work authorized by the department or the board, the permittee shall submit two copies of the "as built" plans to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. One copy will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

6. All representations relative to mitigation set forth in the accepted Conservation District Use Application (CDUA) and Environmental Assessment (EA) for the proposed use are incorporated as conditions of the permit;

7. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

8. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;

9. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;

10. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;

11. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;

12. The permittee shall obtain a county building or grading permit or both, as necessary, for the use prior to final construction plan approval by the department;

13. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;

14. Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;

15. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

16. Other terms and conditions as prescribed by the chairperson, and

17. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Respectfully submitted,

SAMUEL LEMMO
Administrator

Approved for submittal:

WILLIAM J.AILA Jr., Chairperson
Board of Land and Natural Resources

Attachments

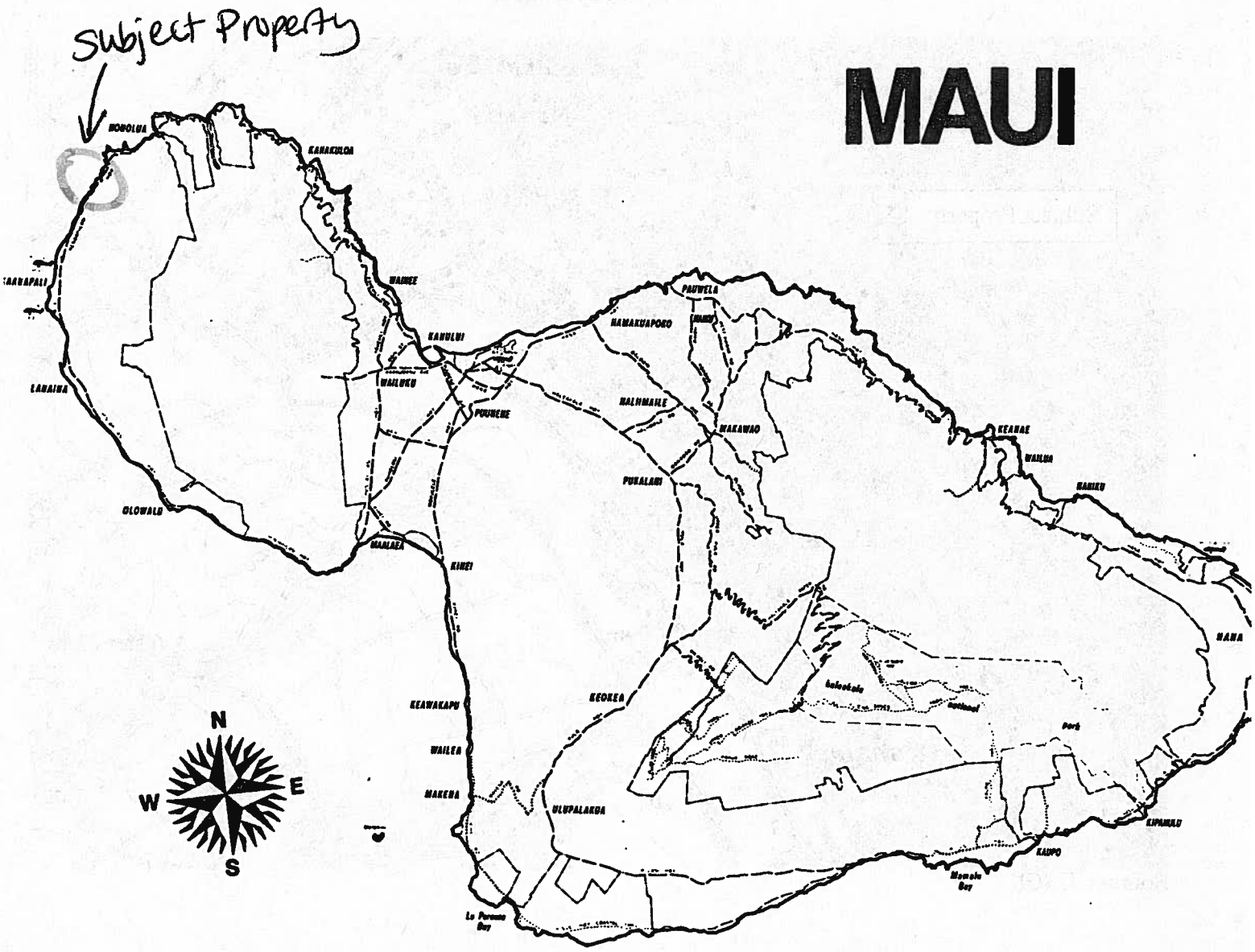
Subject Property
MAUI
HONOLUA
KAHAKULOA
WAIHEE
KAHULUI
WAILUKU
PUUNENE
LAHAINA
OLOWALU
MAALAEA
KIHEI
KEAWAKAPU
WAILEA
MAKENA
OLUPALAKOA
La Perouse Bay
KEOKEA
HALEAKALA
PUKALANI
MAKAWAO
HAMAKUAPOKO
PAUWELA
KEANAE
WAILUA
HANA
KIPAHULU
KAUPO
Manele Bay
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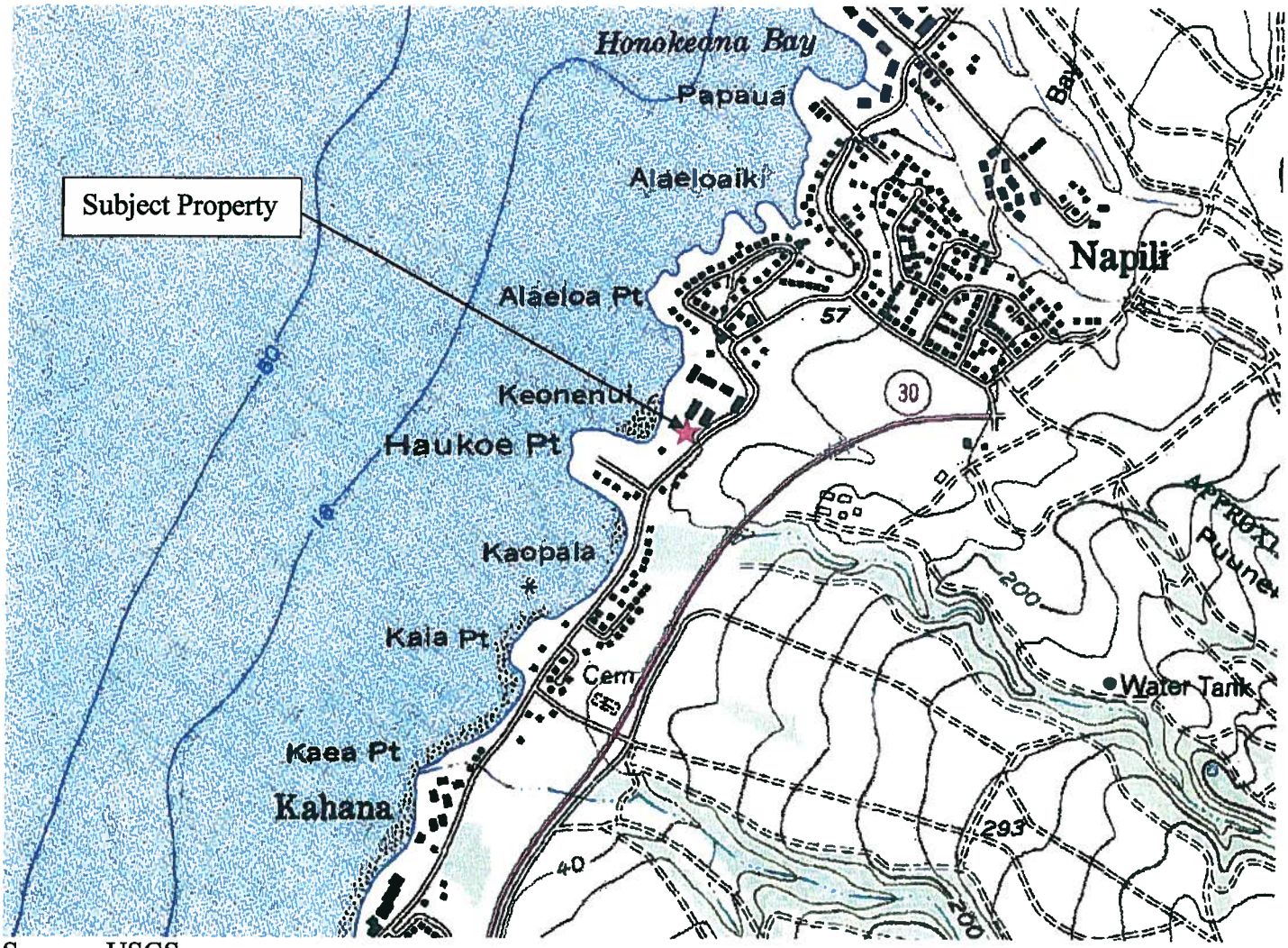
EXHIBIT 1

LOCATION MAP



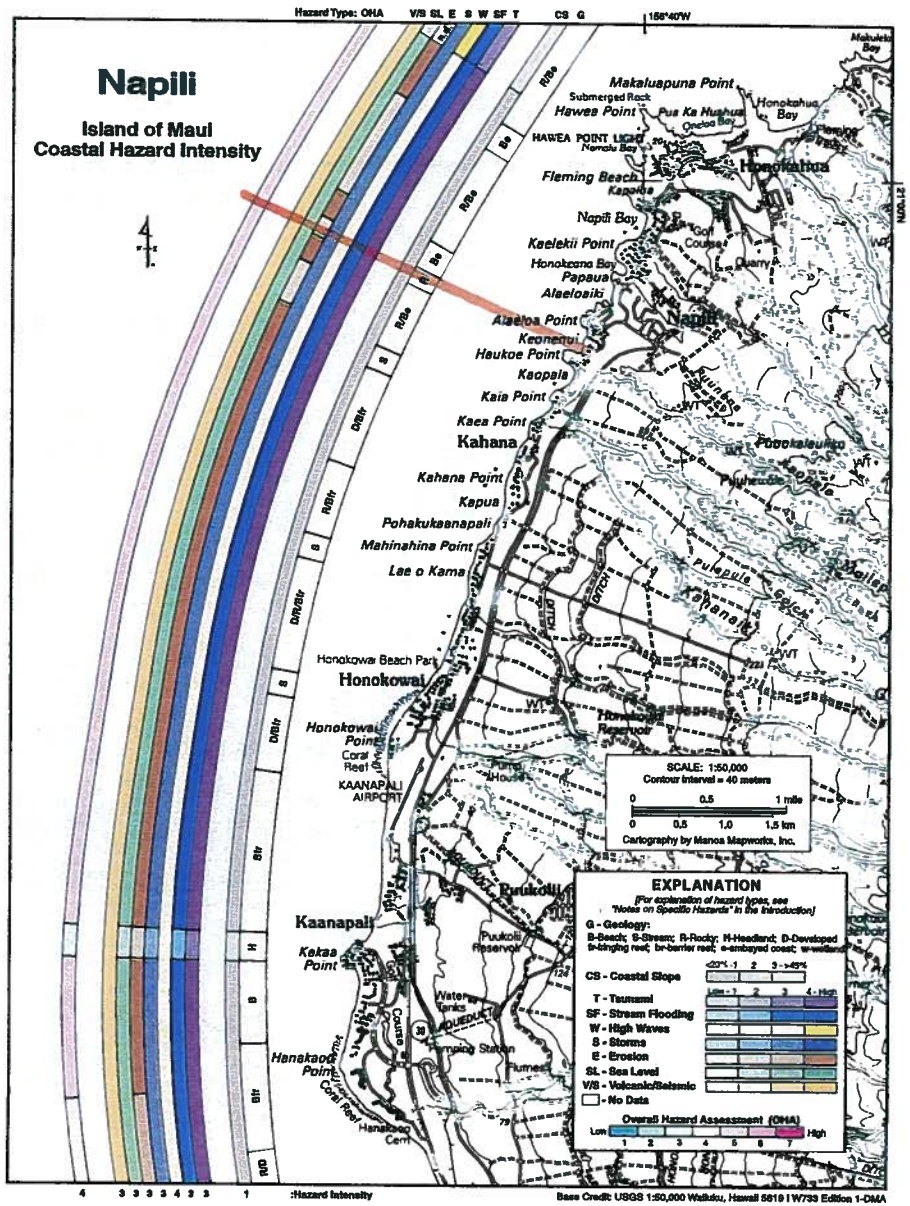
Source: USGS

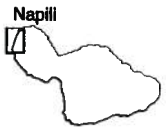
EXHIBIT 2

TAX MAP KEY (2) 4-3-015:001

EXHIBIT 2

EXHIBIT 4

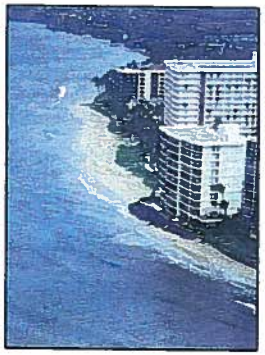




Napili

The highly developed coast of Napili is famous for its luxurious resorts, hotels, and golf courses that are built directly alongside one of Hawaii's most scenic shorelines. The relatively low coastal plain rises only slightly near Napili and Honokahua, where isolated coves are partly protected from refracting trade wind waves and northerly winter swell by steep rocky outcrops and points. Offshore, a fringing reef partly dissipates wave energy, acting as a buffer for the beaches that extend along south Kaanapali and within the bays of Kahana, Napili, and Honokahua. Numerous small streams originating in the West Maui Mountains flow across this gently sloping coastal terrace.

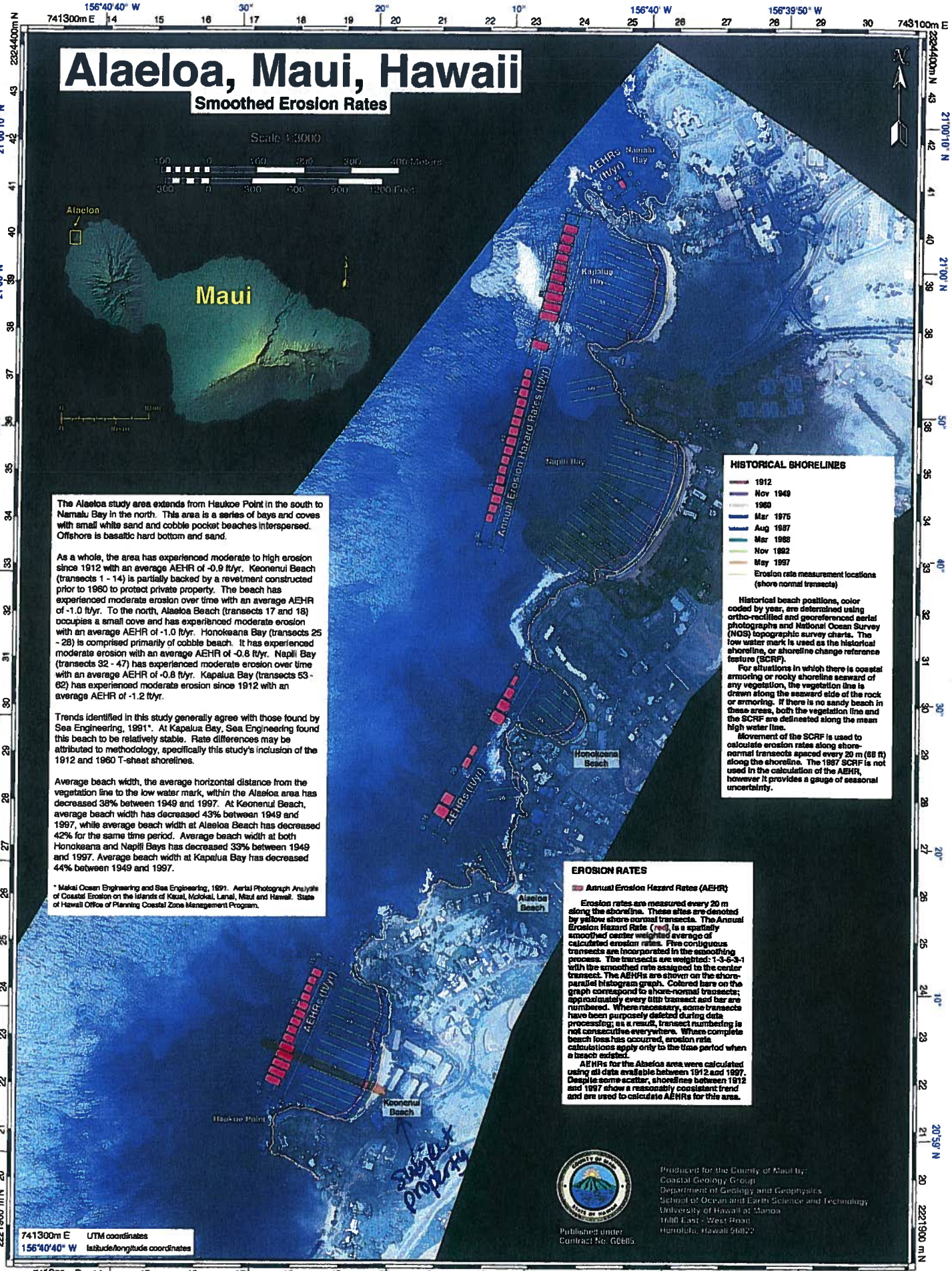
The Overall Hazard Assessment (OHA) for the Napili coast is moderate to high (5) and is largely influenced by high tsunami, stream flooding, and erosion hazards and moderately high storm, sea-level rise, and seismicity threats on this Maui coastline. Historically, there have been few tsunamis recorded at Kaanapali. However, a 15 ft tsunami that made landfall there in 1946 supports the high tsunami hazard ranking in this region, except at Kekaa Point, where it is reduced to moderately high. Flash floods and heavy rains, such as in March of 1968, when 24 inches fell in 48 hours, support a high stream-flooding hazard ranking, except at Kekaa Point, where it is moderately low. The threat from high waves is moderately low along the Napili coast, which is partly sheltered from approaching northwest swell by the island of Molokai. Storm and sea-level rise hazards are ranked moderately high, except at the steep Kekaa Point headland, where they are reduced to moderately low. High rates of erosion have recently led to the proliferation of seawalls and revetments to protect coastal property which in turn has exacerbated beach loss. As a result, the erosion hazard is ranked high except at the rocky headlands at Kekaa, Haukoe, Alaeloa, and Kaelekii Points, where it is moderately low. The volcanic/seismic hazard is ranked moderately high along the Napili coast due to its location in seismic hazard zone 2. The OHA is reduced to moderate to low (3) at Kekaa Point, while south of Hanakaoo Point it is increased to moderate (4), reflecting the greater hazards associated with the lower coastal slope there.



Extensive development has occurred along the small and narrow beaches of the Napili coast, while fossil beachrock ridges near Honokowai, marking the position of the former shoreline, lie submerged offshore as evidence of rapid sea-level rise and erosion.

Alaeloa, Maui, Hawaii

Smoothed Erosion Rates



The Alaeloa study area extends from Hauiole Point in the south to Namalu Bay in the north. This area is a series of bays and coves with small white sand and cobble pocket beaches interspersed. Offshore is basaltic hard bottom and sand.

As a whole, the area has experienced moderate to high erosion since 1912 with an average AEHR of -0.9 ft/yr. Keonenui Beach (transects 1 - 14) is partially backed by a revetment constructed prior to 1960 to protect private property. The beach has experienced moderate erosion over time with an average AEHR of -1.0 ft/yr. To the north, Alaeloa Beach (transects 17 and 18) occupies a small cove and has experienced moderate erosion with an average AEHR of -1.0 ft/yr. Honokeana Bay (transects 25 - 28) is comprised primarily of cobble beach. It has experienced moderate erosion with an average AEHR of -0.8 ft/yr. Napili Bay (transects 32 - 47) has experienced moderate erosion over time with an average AEHR of -0.8 ft/yr. Kapalua Bay (transects 53 - 62) has experienced moderate erosion since 1912 with an average AEHR of -1.2 ft/yr.

Trends identified in this study generally agree with those found by Sea Engineering, 1991*. At Kapalua Bay, Sea Engineering found this beach to be relatively stable. Rate differences may be attributed to methodology, specifically this study's inclusion of the 1912 and 1960 T-sheet shorelines.

Average beach width, the average horizontal distance from the vegetation line to the low water mark, within the Alaeloa area has decreased 38% between 1949 and 1997. At Keonenui Beach, average beach width has decreased 43% between 1949 and 1997, while average beach width at Alaeloa Beach has decreased 42% for the same time period. Average beach width at both Honokeana and Napili Bays has decreased 33% between 1949 and 1997. Average beach width at Kapalua Bay has decreased 44% between 1949 and 1997.

* Makai Ocean Engineering and Sea Engineering, 1991. Aerial Photograph Analysis of Coastal Erosion on the Islands of Kauai, Molokai, Lanai, Maui and Hawaii. State of Hawaii Office of Planning Coastal Zone Management Program.

HISTORICAL SHORELINES

- 1912
- Nov 1949
- 1960
- Mar 1975
- Aug 1987
- Mar 1988
- Nov 1992
- May 1997
- Erosion rate measurement locations (shore normal transects)

Historical beach positions, color coded by year, are determined using ortho-rectified and georeferenced aerial photographs and National Ocean Survey (NOS) topographic survey charts. The low water mark is used as the historical shoreline, or shoreline change reference feature (SCRF).

For situations in which there is coastal armoring or rocky shoreline seaward of any vegetation, the vegetation line is drawn along the seaward side of the rock or armoring. If there is no sandy beach in these areas, both the vegetation line and the SCRF are delineated along the mean high water line.

Movement of the SCRF is used to calculate erosion rates along shore-normal transects spaced every 20 m (66 ft) along the shoreline. The 1987 SCRF is not used in the calculation of the AEHR, however it provides a gauge of seasonal uncertainty.

EROSION RATES

Annual Erosion Hazard Rates (AEHR)

Erosion rates are measured every 20 m along the shoreline. These sites are denoted by yellow shore normal transects. The Annual Erosion Hazard Rate (red), is a spatially smoothed center weighted average of calculated erosion rates. Five contiguous transects are incorporated in the smoothing process. The transects are weighted: 1-3-5-3-1 with the smoothed rate assigned to the center transect. The AEHRs are shown on the shore-parallel histogram graph. Colored bars on the graph correspond to shore-normal transects; approximately every fifth transect and bar are numbered. Where necessary, some transects have been purposely deleted during data processing; as a result, transect numbering is not consecutive everywhere. Where complete beach loss has occurred, erosion rate calculations apply only to the time period when a beach existed.

AEHRs for the Alaeloa area were calculated using all data available between 1912 and 1997. Despite some scatter, shorelines between 1912 and 1997 show a reasonably consistent trend and are used to calculate AEHRs for this area.

Published under Contract No. G0605.

Produced for the County of Maui by:
Coastal Geology Group
Department of Geology and Geophysics
School of Ocean and Earth Science and Technology
University of Hawaii at Manoa
1680 East - West Road
Honolulu, Hawaii 96822

EXHIBIT

2003 Oblique Photo

11-29-03

EXHIBIT 6

Photos taken: 3/2/09

Henry & Diane Schweitzer, TMK: (2) 4-3-015:001

Shoreline area fronting the Schweizer property at TMK: (2) 4-3-015:001. Possible encroaching stairway onto the sand shoreline.

EXHIBIT 4

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i

September 28, 2012

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REGARDING: Conservation District Enforcement File MA 09-54
Alleged Unauthorized Seawall and Stairs

BY: Henry and Diane Schweitzer
4885 Lower Honoapi'ilani Road
Lahaina, Hawai'i 96761

LOCATION/
Tax Map Key: Keonenui Beach, 'Alaeloa, Island of Maui
(2) 4-3-015:001

SUBZONE: Resource

This item was deferred by the Board of Land and Natural Resources at its May 25, 2012 meeting.

DESCRIPTION OF AREA:

The subject area is located on the shore of Keonenui Beach, 'Alaeloa, West Maui, TMK: (2) 4-3-015:001 (**Exhibits 1, 2 & 3**). This is a northwest-facing coastline just south of Kapalua Resort. The property is located in the State Land Use Urban District up to the highest wash of the waves. Lands seaward of the shoreline are located in the Conservation District, Resource subzone.

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Coastal armoring has fixed the shoreline location along much of the bay. Upland substrate is generally a basalt base with overlying clay bank. The basalt base has numerous wave cut notches and caves, where coastal armoring has not covered them. There is no significant sandy resource mauka of the shoreline such as dune systems.

as amended

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
SEP 28 2012

EXHIBIT R

Though the coastal armoring is not impounding any significant sand resource, it is nonetheless serving as a wave reflective surface. Reflective surfaces tend to have a negative impact on sandy beaches. Additionally, the beach area is a known turtle haul out location, with numerous turtles found in the bay on most days.

CHRONOLOGY:

March 19, 1979 & February 4, 1980 – Shoreline certified and re-certified for subject property. There was no evidence of a seawall or stairs. The photographs and shoreline survey show that the only structures near the shoreline at that time are a wooden bathhouse and a covered picnic area (**Exhibit 7**).

1987 – An aerial photograph of the subject shoreline documents the existence of a seawall (**Exhibit 8**).

November 21, 2003 – Maui Planning Department issued the Landowner, Henry Schweitzer, a Notice of Warning (NOW) for building a seawall without a permit. The NOW has not been resolved.

March 2, 2009 – The Maui District Land Office (MDLO) received a complaint regarding a concrete and rock wall with stairway fronting the subject property that appears to be extending out beyond the property's seaward boundary and onto the sand shoreline. MDLO conducted a site inspection, but was unable to find the subject property's seaward boundary pins (**Exhibit 9**).

April 14, May 26, and June 30, 2009 – The Landowner was sent letters requesting their response to provide authorizing documentation for the seawall and stairs (**Exhibit 10**). There had been no response to our letter for several years.

July 14, 2009 – MDLO conducted another site inspection and attempted to locate the owner; however, there was no response at the doorbell. MDLO noted additional observations: 1) Concrete stairway leading to a smaller concrete and rock stairs, which leads down to the shoreline; 2) Terraced rock walls within the SMA area; and 3) A construction gazebo within the first terraced area that has also been filled with sand (**Exhibit 11**).

July 23, 2009 – Maui Planning Department issued another two (2) NOWs for noncompliance with SMA rules and shoreline rules for the Maui Planning Commission (**Exhibit 12**).

On April 17, 2012 the OCCL received a letter from Paul Mancini (his legal counsel), which chronicles events between April 1979 and November 1984 (**Exhibit 13**). In his chronology, he alleges that the seawall was permitted. There is a document from the Maui County Board of Realtors (April, 1979) that makes a reference to a "permit obtained for the construction of a retaining wall." Staff is unsure what this documents means (from the perspective of land use entitlements), but the County of Maui continues to believe that the structure is not permitted.

On August 29, 2012, the County of Maui issued Notice of Violations to the Schweitzers for the seawall and stairs (**Exhibit 14**).

ALLEGED UNAUTHORIZED LAND USE:

Survey, photographic, and documented evidence of the shoreline provides evidence that the construction of the subject seawall and stairs may have occurred between 1980 and 1984.

The highest wash of the waves currently washes against the seawall and stairs. We know of no State or County approvals for the seawall/stairway.

The current owner, Henry Schweitzer, purchased the property in 1984[1], although it is clear from Mr. Mancini's chronology that he was involved to some extent in the efforts to build the seawall and stairs, as far back as 1979.

The Department and Board of Land and Natural Resources has jurisdiction over land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawai'i Revised Statutes (HRS).

Staff believes that the unauthorized land uses occurred within the Conservation District based upon the wave run up and historic photographs, and also based on the location of the 1980 shoreline as evidenced by a 1980 shoreline certification **(See Exhibit 7)**. The OCCL believes there is sufficient cause to bring this matter to the Board since it is evident that the unauthorized land uses are within the Conservation District pursuant to the Hawai'i Administrative Rules (HAR), §15-15-20 Standards for determining "C" conservation district boundaries:

> *It shall include lands having an elevation below the shoreline as stated by §205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to §501-33, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps.*

Chapter 13-5, HAR and Chapter 183C, HRS, regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. HAR §13-5-2 defines "land use" as follows:

> *The placement or erection of any solid material on land if that material remains on the land more than fourteen days, or which causes a permanent change in the land area on which it occurs.*

Hawai'i Coastal Erosion Management Plan

On August 27, 1999, the Board adopted the Hawai'i Coastal Erosion Management Plan (COEMAP) as an internal policy for managing shoreline issues including erosion and coastal development in Hawai'i. COEMAP still serves as the primary shoreline policy for the DLNR and recommends a number of strategies to improve our State's management of coastal erosion and beach resources.

However, COEMAP's scope is of a general nature, more focused on broader government policy than erosion management practice. The COEMAP effort is guided by the doctrine of sustainability,

[1] According to Maui County Property Tax Department

promoting the conservation, sustainability, and restoration of Hawai'i's beaches for future generations. When assessing cases involving unauthorized shoreline structures that affect the shoreline that are constructed after the 1999, there is a "no tolerance" policy and the customary policy is to remove the structure before other actions are considered[2].

DISCUSSION:

Coastal erosion occurs as a result of the following phenomena: 1) Seasonal changes in waves and currents that shift sand within the system; 2) Long-term (chronic) erosion due to natural deficits in sand supply or oceanographic processes such as sea level rise; and 3) Human impacts to sand availability through sand impoundment and supply disruption as a result of shoreline modifications including seawalls.

Development on beaches and dunes has contributed to serious erosion of these areas, resulting in loss of recreational areas, habitat, and the storm protection that 'healthy' beaches and dunes provide. Beach narrowing and loss, and shoreline hardening (the construction of vertical seawalls or sloping stone revetments along a shoreline to protect coastal lands from marine erosion), also severely restrict public access to State Conservation land and the natural resources. In heavily armored sectors, sand impoundment mauka of walls can lead to reduction in sand supply increasing regional erosion trends[3].

Unfortunately, many of Hawai'i's beaches have been degraded or lost from a combination of natural erosion and inappropriate coastal development including shoreline armoring, shallow beachfront lot subdivisions, and development too close to the shoreline.

In a 2012 study published by Romine/Fletcher in the Journal of Coastal Research, 70 percent of all beaches measured in the Hawaiian Islands (244 km) indicated an erosion trend. More than 21 km or 9 percent of the total length of the beaches studied were lost to erosion. In nearly all cases, the beaches were replaced with seawalls or other coastal structures.

In this case as in many, but not in all cases, the delineation between the State Land Use Conservation/Urban District is the shoreline. The shoreline for the Schweitzer property was certified in 1979 and 1980 when there was no seawall present, and it appears that the wall was constructed seaward of the shoreline in the early 1980s. The attorney for the landowner submitted a recent survey map that clearly shows the improvements seaward of the 1980 shoreline certification **(Exhibit 15)**. Since the seawall and stairway qualify as a land use under the Conservation District definition (HAR §13-5-2), some type of permit or approval should have been obtained by the alleged.

Under the Penalty Guideline Framework (**Exhibit 16**) this action is considered "Major" since the identified land use would require a Board Permit under the permit prefix "D". This violation follows a penalty range of $10,000 to $15,000. The comparable identified use in the Hawaii Administrative Rules (HAR-13-5) would be "Shoreline Erosion Control" for which a Board Permit is normally required.

---

[2] Because the structure was established prior to the BLNR's "No Tolerance" policy, the landowner may apply for an after-the-fact CDUP, or alternatively, remove the structure.

[3] In some cases, sandy beaches in Hawaii are located in areas of predominant basalt or clay substrate. With rising sea levels, beaches found in these types of settings will eventually disappear if there is no significant sand resource in the backshore area. This is because the beach has no place to recede to.

Therefore under the Penalty Guideline Framework this unauthorized land use is considered:

1. a *Major* harm to resource or potential harm to resource; and
2. a *Major* comparable harm to resource.

Based on the information including pre-project photographs taken for the shoreline certification, more recent photographs and information provided by Mr. Mancini, we believe that the seawall is within the Conservation Distinct. In addition, the portions of the stairs that extend beyond the wall are also within the Conservation District.

Staff believes that the landowner should be fined one time for the unauthorized land use. Staff will recommend a fine of $10,000 (maximum is $15,000/violation) because the violation occurred over 30 years ago and the attorney for the landowner has been very cooperative. He provided OCCL with a copy of the survey map that clearly delineates the extent of the violation, which greatly facilitates this matter. Staff will also recommend administrative penalties.

This submittal and notice of the Board's meeting shall be sent to the property's landowners by certified mail to the address on record.

AS SUCH, STAFF RECOMMENDS:

That pursuant to Chapter 183C, HRS, the Board finds the Landowner of TMK: (2) 4-3-015:001 at Keonenui Beach, 'Alaeloa, Maui, in violation of Chapter 183C-7, HRS and Chapter 13-5-6, HAR, subject to the following:

1. The Landowner is fined $10,000.00 for the Conservation District violation, pursuant to Chapter 183C, HRS;

2. The Landowner is fined an additional $1,000.00 for administrative costs associated with the subject violation;

3. The Landowner shall pay all fines (total $11,000.00) within sixty (60) days of the date of the Board's action;

4. The Landowner shall either remove the wall and stairs within three (3) months of the date of the Board's decision on this matter, or alternatively, apply for an after-the-fact permit for the seawall;

5. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional $11,000.00 per day until the order is complied with; and

6. That in the event of failure of the landowners to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:

William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

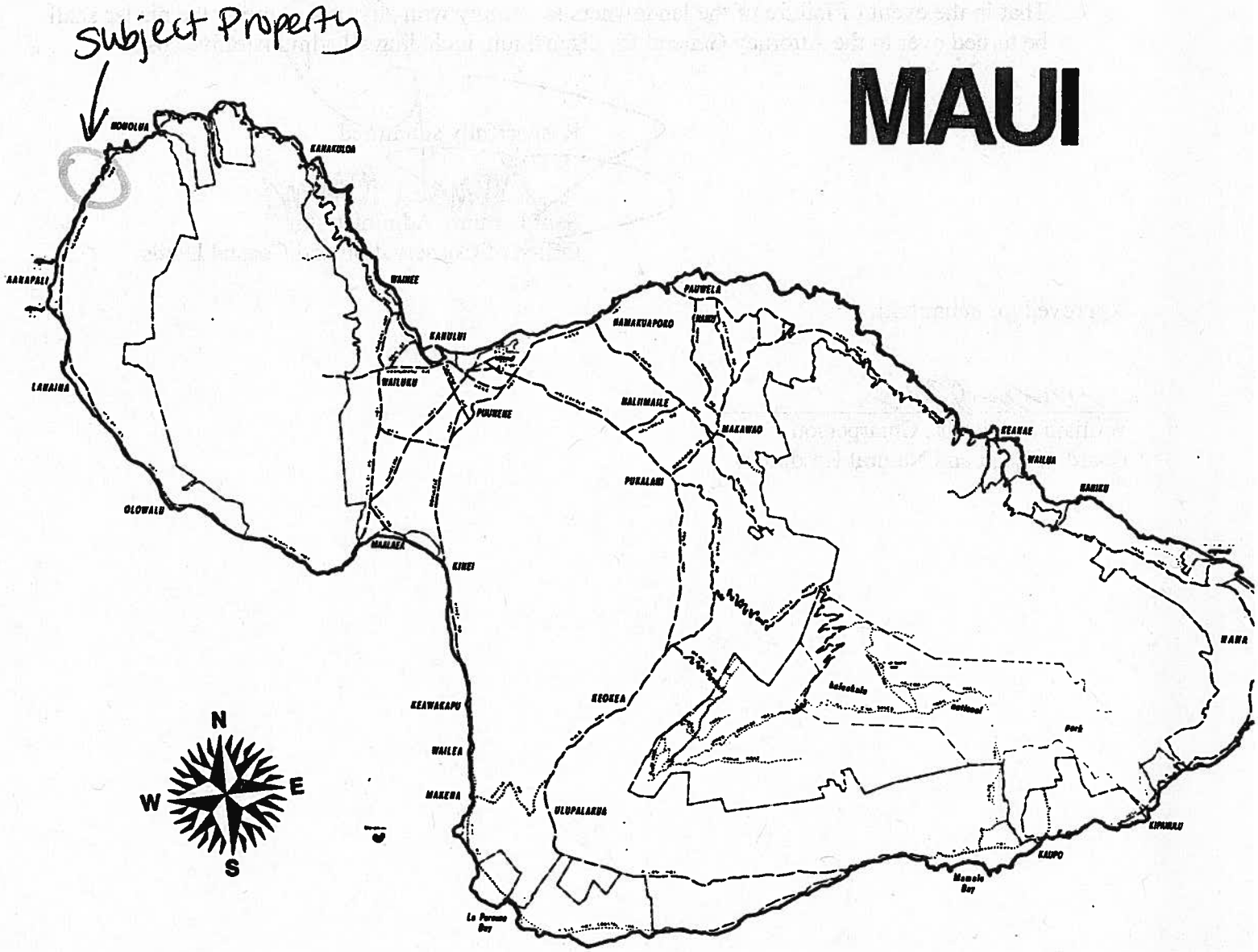
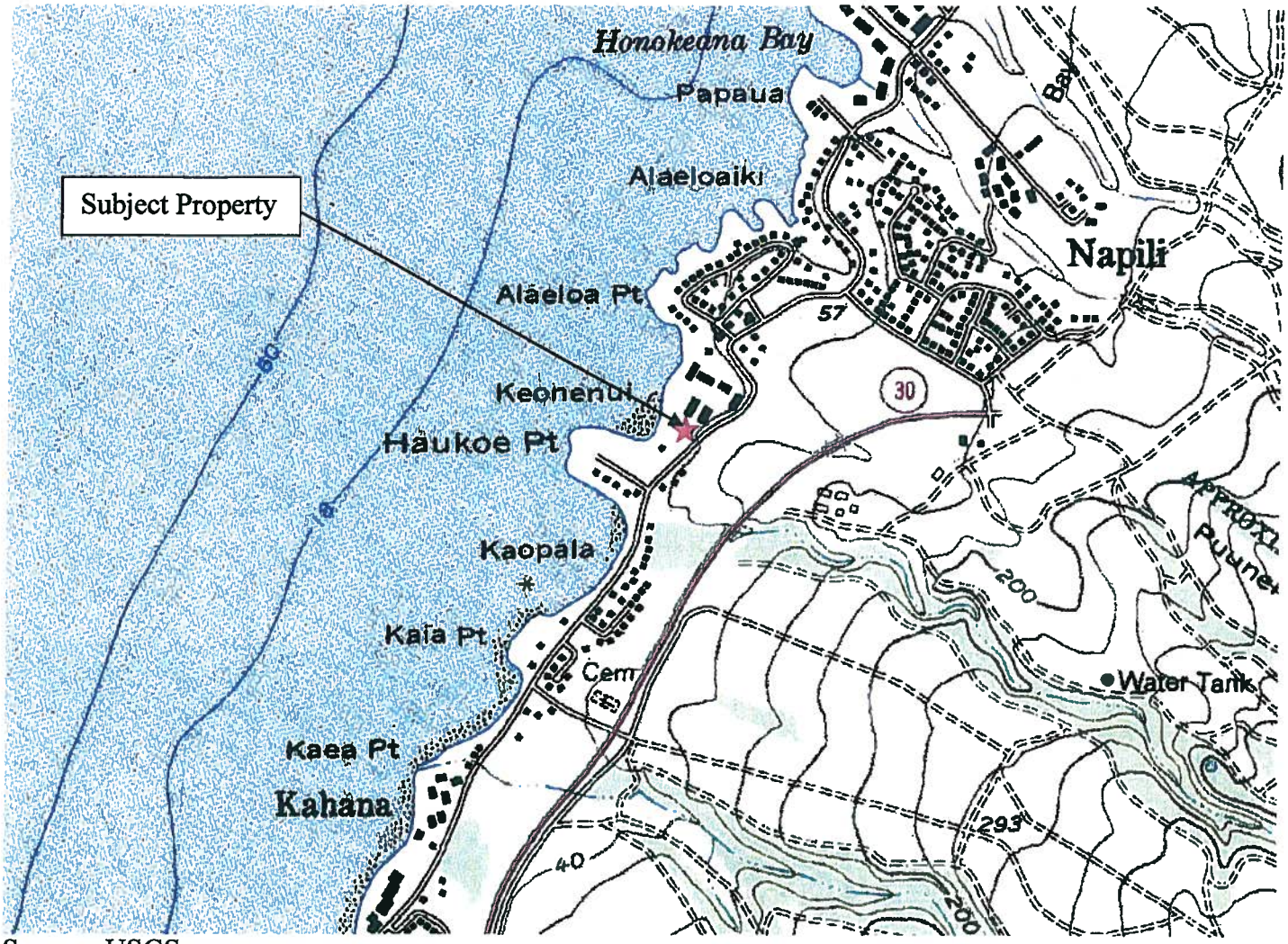

Subject Property
MAUI
HONOLUA
KAHAKULOA
WAIHEE
KAHULUI
WAILUKU
PUUNENE
PAUWELA
HAMAKUAPOKO
HALIMAILE
MAKAWAO
PUKALANI
KEANAE
WAILUA
HANA
KIHEI
MAKENA
KEAWAKAPU
WAILEA
KEOKEA
ULUPALAKUA
KAUPO
N
S
E
W

EXHIBIT 1

LOCATION MAP



Source: USGS

EXHIBIT 2

TAX MAP KEY (2) 4-3-015:001

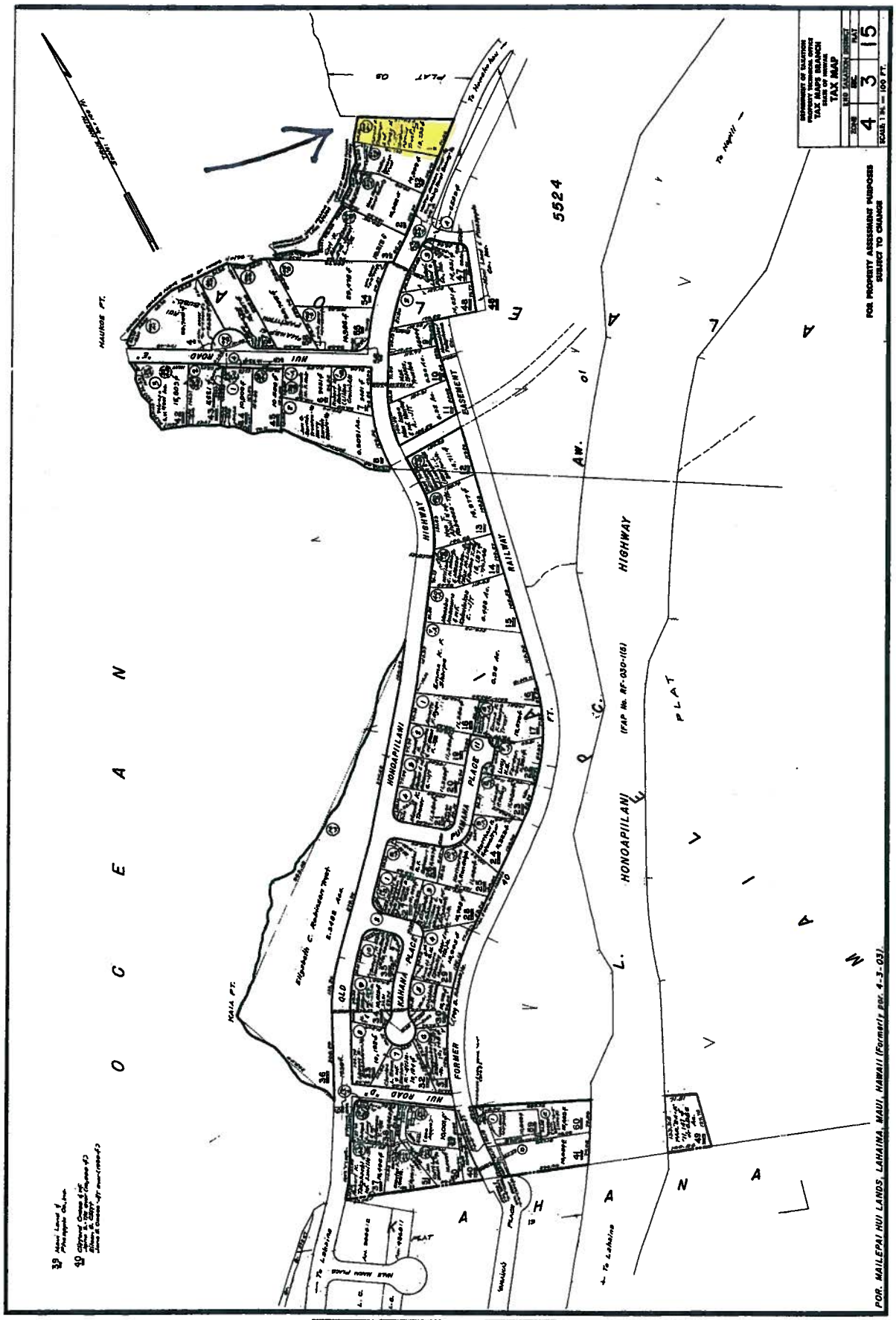
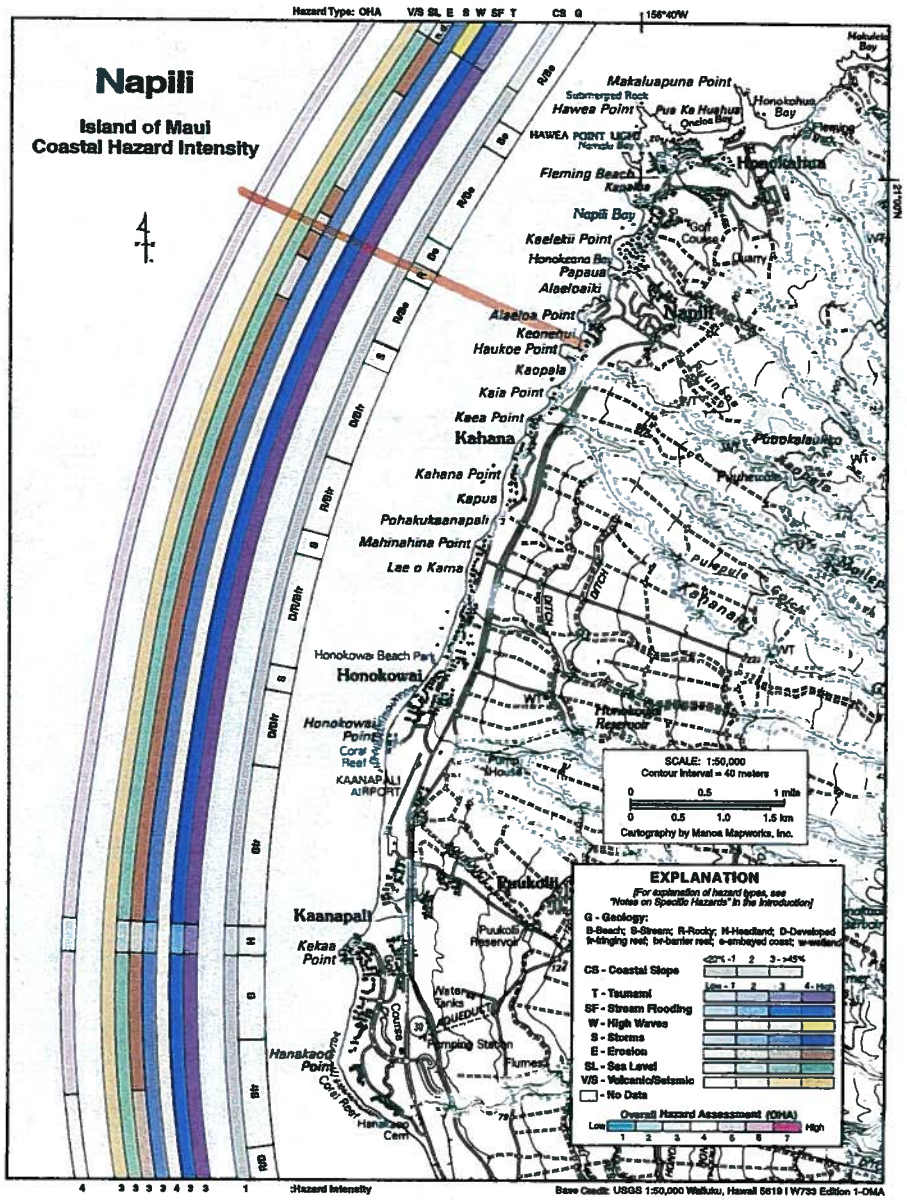


EXHIBIT 2

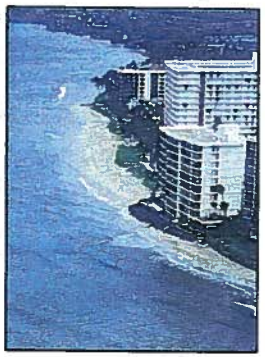
EXHIBIT 4



Napili

The highly developed coast of Napili is famous for its luxurious resorts, hotels, and golf courses that are built directly alongside one of Hawaii's most scenic shorelines. The relatively low coastal plain rises only slightly near Napili and Honokahua, where isolated coves are partly protected from refracting trade wind waves and northerly winter swell by steep rocky outcrops and points. Offshore, a fringing reef partly dissipates wave energy, acting as a buffer for the beaches that extend along south Kaanapali and within the bays of Kahana, Napili, and Honokahua. Numerous small streams originating in the West Maui Mountains flow across this gently sloping coastal terrace.

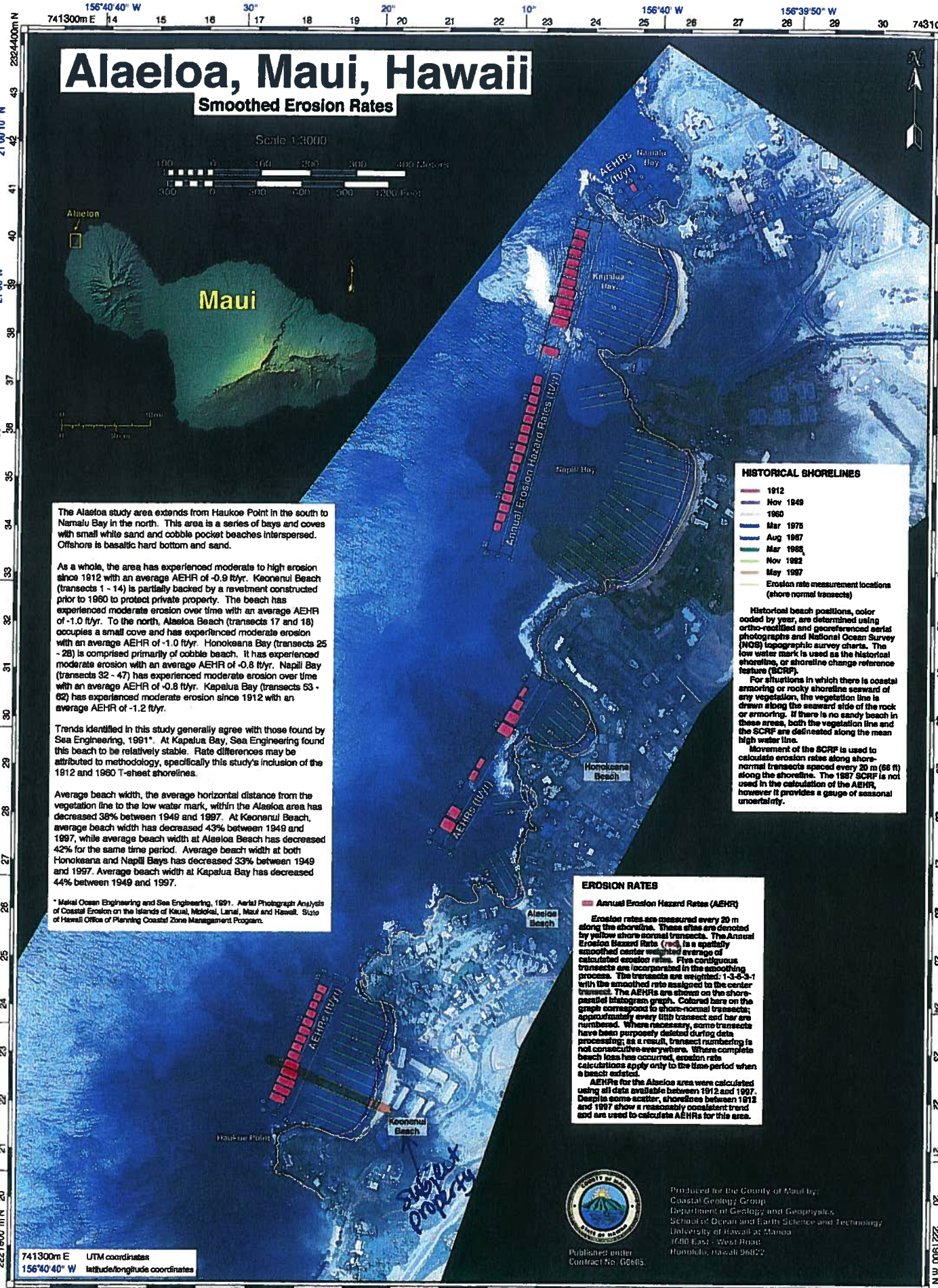
The Overall Hazard Assessment (OHA) for the Napili coast is moderate to high (5) and is largely influenced by high tsunami, stream flooding, and erosion hazards and moderately high storm, sea-level rise, and seismicity threats on this Maui coastline. Historically, there have been few tsunamis recorded at Kaanapali. However, a 15 ft tsunami that made landfall there in 1946 supports the high tsunami hazard ranking in this region, except at Kekaa Point, where it is reduced to moderately high. Flash floods and heavy rains, such as in March of 1968, when 24 inches fell in 48 hours, support a high stream-flooding hazard ranking, except at Kekaa Point, where it is moderately low. The threat from high waves is moderately low along the Napili coast, which is partly sheltered from approaching northwest swell by the island of Molokai. Storm and sea-level rise hazards are ranked moderately high, except at the steep Kekaa Point headland, where they are reduced to moderately low. High rates of erosion have recently led to the proliferation of seawalls and revetments to protect coastal property which in turn has exacerbated beach loss. As a result, the erosion hazard is ranked high except at the rocky headlands at Kekaa, Haukoe, Alaeloa, and Kaelekii Points, where it is moderately low. The volcanic/seismic hazard is ranked moderately high along the Napili coast due to its location in seismic hazard zone 2. The OHA is reduced to moderate to low (3) at Kekaa Point, while south of Hanakaoo Point it is increased to moderate (4), reflecting the greater hazards associated with the lower coastal slope there.



Extensive development has occurred along the small and narrow beaches of the Napili coast, while fossil beachrock ridges near Honokowai, marking the position of the former shoreline, lie submerged offshore as evidence of rapid sea-level rise and erosion.

Alaeloa, Maui, Hawaii

Smoothed Erosion Rates



The Alaeloa study area extends from Hauk'oe Point in the south to Namalu Bay in the north. This area is a series of bays and coves with small white sand and cobble pocket beaches interspersed. Offshore is basaltic hard bottom and sand.

As a whole, the area has experienced moderate to high erosion since 1912 with an average AEHR of -0.9 ft/yr. Keonenui Beach (transects 1 - 14) is partially backed by a revetment constructed prior to 1960 to protect private property. The beach has experienced moderate erosion over time with an average AEHR of -1.0 ft/yr. To the north, Alaeloa Beach (transects 17 and 18) occupies a small cove and has experienced moderate erosion with an average AEHR of -1.0 ft/yr. Honokeana Bay (transects 25 - 28) is comprised primarily of cobble beach. It has experienced moderate erosion with an average AEHR of -0.8 ft/yr. Napili Bay (transects 32 - 47) has experienced moderate erosion over time with an average AEHR of -0.8 ft/yr. Kapalua Bay (transects 53 - 62) has experienced moderate erosion since 1912 with an average AEHR of -1.2 ft/yr.

Trends identified in this study generally agree with those found by Sea Engineering, 1991*. At Kapalua Bay, Sea Engineering found this beach to be relatively stable. Rate differences may be attributed to methodology, specifically this study's inclusion of the 1912 and 1960 T-sheet shorelines.

Average beach width, the average horizontal distance from the vegetation line to the low water mark, within the Alaeloa area has decreased 38% between 1949 and 1997. At Keonenui Beach, average beach width has decreased 43% between 1949 and 1997, while average beach width at Alaeloa Beach has decreased 42% for the same time period. Average beach width at both Honokeana and Napili Bays has decreased 33% between 1949 and 1997. Average beach width at Kapalua Bay has decreased 44% between 1949 and 1997.

* Makai Ocean Engineering and Sea Engineering, 1991. Aerial Photograph Analysis of Coastal Erosion on the Islands of Kauai, Molokai, Lanai, Maui and Hawaii. State of Hawaii Office of Planning Coastal Zone Management Program.

HISTORICAL SHORELINES

- 1912
- Nov 1949
- 1960
- Mar 1975
- Aug 1987
- Mar 1988
- Nov 1992
- May 1997
- Erosion rate measurement locations (shore normal transects)

Historical beach positions, color coded by year, are determined using ortho-rectified and georeferenced aerial photographs and National Ocean Survey (NOS) topographic survey charts. The low water mark is used as the historical shoreline, or shoreline change reference feature (SCRF).

For situations in which there is coastal armoring or rocky shoreline seaward of any vegetation, the vegetation line is drawn along the seaward side of the rock or armoring. If there is no sandy beach in these areas, both the vegetation line and the SCRF are delineated along the mean high water line.

Movement of the SCRF is used to calculate erosion rates along shore-normal transects spaced every 20 m (66 ft) along the shoreline. The 1997 SCRF is not used in the calculation of the AEHR, however it provides a gauge of seasonal uncertainty.

EROSION RATES

Annual Erosion Hazard Rates (AEHR)

Erosion rates are measured every 20 m along the shoreline. These sites are denoted by yellow shore normal transects. The Annual Erosion Hazard Rate (red) is a spatially smoothed center weighted average of calculated erosion rates. Five contiguous transects are incorporated in the smoothing process. The transects are weighted: 1-3-5-3-1 with the smoothed rate assigned to the center transect. The AEHRs are shown on the shore-parallel histogram graph. Colored bars on the graph correspond to shore-normal transects; approximately every fifth transect and bar are numbered. Where necessary, some transects have been purposely deleted during data processing; as a result, transect numbering is not consecutive everywhere. Where complete beach loss has occurred, erosion rate calculations apply only to the time period when a beach existed.

AEHRs for the Alaeloa area were calculated using all data available between 1912 and 1997. Despite some scatter, shorelines between 1912 and 1997 show a reasonably consistent trend and are used to calculate AEHRs for this area.

Published under Contract No. G0665.

Produced for the County of Maui by:
Coastal Geology Group
Department of Geology and Geophysics
School of Ocean and Earth Science and Technology
University of Hawaii at Manoa
1680 East - West Road
Honolulu, Hawaii 96822

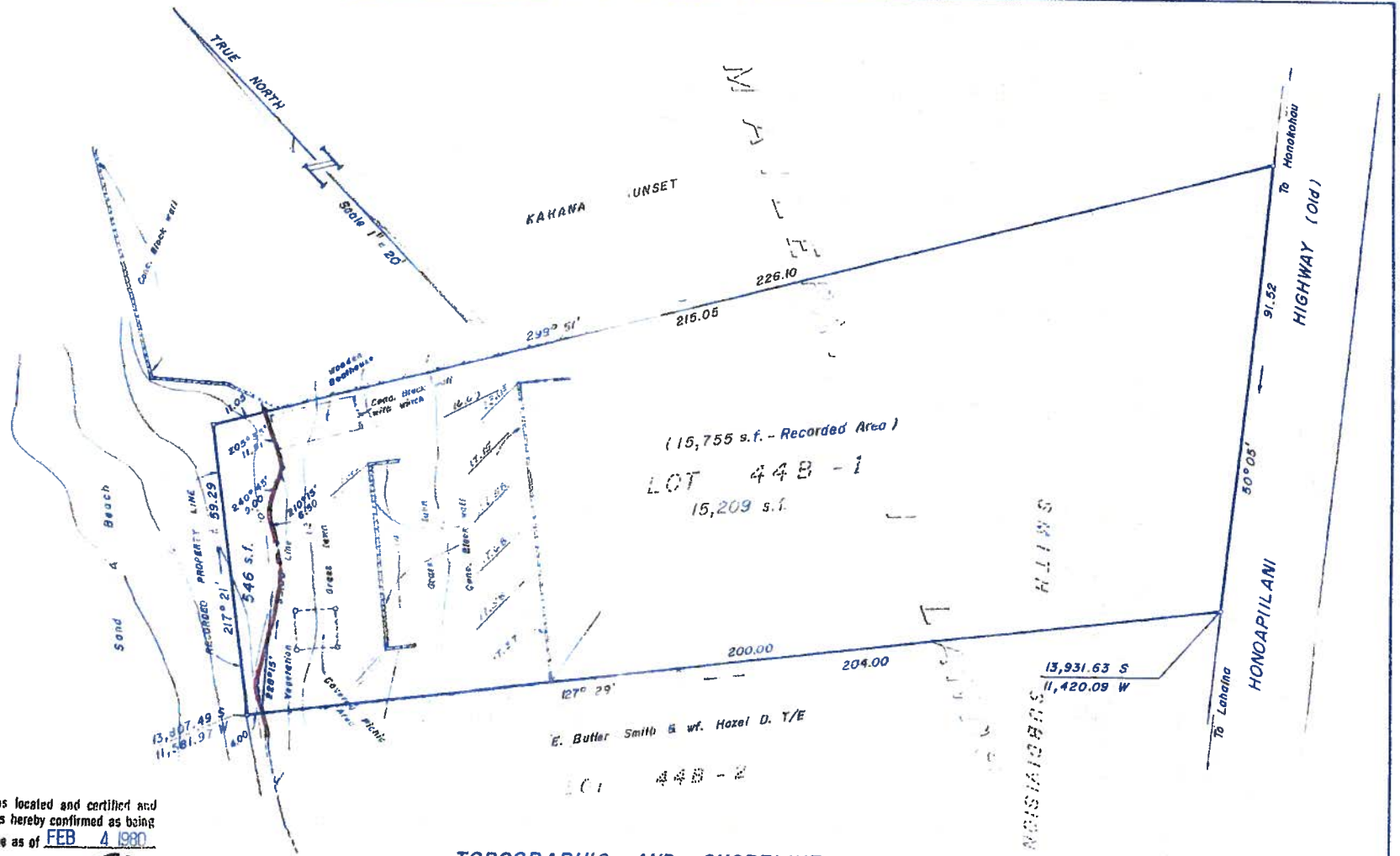
EXHIBIT

2003 Oblique Photo

11-29-03

EXHIBIT 6

EXHIBIT 7



The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of FEB 4 1980

Chairman, Board of Land and Natural Resources

TOPOGRAPHIC AND SHORELINE SURVEY

OF

LOT 44B-1 OF THE SMITH SUBDIVISION, MAILEPAI HUI LANDS
PORTION OF R.P. 1663, L.C. Aw. 5524 TO L. KONIA

AT ALAELOA, KAANAPALI, MAUI, HAWAII

SCALE 1 inch = 20 feet

FEBRUARY 11, 1979
REVISED - MARCH 8, 1979
Resubmitted - JANUARY 23, 1980

PREPARED AT REQUESTED OF:

William Taylor
1853 Anapa Place
Kihei, Maui, Hawaii 96753

PREPARED BY:
GEORGE F. NEWCOMER
LAND SURVEYOR
Kahului Building, Suite 350
Kahului, Maui, Hawaii

This work done by me or under my direction.

George F. Newcomer
REGISTERED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 2715 - S

NOTES

1. Adjoining owners from Tax Map Records.
2. Coordinates referred to "MALO △"
3. Actual field survey done January 4, 1979 at 11:00 A.M.
4. Pipes set at all corners.
5. Shoreline field inspected January 21, 1980, no appreciable change.

Previously approved 3/19/79
Set Folder 597-9(4)

TAX MAP KEY 4-3-15:1

SURVEY OFFICE COPY

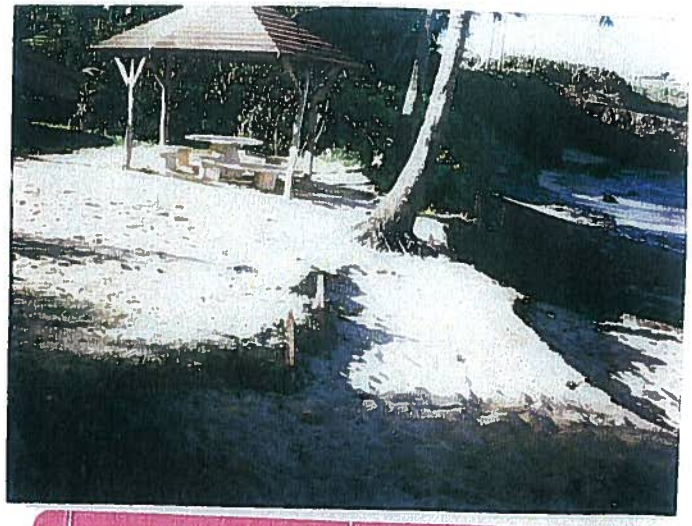
78-95

1979

N.W. Corner
Taken on conc. wall - Kahana Sunset

S.W. Corner
Taken at edge vegetation line

E.W. Corner
Taken on Property Corner



N.W. Corner taken on it.

1979

[illegible] Kahana Sunset

N.W. Corner - looking S.W. [illegible]
Taken at concrete wall (Kahana Sunset

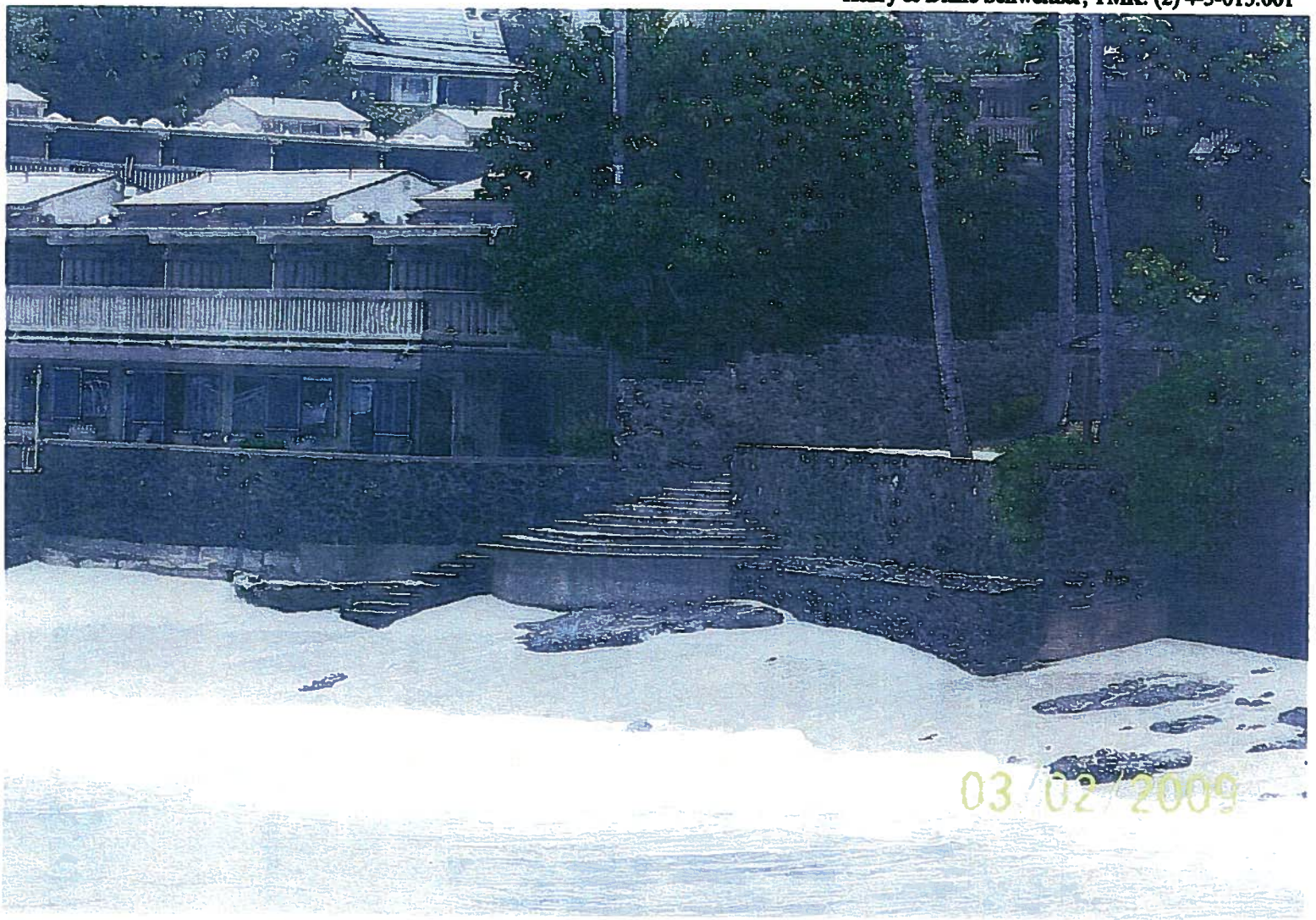
AERIAL PHOTOGAPH: 1987

Source: Coastal Geology Group

EXHIBIT 8

Photos taken: 3/2/09

Henry & Diane Schweitzer, TMK: (2) 4-3-015:001



Shoreline area fronting the Schweizer property at TMK: (2) 4-3-015:001. Possible encroaching stairway onto the sand shoreline.

EXHIBIT 9

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

APR 14 2009
dh

Sent To: Henry H. Schweitzer
Street, Apt. No.; or PO Box No.: 4885 Lower Honoapiilani Rd.
City, State, ZIP+4: Lahaina, HI, 96761

PS Form 3800, August 2006 — See Reverse for Instructions

7008 1140 0001 0730 7403

TATE OF HAWAII
F LAND AND NATURAL RESOURCES
ONSERVATION AND COASTAL LAND
POST OFFICE BOX 621
ONOLULU, HAWAII 96809

ENF: MA 09-25

APR 14 2009

Henry H. Schweitzer
4885 Lower Honoapi'ilani Road
Lahaina, Hawai'i 96761

SUBJECT: ALLEGED UNAUTHORIZED SHORELINE USE WITHIN THE CONSERVATION DISTRICT LOCATED AT TMK: (2) 4-3-015:001

Dear Mr. Schweitzer:

The Office of Conservation and Coastal Lands (OCCL) has received a complaint regarding a concrete and rock stairway extending from the seawall down into the ocean waters fronting the condominium complex. It also appears that a portion of the stairs may be encroaching on land within the Conservation District, under the jurisdiction of the State of Hawai'i.

According to the Maui Planning Department, there was a Notice of Warning issued in 2003 to the property regarding a seawall construction without a permit. OCCL also has no records of approval for the seawall or the stairway.

Please provide authorizing documentation and construction date for the seawall and stairways Should there be no authorization for the improvements located within the Conservation District, the OCCL may initiate enforcement proceedings. Please respond within 30 days. Should you have any questions regarding this correspondence, contact Audrey Barker of our State Office of Conservation and Coastal Lands at (808) 587-0316.

Sincerely,

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

C: Chairperson
MDLO
County of Maui, Department of Planning

EXHIBIT 10

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

MAY 2 6 2009

ab

Sent To: Henry H. Schweitzer
Street, Apt. No.; or PO Box No.: 4885 Lower Honoapiilani Rd.
City, State, ZIP+4: Lahaina, Hawaii 96761

PS Form 3800, August 2006 See Reverse for Instructions

7008 1140 0001 0730 7564

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LAND
P.O. BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

Complaint: MA 09-25

MAY 2 6 2009

Henry H. Schweitzer
4885 Lower Honoapi'ilani Road
Lahaina, Hawai'i 96761

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According to the Maui Planning Department, there was a Notice of Warning issued in 2003 to the property regarding a seawall construction without a permit. OCCL also has no records of approval for the seawall or the stairway. Please provide authorizing documentation and construction date for the seawall and stairways.

On April 14, 2009, the OCCL sent you a letter regarding this matter, and requested you respond within 30 days. The OCCL has received no response to date.

Please respond within **15 days** of receiving this letter. Should we not receive a response from you, the Department intends to bring this matter to the attention of the Board of Land and Natural Resources (BLNR) as an alleged violation of Hawai'i Revised Statute Chapter 183C-7 and rules promulgated pursuant to that chapter.

Should you have any questions, contact Audrey Barker of OCCL at (808) 587-0316 or audrey.t.barker@hawaii.gov.

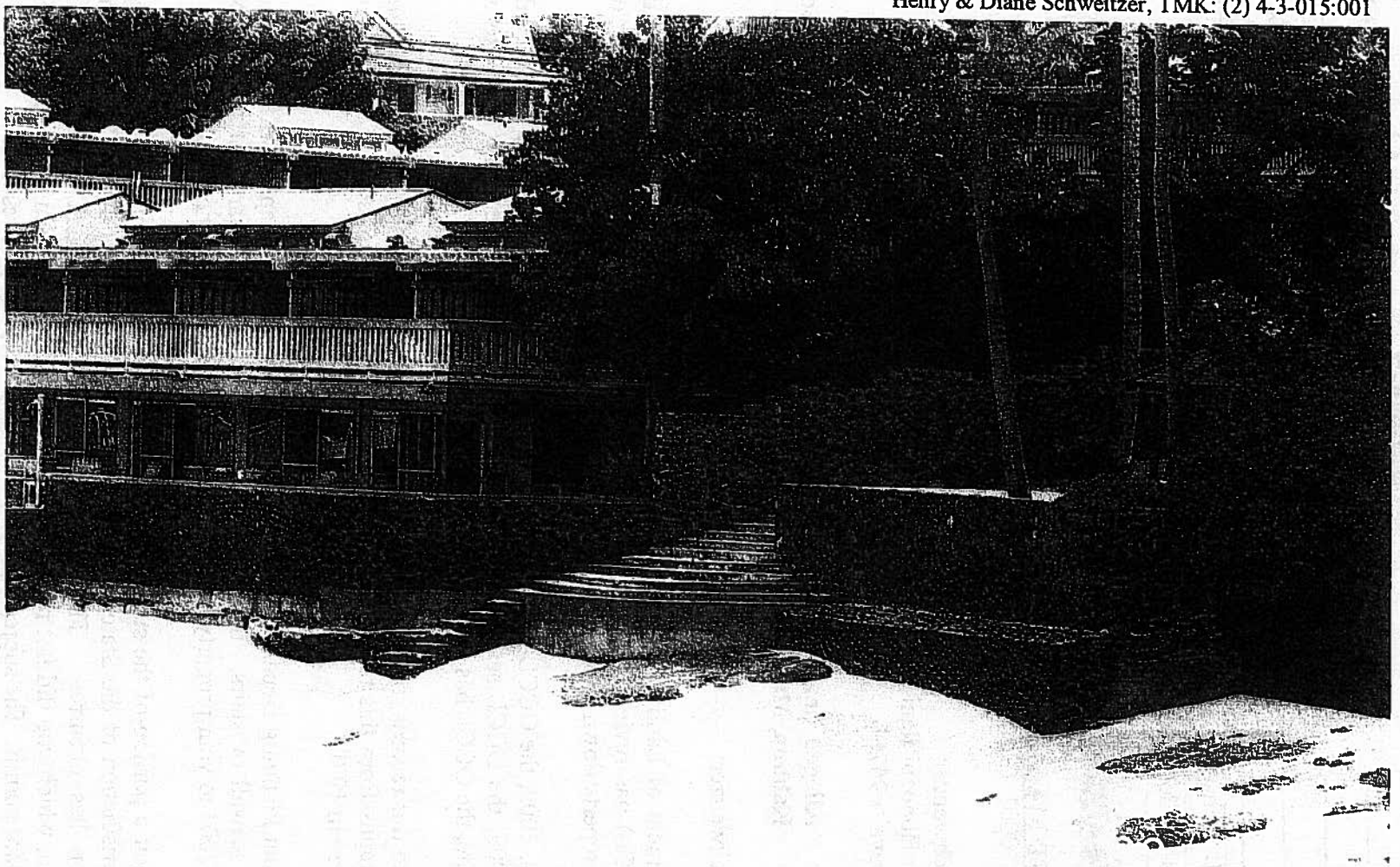
Sincerely,

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

EXHIBIT 1D2

Photos taken: 3/2/09

Henry & Diane Schweitzer, TMK: (2) 4-3-015:001



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U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here
JUN 30 2009

ab

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

ENF: MA-09-54

JUN 30 2009

CERTIFIED MAIL
7008 1140 0001 0730 7663

Henry H. Schweitzer
4885 Lower Honoapi'ilani Road
Lahaina, Hawai'i 96761

SUBJECT: Alleged Unauthorized Land Use within the Conservation District, Located at Kahana, Maui, TMK: (2) 4-3-015:001

Dear Mr. Schweitzer:

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the complaint regarding a concrete and rock stairway extending from your property down into the ocean waters.

On April 14, 2009, the OCCL sent you a letter and requested your response within 30 days. On May 26, 2009, the OCCL sent you a follow-up letter and requested your response within 15 days. To date, the OCCL has received no response from you.

According to our records, the shoreline was previously certified in 1979. The shoreline survey and photographs from this record provide evidence that the current seawall and concrete stairs were not there in 1979.

Both the Maui Planning Department and OCCL have no records of approval for construction of the subject seawall or stairs. In addition, the Maui Planning Department issued a Notice of Warning in 2003 to your property regarding seawall construction without a permit.

It appears that a portion of the stairs are encroaching on land within the Conservation District, under the jurisdiction of the State of Hawai'i, and OCCL believes that a Conservation District use violation has occurred. The construction of a seawall and concrete stairs requires authorization, which you did not receive. At a minimum, seawalls in the Conservation District require a Board permit. The subject unauthorized land uses must be resolved.

EXHIBIT ID 3

We shall be forwarding this matter to the attention of the Board of Land and Natural Resources (BLNR) as an alleged violation of Hawai'i Revised Statute Chapter 171-6(12) and Chapter 183C-7, and rules promulgated pursuant to these chapters

A staff report with recommendations shall be forwarded to you by certified mail notifying you of the date, time, and place of the Board meeting regarding this Conservation District enforcement action. Should you have any questions, contact Audrey Barker of OCCL at (808) 587-0316 or audrey.t.barker@hawaii.gov.

Sincerely,

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

c: Chairperson
MDLO
DOCARE
Thorne Abbott, Maui Planning Department

Photos taken: 7/14/09

Henry Schweitzer, TMK: (2) 4-3-015:001

Photos of improvements made along the shoreline and within the SMA area at the Schweitzer property at 4885 Lower Honoapiilani Road, Lahaina HI.

Concrete stairway leading to the shoreline line of Kahana Bay.

Terraced area filled with sand with a wood gazebo.

EXHIBIT 11

Photos taken: 7/14/09

Henry Schweitzer, TMK: (2) 4-3-015:001

Improvements at the makai side of the Schweitzer property. Property overlooks Kahana Bay.

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PLANNING

July 23, 2009

Certified Receipt No. (7008 3230 001 1256 5849)

Mr. and Mrs. Henry Schweitzer
4885 Lower Honoapiilani Road
Lahaina, Hawaii 96761

Dear Mr. and Mrs. Schweitzer:

RE: FIRST (1ST) REQUEST FOR CORRECTION FOR A CONFORMITY WITHIN THE SHORELINE AREA

TMK:	(2) 4-3-015:001-0000
RFS No.:	09-0002157
Description:	Failure to obtain shoreline setback determination for a property located at 4885 Lower Honoapiilani Road, Maui, Lahaina, Hawaii

Based on the evidence collected on **July 7, 2009**, we find that the construction of concrete seawall and concrete stairs leading to the ocean, does not comply with §§12-203-10, 12-203-11, 12-203-12(a)(8), 12-203-12(b), 12-203-12(c) and 12-203-13(a), Shoreline Rules for the Maui Planning Commission, as amended, and shall be removed by **August 7, 2009**. Evidence of the aforementioned non-conformity includes photos and county/state records.

Please be advised that a follow-up investigation will be performed, and if not in compliance, you will be subject to civil and criminal enforcement action.

Should you have any questions concerning this notice, you may contact me at Sonny.Huh@mauicounty.gov or (808)270-7810.

Sincerely,

Sonny Huh
Zoning Inspector

xc: Thorne Abbott, Staff Planner
Jay Arakawa, Supervising Zoning Inspector (via e-mail)
Sonny Huh, Zoning Inspector (via e-mail)
RFS No. 09-0002157 (KIVA related document; RFS Project File)
09/General File

AHS:SH:ckk
S:\ZONING\RFS\2009\2157_SCHWEITZER_SEAWALL\NOW\NOW1_2.DOC (rev. 05.09)

EXHIBIT 12,

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PLANNING

July 23, 2009

Certified Receipt No. (7008 3230 0001 1256 5849)

Mr. and Mrs. Henry Schweitzer
4885 Lower Honoapiilani Road
Lahaina, Hawaii 96761

Dear Mr. and Mrs. Schweitzer:

RE: FIRST (1ST) REQUEST FOR CORRECTION FOR A NON-CONFORMITY WITHIN THE SPECIAL MANAGEMENT AREA (SMA)

TMK:	(2) 4-3-015:001-0000
RFS No.:	09-0002157
Description:	Failure to obtain SMA permit for a property located at 4885 Lower Honoapiilani Road, Maui, Lahaina, Hawaii

Based on the evidence collected on July 7, 2009, we find that the construction of concrete seawall and concrete stairs leading to the ocean, does not comply with §12-202-12, SMA Rules for the Maui Planning Commission, as amended, and shall be removed by **August 7, 2009**. Evidence of the aforementioned non-conformity includes: photos and county/state records.

Please be advised that a follow-up investigation will be performed, and if not in compliance, you will be subject to civil and criminal enforcement action.

Should you have any questions concerning this notice, you may contact me at Sonny.Huh@mauicounty.gov or (808)270-7810.

Sincerely,

for Sonny Huh
Zoning Inspector

xc: Jay Arakawa, Supervising Zoning Inspector (via e-mail)
Sonny Huh, Zoning Inspector (via e-mail)
RFS No. 09-0002157 (KIVA related document; RFS Project File)
09/General File

EXHIBIT 12

AHS:SH;ckk
S:\ZONING\RFS\2009\2157_SCHWEITZER_SEAWALL\NOW\NOW1_1.DOC (rev. 05.09)

PAUL R. MANCINI*
THOMAS D. WELCH, JR.
JAMES W. GEIGER

COUNSEL
ROSALYN LOOMIS

*A LAW CORPORATION

MANCINI, WELCH & GEIGER LLP
A LIMITED LIABILITY LAW PARTNERSHIP

THE KAHULUI BUILDING
33 LONO AVE., SUITE 470
KAHULUI, HAWAII
96732-1681

TELEPHONE:
(808) 871-8351

FACSIMILE:
(808) 871-0732

April 16, 2012

Mr. Sam Lemmo
State of Hawaii
Department of Land and Natural Resources
Planning Section
P.O. Box 621
Honolulu, Hawaii 96809

RE: Chronology with regard to Building Permits for Construction of Seawall; TMK: 4-3-15:1

Dear Sam:

This is to follow up on our conversation concerning the above.

Find attached a chronology I put together with regard to the application for permits for the construction of a seawall. Please review it and phone me when you have an opportunity. The Schweitzers would not have proceeded and purchased the property without the seawall being permitted and constructed.

Very truly yours,

MANCINI, WELCH & GEIGER LLP

Paul R. Mancini

PRM:ta
Enclosure
cc: Hoyle and Diane Schweitzer

EXHIBIT 13

CHRONOLOGY WITH REGARD TO BUILDING PERMIT
FOR CONSTRUCTION OF SEAWALL ON NAPILI PROPERTY

Date	Narrative on Documentation
April 1, 1979	Maui County Board of Realtor's residential property listings. Office of Michael McCormick. Remarks: "Permit obtained for construction of retaining wall which will be completed".
November 1, 1979	Agreement of Sale between Schweitzers and Graham Trust.
December 28, 1979	Construction plans by Stephen Pitt for Chapman seawall. Schweitzer acquisition documentation.
January 23, 1980	Letter from George Newcomer to Alvin Haake, Land Agent, Department of Land and Natural Resources transmiting prints of shoreline certification by Saito to Taylor Construction. Pictures being transmitted showing gazebo.
January 25, 1980	Taylor Construction Company memo to Hoyle Schweitzer regarding shoreline verification with regard to property.
May 18, 1980	Letter from Hoyle Schweitzer to Tosh Ishikawa explaining urgency and necessity of construction of seawall on Napili property.
May 24, 1980	Letter from Taylor Construction to Hoyle Schweitzer asking for additional letter and documents to be submitted to Tosh Ishikawa. Notation shows the same being accomplished on May 29, 1980.
July 28, 1980	Construction Agreement with Taylor Construction and Mr. & Mrs. Hoyle Schweitzer for construction of seawall.
November 12, 1984	Deed from Charles Edward Graham, Trustee for Graham Trust to Henry Hoyle Schweitzer and Diane Adele Schweitzer.

MAUI COUNTY BOARD OF REALTORS
RESIDENTIAL

Price	List Date	Exp. Date	Waterfront
$1,150,000.00	4/1/79	11/1/79	yes

VIEW: ☑ OCEAN
☐ MOUNTAIN

MLS 3258 | Address Rural Route 1 - Box 471-A Kahana, Maui, Hawaii 96761

District	Land Area	Roofed Area	Age	FS	Reg
Kahana	15,755	Main 1962	13	LH	xxxxxx
		Other* 460			

Schools: Kamehameha III, Lahaina Intermed, Lahainaluna

Zoning Div	Zone	Sect	Plat	Parcel
2	4	3	15	1

Bdrms Two	Stories One	Lot 91	X 226irr.
Baths Two	Enc Lndy Yes	Sewer No	Conn Yes No
Md. Qtrs ☐	Roof Shake	Ass. Bal. $ None	
Gar.* 460 sq. ft. ☑	Floor Quarry, Asph Tile	Paid By ----	
Patio* ☐	Constr DW WF	Ass. Val 19 79/80	
Lanai 36'x12' ☐	Cond Excellent	Land $ 120,667	
Fam Rm ------	Easemnts None	Impr. $ 34,406	
Din Rm Area	Set-back 20 ft.	1978 Taxes $ 1160/yr	
Pool ☐	Topo Slop/Terrace	Home Exempt No	

Incl: Htr/Rng/ Refri Dw/Disp/ W/D Drps/ TV Cable

And: Bedroom drapes, Bedspreads match wallpaper

Lessor FEE	Rent $	Term
Ren. Date	Expr	
Exist 1st Mort.	$	$ Mo
Now @ % P&I or all incl	Exist 2nd or A/S 90,000@8%-4yr	
Will Accept: Cashout		remain.
	C 6%	S 50 L 50

Remarks | FURNISHED Not in price

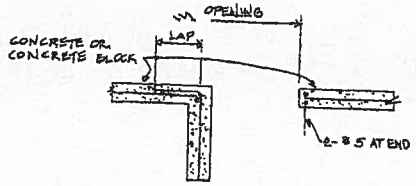
Oceanfront w/59 ft. golden sand beach. Well maintained/landscaped. Garden off master bath, 2 outdoor showers, auto. sprinklers, outdoor lit-ing, boat shed. Permit obtained for construc. of retaining wall which will be completed. Shown by appoint. only thru Listor. 24 hrs. notice, please.

Off Mike McCormack WV	No. 804	Ph. 661-3607
Lt Jewel Wieck	No.	Ph. 661-0924

GENERAL NOTES

1. CONCRETE TO BE F'C = 3000 PSI @ 28 DAYS
2. REBAR TO BE INTERMEDIATE GRADE 40 KSI
3. GROUT TO BE F'C = 2500 PSI @ 28 DAYS
4. MORTAR TO BE F'C = 2000 PSI @ 28 DAYS
5. PROVIDE 3" CLEAR COVER BETWEEN EARTH AND REBAR
6. LAP ALL REBAR 24 INCHES MINIMUM
7. BLOCK TO BE LAID IN RUNNING BOND
8. GROUT ALL CELLS SOLID WITH GROUT
9. FOR LAYOUT OF WALL, CONTRACTOR IS DIRECTED TO REFER TO SHORELINE SURVEY BY GEORGE F. NEWCOMER DATED MARCH 8, 1978. LAYOUT OF WALL MAY BE VARIED SLIGHTLY AT CONTRACTORS OPTION TO ATTAIN OPTIMUM USAGE OF LOT
10. NO PORTION OF SEAWALL OR ITS FOOTING MAY PROJECT BEYOND OF THE SHORELINE PROPERTY LINE.
11. FOOTING OF SEAWALL TO BE LOCATED ON FIRM UNDISTURBED SUBGRADE
12. CONTRACTOR TO NOTIFY STRUCTURAL ENGINEER 48 HOURS PRIOR TO POURING CONCRETE FOOTING

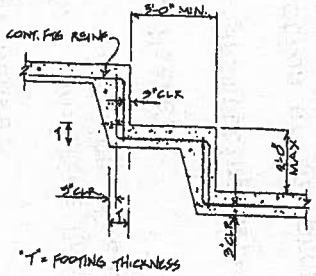
Rev'd 8/2000



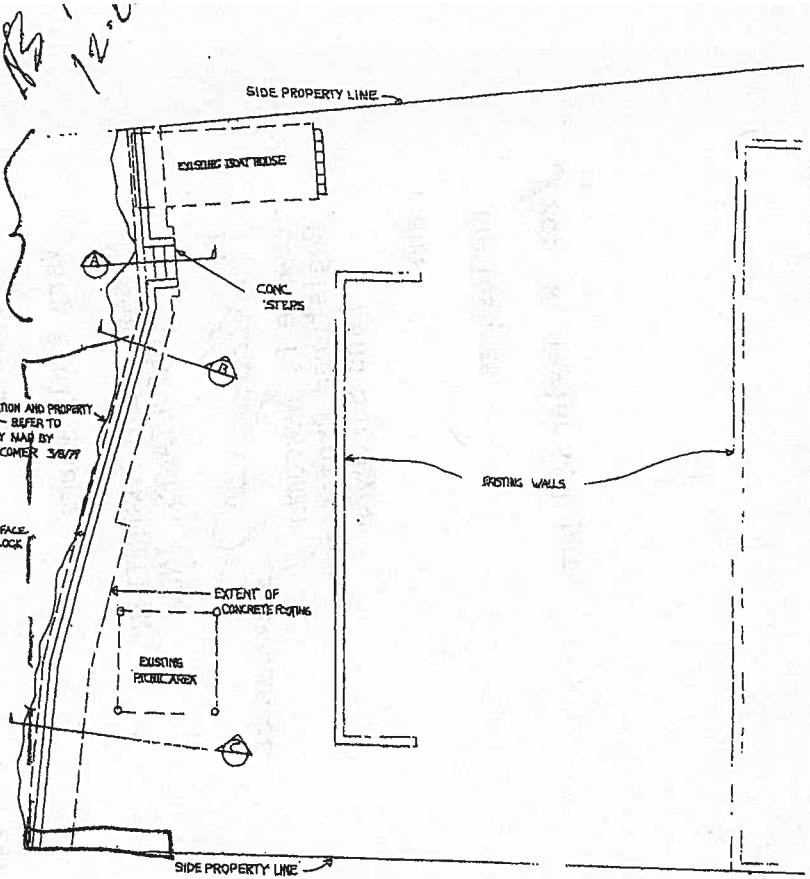
CORNER JAMB

LAP SPLICE 'L': 40 d FOR LONG BLOCK WALL
36 d FOR CONCRETE
2'-0" MINIMUM

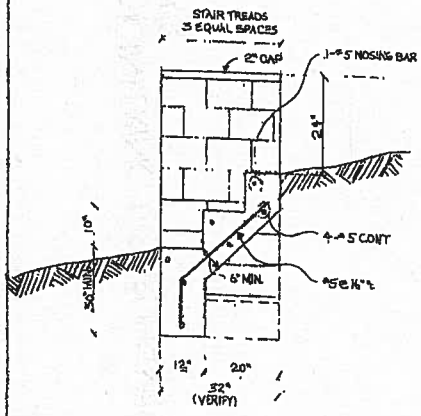
1 TYPICAL HORIZONTAL REINFORCING
NO SCALE



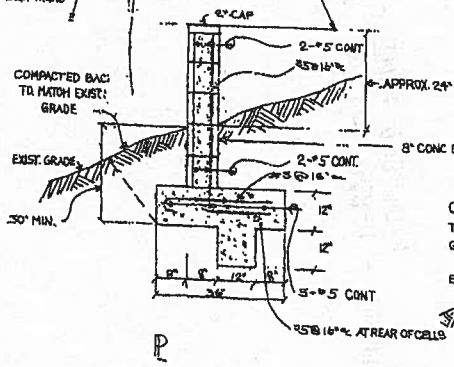
2 TYP. STEPPED FOOTING DETAIL
NO SCALE



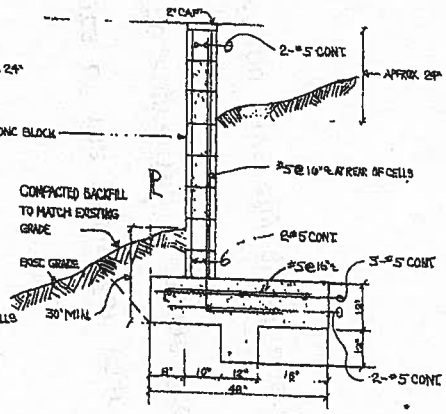
3 SITE PLAN
SCALE 1" = 5'



A STAIR SECTION
3/4" = 1'-0"



B WALL SECTION
3/4" = 1'-0"



C WALL SECTION
3/4" = 1'-0"

STEPHEN PITT & ASSOCIATES

NORMAN SAITO ENGINEERING CONSULTANTS, INC.
civil · structural · surveying

January 23, 1980

REFER: 581-8

Mr. Alvin Haake
Dept. of Land &
Natural Resources
State of Hawaii
Wailuku, HI 96732

Dear Mr. Haake:

SUBJECT: Shoreline Recertification of Lot 44B-1 - Smith Subdivision
Alaeloa, Kaanapali, Maui - TMK: 4-3-15:1

Dear Mr. Haake:

We are transmitting herewith six prints of the above for your processing.

An inspection of the property showed no appreciable change from the shoreline certified March 19, 1979.

Thank you for your cooperation, should you have any questions please contact us.

Very truly yours,

NORMAN SAITO ENGINEERING
CONSULTANTS, INC.

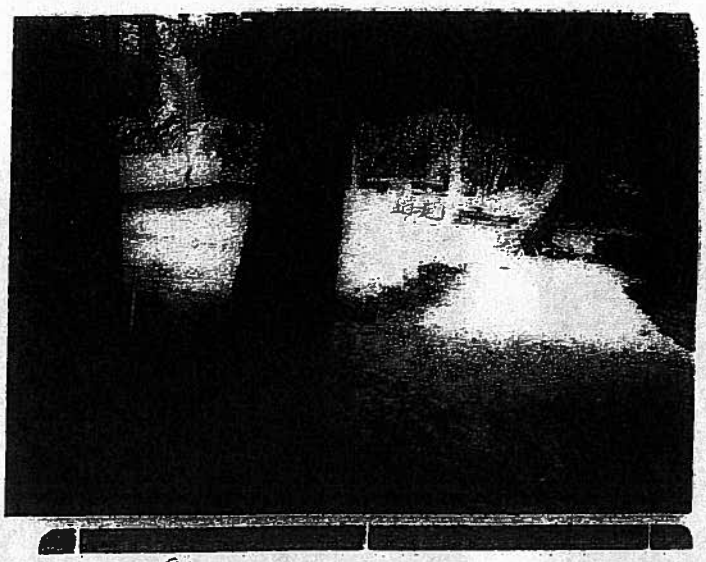
BY George F. Newcomer
George F. Newcomer
Registered Professional
Land Surveyor

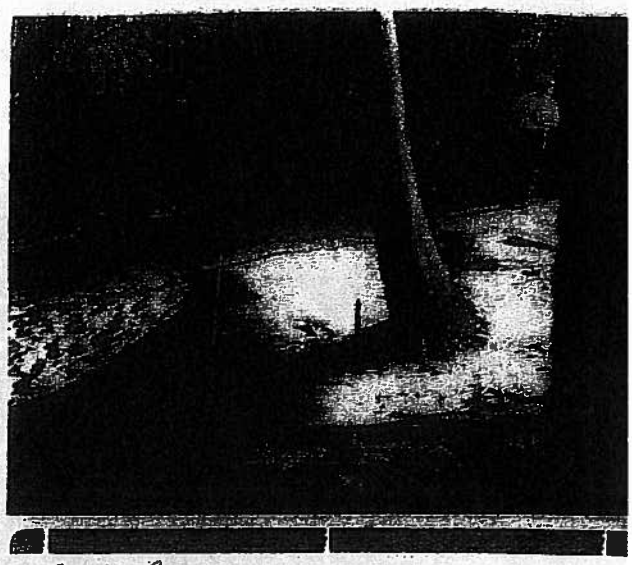
ahh

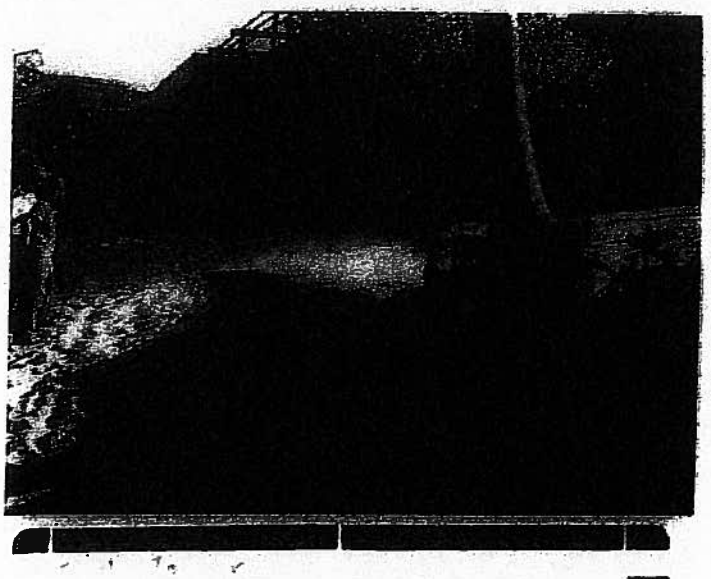
Enclosures

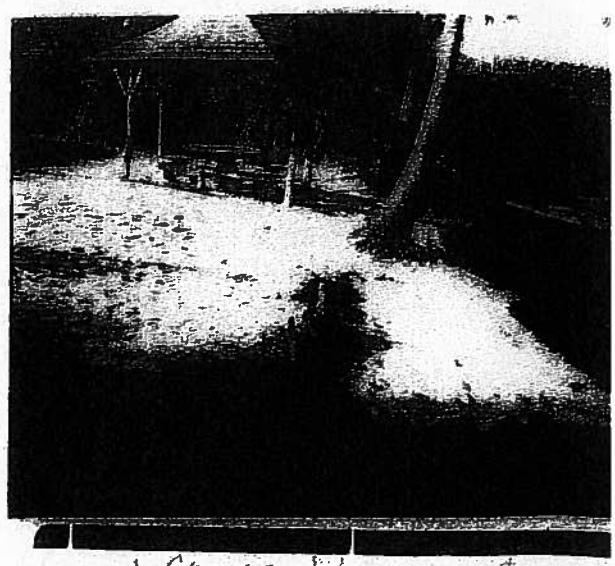
xc: W. Taylor w/1 prt.

PO BOX 1887 - KAHULUI, MAUI, HAWAII 96732 - TELEPHONE 877-7[illegible]









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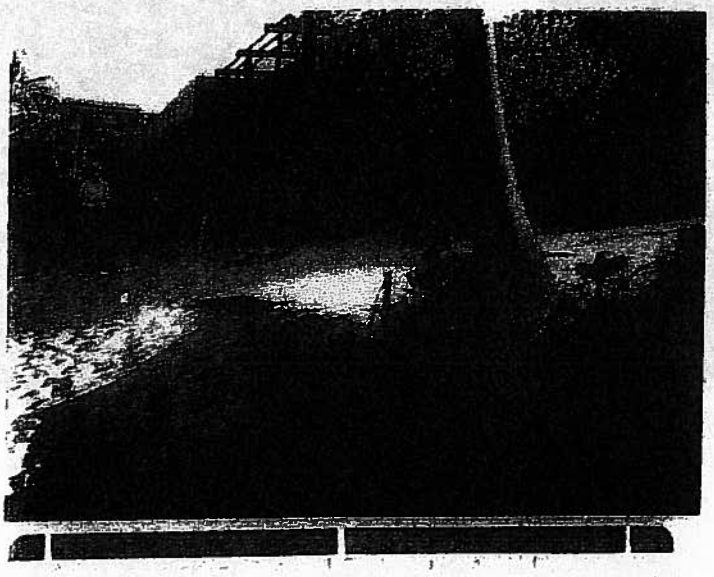
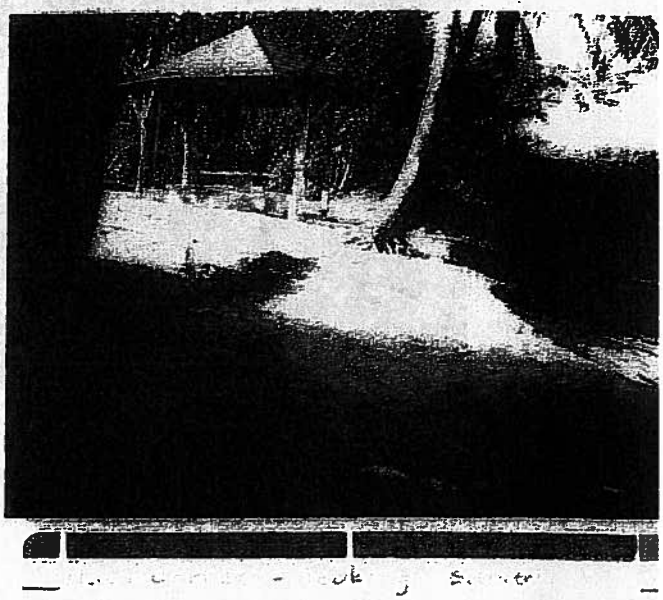




TAYLOR CONSTRUCTION CO.

973 PALAPALA DRIVE • KAHULUI, MAUI, HAWAII 96732 • PHONE 877-5441

TO: Mr. Hoyle Schwitzer
1655 Princeton Drive
Marina Del Rey,
California - 90291

DATE: 1-22-80

Hi - Enclosed are the Plans for your workshop - I did a few revisions on them I hope you are pleased with the results.

There is also an outside chance we can get your shop time within a week without a new survey - That could save several thousand up.

Sincerely - Bill

P.S. The Rain out to the Marina sucks -

DATE

JAN 25 1980

Still need Home plans

Fence wall

SIGNED

E Maui

TAYLOR CONSTRUCTION C

May 18, 1980

MAY 29 1980

Mr. Toshio Ishikawa
Planning Director
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Sir:

As per your request, I am submitting for your consideration this le which explains the urgency and necessity of construction of a sea w on my property in Napili.

Due to the storms which occur from time to time and especially this last winter in Napili, our shoreline is being eroded away and some damage has been done to our property. We have hesitated requesting or being involved in the construction of a sea wall, however, after looking at the alternatives and determining there will be no adverse effects to the shoreline, we see it is a must.

We have hired Norman Saito Engineering Consultants, who have surveye the land and obtained a shoreline verification. We have also acquir the services of Stephen Pitt, a structural engineer, who has designe the wall according to the scope of the problem. We are under contra to Taylor Construction Company to build the wall when everything has been approved.

We are submitting all of this information including authorization fo Taylor Construction to build the structure and trust approval will b forthcoming as soon as possible.

Sincerely,

Hoyle Schweitzer

Hoyle Schweitzer

HS/bt
Encl.

973 PALAPALA DR. • NASKA, MAUI, HAWAII • TELEPHONE 877-54

TAYLOR CONSTRUCTION CO.

973 PALAPALA DRIVE • KAHULUI, MAUI, HAWAII 96732 • PHONE 877-5441

TO Mr. Hoyle Schweitzer
1038 Princeton Drive
Marina Del Ray, California 90291

DATE

DATE May 24, 1980

Dear Hoyle:

Please execute the attached letter to Mr. Toshio Ishikawa so we can commence with the next phase of this project. Return this to me so I can submit it with the other necessary documents. Thanks.

Done 5-29-80

BY Bill

SIGNED

TAYLOR CONSTRUCTION CO.

973 PALAPALA DRIVE
NASKA, MAUI, HAWAII 96732 – TELEPHONE 877-5441

Job No. _____

This Agreement, made this _____ day of _____, 19____, by and between _____, hereinafter called the Contractor, and _____ jointly and/or severally, hereinafter called the Owner.

The Contractor agrees to furnish all labor and materials to perform at _____

_____
(Address)

the following described work:

_____

_____

_____

_____

_____

_____

Exclusions _____

_____

_____

The Owner agrees to pay the Contractor, or his designated agent or assignee, for the performance of the above described work the sum of _____

_____ DOLLARS ($ _____), payable as follows:

_____

_____

_____

_____

The parties further agree to perform and be bound by the terms and conditions set forth on the reverse side hereof and hereby made a part hereof.

Accepted by

By _____ _____ (Owner)

_____ (Owner)

COUNTY OF MAUI
DEPARTMENT OF PLANNING
ZONING ADMINISTRATION AND ENFORCEMENT DIVISION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
Telephone: (808) 270-7253
Facsimile: (808) 270-7634
E-mail: planning@mauicounty.gov

FILE NO.	NOV 2012/0020
RFS NO.	09-0002157
DATE OF NOTICE	August 29, 2012
DATE OF VIOLATION	June 30, 2009
CONTINUING VIOLATION	[X] YES [ ] NO
COLLECTED FINE	NONE
CERTIFIED RECEIPT NO.	See Below

NOTICE OF VIOLATION
SHORELINE - MAUI

TO:

Certified Receipt No. (7009 0960 0000 5324 3006)
Henry and Diane Schweitzer
4885 Lower Honoapiilani
Lahaina, Hawaii 96761

Certified Receipt No. (7009 0960 0000 5324 3013)
Paul R. Mancini Esq.
Mancini, Welch, & Geiger LLP
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

RE: **TMK** (2) 4-3-015:001-0000 **PERMIT NO**

ADDRESS 4885 Lower Honoapiilani Road Lahaina, Hawaii

I have inspected the below described structure(s) and/or premises and have found the following violation(s) of §§12-203-10, 12-203-11, 12-203-12(b), 12-203-12(c) and 12-203-13(a), Shoreline Rules for the Maui Planning Commission, as amended:

NATURE AND EVIDENCE OF THE VIOLATION(S)	Failure to obtain shoreline setback approval for development(s) within the shoreline setback area.

Construction of a seawall. Evidence of the aforementioned violation(s) include(s): site inspection, photographs, State and County records.

ORDER

Pursuant to §§12-203-16 and 12-203-17, Shoreline Rules of the Maui Planning Commission, and §§205A-32 and 205A-43.6 Hawaii Revised Statutes (HRS), as amended, you are hereby ordered as follows:

X	Cease and desist all activity immediately.		
X	Remove the violation(s) at the Planning Director's direction or submit an application for and obtain a shoreline setbac variance from the Maui Planning Commission, by **September 28, 2012**		
X	Pay an initial civil fine in the amount of:	**$50,000**	To the Department of Planning ("Planning") by **Septembe 28, 2012**
X	Pay a daily civil fine in the amount of:	**$5,000**	Per day to Planning if the corrective action described abov is not completed by **September 28, 2012**

Pursuant to §§205A-32 and 91, HRS, as amended, you are entitled an opportunity for a hearing before said fines become fina Should you wish to contest any provision of this Notice of Violation and Order, submit written confirmation that you wish to procee with said hearing within thirty (30) days from the certified mailing of this notice, or this order shall become final. Pursuant to§91-9 HRS, as amended, a notice of hearing date and time will be forwarded to you under separate cover. Please be advised that yo may appear on your own behalf or retain counsel to represent you.
Please be advised that the aforementioned contested case does not stay any provision of this order.
In the future, should you have a violation in the same manner as described above, the violation will be considered as recurrin and will be subject to additional fines and other legal action.

FOR THE PLANNING DIRECTOR

Issued By: Print Inspector's Name	Conklin Wright	Issued By: Inspector's Signature	
Print Supervisor's Name	Jay Arakawa	Supervisor's Signature	
Print Director's Name	William Spence	Director's Signature	
Attached Document(s)	None		

xc: RFS 09-0002157 & NOV 2012/0020 (Project File & KIVA Related Documents)
12/General File
WRS:AHS:Jaa:CW;ckk

S:\ZONING\RFS\2009\2157_Schweitzer_seawall\NOV\NOV_20120020_SsaSeawall.wpd (F

EXHIBIT 1/1

COUNTY OF MAUI
DEPARTMENT OF PLANNING
ZONING ADMINISTRATION AND ENFORCEMENT DIVISION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
Telephone: (808) 270-7253
Facsimile: (808) 270-7634
E-mail: planning@mauicounty.gov

FILE NO	NOV 2012/0019
RFS NO	09-0002157
DATE OF NOTICE	August 29 2012
DATE OF VIOLATION	June 30, 2009
CONTINUING VIOLATION	[X] YES [ ] NO
TOTAL COLLECTED FINE	NONE
CERTIFIED RECEIPT NO	See Below

NOTICE OF VIOLATION
SPECIAL MANAGEMENT AREA - MAUI

TO:

Certified Receipt No. (7009 0960 0000 5324 3006)
Henry and Diane Schweitzer
4885 Lower Honoapiilani
Lahaina, Hawaii 96761

Certified Receipt No. (7009 0960 0000 5324 3013)
Paul R. Mancini Esq.
Mancini, Welch, & Geiger LLP
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

RE: **TMK** (2) 4-3-015:001-0000 **PERMIT NO**

ADDRESS 4885 Lower Honoapiilani Road Lahaina, Hawaii

I have inspected the above described structure(s) and/or premises and have found the following violation(s) of §§12-202-12 an 12-202-23, Special Management Area Rules for the Maui Planning Commission ("SMA Rules"), as amended:

NATURE AND EVIDENCE OF THE VIOLATION(S)	Failure to obtain a Special Management Area ("SMA") determination for the following project within the SMA:

Construction of concrete stairs leading to ocean. Evidence of the aforementioned violation(s) include(s):site inspection photographs, State and County records.

ORDER

Pursuant to §§12-202-23(b) and §12-202-25, SMA Rules, as amended, you are hereby ordered as follows:

X	Cease and desist all activity immediately.		
X	Remove the violation(s) at the Planning Director's direction or submit a SMA Assessment Application for SMA determination by **September 28, 2012**		
X	Pay an initial civil fine in the amount of:	**$5,000**	To the Department of Planning ("Planning") by **Septembe 28, 2012**
X	Pay a daily civil fine in the amount of:	**$1,000**	Per day to Planning if the corrective action described above is not completed by **September 28, 2012**

Pursuant to §205A-32(c), Hawaii Revised Statutes ("HRS") and §12-202-23, SMA Rules, you are entitled an opportunity for a hearing before the Planning Director or his designee, before the imposition of said fines. To contest any provision within this Notic of Violation and Order, submit written confirmation that you wish to proceed with said hearing within thirty (30) days from the dat of the certified mailing of this notice, or this order shall become final. Pursuant to §91-9, HRS, a notice of hearing date and tim will be forwarded to you under separate cover. Please be advised that you may appear on your own behalf or retain counsel t represent you.
Pursuant to §12-202-25, SMA Rules, the submittal of an SMA permit application subsequent to the issuance of this Notice o Violation and Order shall not stay any provision of this order.
Pursuant to §12-202-23(d)(3), any negotiated settlement shall be forwarded to the Maui Planning Commission for final action.

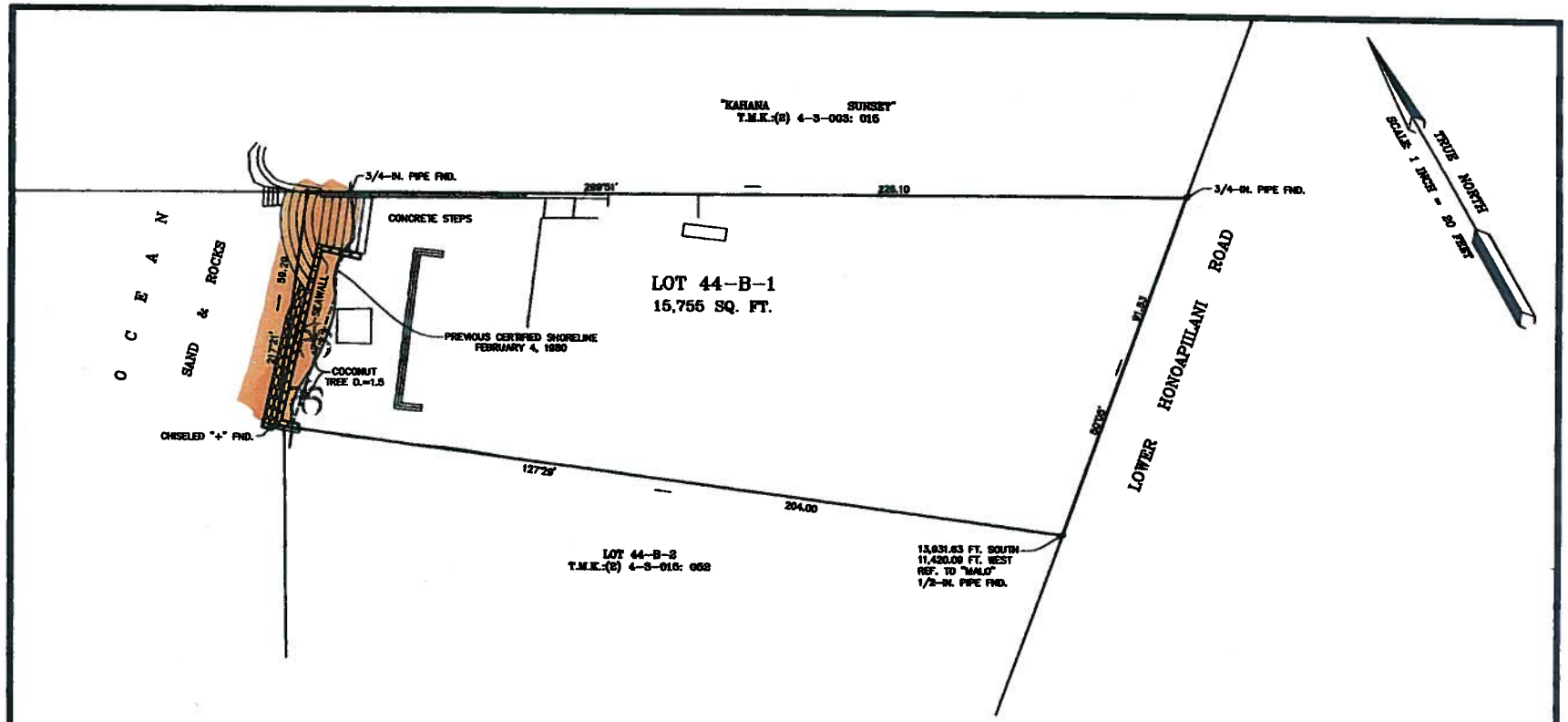
FOR THE PLANNING DIRECTOR

Issued By: Print Inspector's Name	Conklin Wright	Issued By: Inspector's Signature	
Print Supervisor's Name	Jay Arakawa	Supervisor's Name	
Print Director's Name	Willaim Spence	Director's Signature	
Attached Document(s)	None		

xc: RFS 09-0002157 & NOV 2012/0019 (Project File & KIVA Related Documents)
12/General File
WRS:AHS:JAA:CW;ckk

S:\ZONING\RFS\2009\2157_Schweitzer_seawall\NOV\NOV_20120019_SmaStairs.wpd (Rev. 03.

EXHIBIT 1/1



PLAT OF SURVEY

LOT 44-B-1 OF THE SMITH SUBDIVISION

Being a portion of Royal Patent 1663, Land Commission Award 5324 to L. Konia

SITUATED AT ALAEIOA, KAANAPALI, MAUI, HAWAI'I

Prepared for:
Mancini, Welch & Geiger
33 Lono Ave., Suite 470
Kahului, HI 96732

Scale: 1 inch = 20 Feet
Date: July 31, 2012

BRUCE R. LEE
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5083-LS
HAWAII, U.S.A.

This plat was prepared from a survey on the ground performed by me or under my supervision.

BRUCE R. LEE
Licensed Professional Land Surveyor Certificate No. 5083-LS

0 10 20 40 60 80 100
SCALE IN FEET

TMK:(2) 4-3-015: 001

15" X 21" = 2.2 SQ. FT.

NEWCOMER – LEE LAND SURVEYORS, INC. 1498 LOWER MAIN STREET, SUITE E, WAILUKU, MAUI, HAWAII 96793

DWG NO. 9344-SL JOB NO. 12-9344

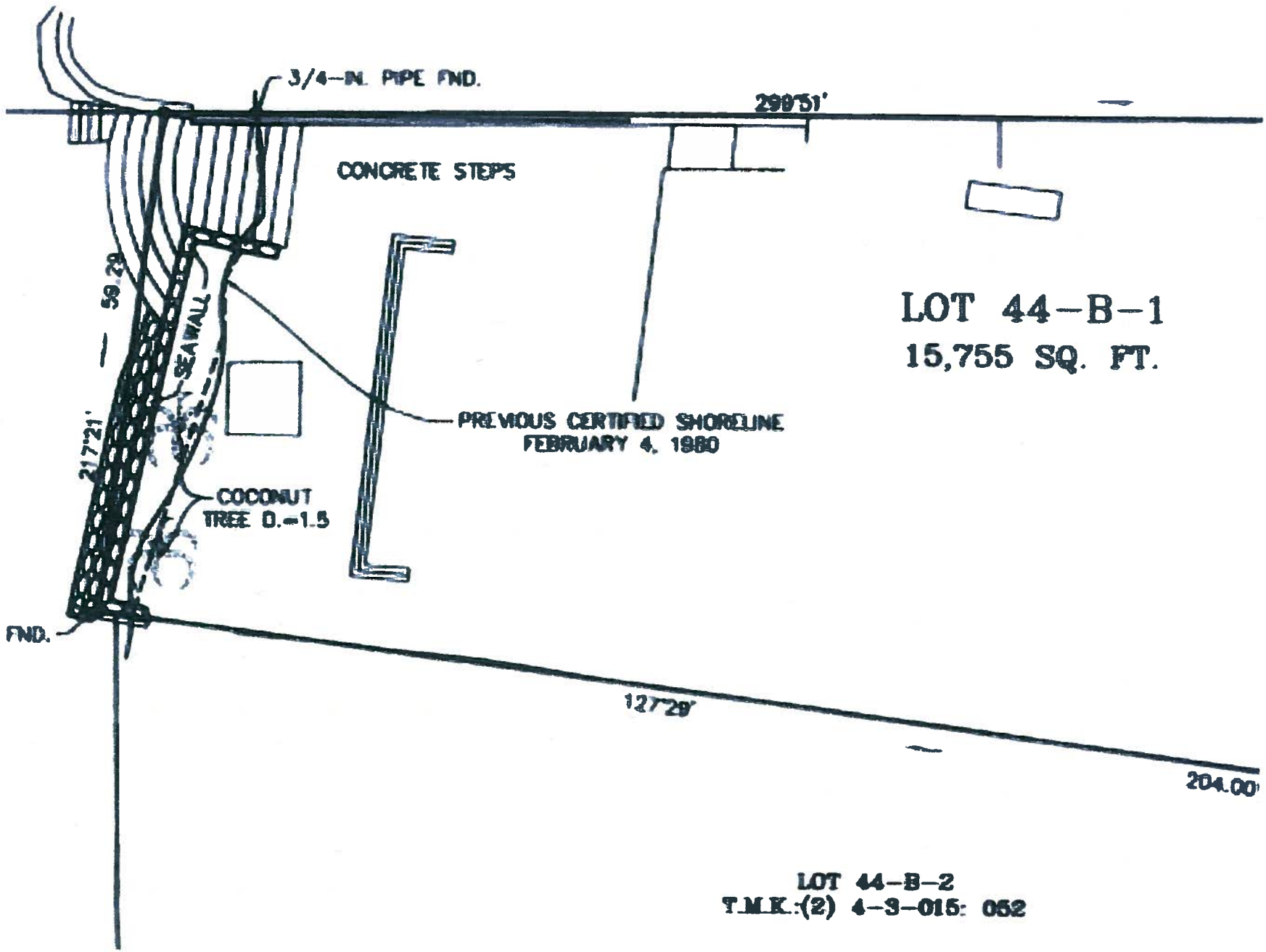

3/4-IN. PIPE FND.
299'51'
CONCRETE STEPS
59.29
SEAWALL
217'21'
PREVIOUS CERTIFIED SHORELINE
FEBRUARY 4, 1980
LOT 44-B-1
15,755 SQ. FT.
COCONUT
TREE D.=1.5
FND.
127'29'
204.00'
LOT 44-B-2
T.M.K.:(2) 4-3-015: 052

EXHIBIT 15

CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES AND ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

September 2009

Relating to penalties for violations within the Conservation District

Act 217

EXHIBIT 16

TABLE OF CONTENTS

1 INTRODUCTION

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to $15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

This document, *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources* is intended to provide the Office of Conservation and Coastal Lands (OCCL) with a framework to systematically carry out its enforcement powers, in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed. These guidelines are consistent with HAR §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

The charging and collecting of penalties is an enforcement tool that may be used to ensure future compliance by the responsible party and others similarly situated. The penalty amount(s) shall be enough to ensure immediate compliance with HAR §13-5 and HRS §183C, and cessation of illegal activities. Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use and that impairs or destroys natural resources protected under Chapter §183C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land

and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential "harm to the resource"[1] caused by the violation.

Once the baseline for the penalty range has been established according the required permit, the penalty may be adjusted appropriately upward or downward according to the "harm to resource" caused or potentially caused by the violator's action and additional considerations and factors (See 2.1.4),[2] within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the "harm to the resource" caused by the violation. Table 1

[1] "Harm to resource" is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration (See Appendix B: Definitions) *Adapted from Florida Department of Environmental Protection2000 Administrative Fines and Damage Liability, Ch. 62B-54.*

[2] Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damages, significance of any offsite indirect impacts, environmental record of the violator, responsiveness of violator, etc. (See 2.1.4 Additional Considerations and Factors).

was created to demonstrate the penalty ranges for the type of required permit and "harm to resource" (See 2.1.1 or Appendix A).

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework discussed in Section 2.1.1, Identified land use penalties.

2.1.1 Identified Land Use Penalties

The violation penalty range associated with each required permit will be assessed in accordance with the following harm to resource indices in this graduated framework.

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit beginning with the letter	Penalty Range
Major	D (Board)	$10,000-$15,000
Moderate	C (Departmental)	$2,000-$10,000
Minor	B (Site Plan)	$1,000-$2,000
Very Minor	(B) (Site Plan)	Up to$1,000

Major Harm to the Resource/ Board Permit (D)

Violations identified with the required permit prefix (D) may incur a penalty in the range of $10,000 - $15,000 as a Board permit would have been required to minimize the possibility of causing "major harm to the resource." Examples of "major harm(s) to the resource" may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

Moderate Harm to the Resource/Departmental Permit (C)

Violations identified with the required permit prefix (C) may incur a penalty in the range of $2,000-$10,000, as a Departmental permit would have been required, due to the possibility of causing "moderate harm to the resource." Examples of "moderate harm(s) to the resource" may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

Minor Harm to the Resource/Site Plan Approval (B) Permit

Violations identified with the required permit prefix (B) may incur penalties as a site plan approval would have been required to assure that "minor harm(s) to the resource" are minimized. "Minor harm(s) to the resource" may incur a penalty of $1,000-$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Very Minor Harm to the Resource/(B) Permit

In instances in which a permit with the B prefix should have been sought but are considered to have only caused "very minor harm(s) to resource" a penalty of up to $1,000 may be incurred. These "very minor harm(s) to the resource" could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

2.1.2 Non- Identified Land Use Penalties

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR

§13-5 or according to the "harm to the resource" caused by the violation. Refer to the above section, *Identified Land Use Penalties,* for the most similar required permit prefix. To categorize the violation as a "harm to resource" when no similar use is identified in HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of "harm to resource" (See Appendix B: Definitions).

2.1.3 Tree Removal

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially valuable tree may incur a fine of up to $15,000 per tree. Removal of any native tree may incur a fine of up to $1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation, similar to the removal/clearing of vegetation.[3] If violation is considered as one violation, a fine amount of up to $15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to $15,000 per tree.

2.1.4 Vegetation Removal/Vegetation Clearing

Past Staff recommendations and Board decisions have treated some cases of tree or removal as one citation of vegetation clearing/vegetation removal, this practice may be continued in violations resulting in minor or very minor harm to the resource. In accordance with the identified land uses within HAR §13-5 the assessment of vegetation removal has been based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 3 Vegetation Removal). However, the

[3] While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to $15,000 per plant.

Table 3. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	$10,000-$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	$2,000-$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	$1,000-$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to $1,000[4]

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to $15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to $1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of $10,000.

2.1.5 Additional Considerations and Factors

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range (1, 2, and 3 found above), the Staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

2.1.6 Continuing Violations and Permit Non-Compliance

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to $15,000 per day (penalties for every day illegal actions continue) by the Department for each separate offense.

[4] Provided the harm to the resource and offsite damage were minimal.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis. Existing permit violations, in which deadlines are not met, may be individually assessed by the Staff as to prior violator conduct, knowledge, and compliance. Violation of permit conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions may result in permit revocation. Failure to perform proper cultural, archeological, or environmental impact studies or failure to implement proper best management practices as identified in the standard permit conditions may be assessed more severely by Staff, as a moderate or major harm to the resource, due to the potential of greater adverse impacts to natural resources from the violator's failure to comply with the permit conditions, may have occurred.

2.1.7 In-Kind Penalties

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.[5] This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if (1) the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or if (2) the responsible party is a private party proposing an environmental

[5] In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.

restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.

b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL's, mission to protect and conserve Hawaii's Conservation District Lands.

c. **Capital or Facility improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.

d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.

2.1.8 Penalty Adjudication

Violation penalties may be adjudicated similarly to the harm to resource indices in the penalty guideline framework.

Comparable Harm to Resource	Identified land use permit and Penalty Range	Penalty Adjudicator
Major	$10,000-$15,000	Board
Moderate	$2,000-$10,000	Board
Minor	$1,000-$2,000	Chairperson or Presiding Officer
Very Minor	up to $1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an In-kind penalty.

Minor and Very Minor Harm to the Resource

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,

economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and /or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

3.1 PRIMARY RESTORATION DAMAGES

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial system such as a Koa (*Acacia koa*) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which

may be valued; (2) purchase, production and out-planting of Koa seedlings; and (3) monitoring, maintenance, and management for the time period of mature growth of ~40-60 years, to achieve mature canopy structure, native under-story, and an acceptable level of lost ecosystem structure, function and/or services restored.

3.2 COMPENSATORY DAMAGE CALCULATION

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications (See Appendix C and D for examples) to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

The total value of the natural resource that is lost or damaged may include the initial and interim values of the ecosystem services provided by the natural resource or habitat, and the social-economic value of the degraded site, until the ecosystem structure, function, and/or services are restored. Assessing the damages to the resource could include: estimating the loss of ecosystem services of carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

These natural resource damages may be assessed using economic valuation techniques to estimate the total value(s) of the natural resource(s) damaged on a per area basis, including: total ecosystem service value, total annual benefits, the market value of the natural resource, or any other factor deemed appropriate. The total value of the present and interim natural resource damage may be estimated by calculating the net present value of these lost benefits, values and services. The net present value may be calculated using a discount rate to scale the present and future costs to the public, of the interim losses of ecosystem services over the restoration time. The restoration time may be

estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

3.3 ADJUDICATION OF DAMAGES

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit beginning with the letter	Penalty Range
Major	D (Board)	$10,000-$15,000
Moderate	C (Departmental)	$2,000-$10,000
Minor	B (Site Plan)	$1,000-$2,000
Very Minor	(B) (Site Plan)	Up to$1,000

Table 2. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	$10,000-$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	$2,000-$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	$1,000-$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to $1,000[6]

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to $1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of $10,000. The clearing of threatened, endangered or commercially valuable plants, will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to $15,000 per plant.

APPENDIX B: DEFINITIONS

Definitions:

(1) "Baseline" means the original level of services provided by the damaged resource.

(2) "Benefit Transfer Method" estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.[7]

(3) "Board" means the Board of Land and Natural Resources.

(4) "Board Permit" means a permit approved by the Board of Land and Natural Resources.

(5) "Chairperson" means the chairperson of the board of land and natural resources

(6) "Civil Resource Violations System" or "CRVS" means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.

(7) "Compensatory Damages" means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.

(8) "Contested Case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.

(9) "Department" means the Department of Land and Natural Resources.

(10) "Departmental Permit" means a permit approved by the Chairperson.

(11) "Discounting" means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.

(12) "Ecosystem Services" means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

[7] Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_transfer.htm

(13) "Grossly negligent" violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.[8]

(14) "Harm to resource" means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

(a) "Major Harm to resource" means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics

(b) "Moderate Harm to Resource" means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).

(c) "Minor Harm to Resource" means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.

(d) "Very Minor Harm to Resource" means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

For example, "major harm to the resource(s)" would be associated with a major land use violation that would have likely required a Board Permit, such as building a house, while a "minor harm to the resource(s)" may be

[8] Definition adapted from Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

(15) "Knowing" violation means an act or omission done with awareness of the nature of the conduct.

(16) "Net Present Value" means the total present value (PV) of a time series of cash flows.

(17) "OCCL Administrator" means the Administrator of the Office of Conservation and Coastal Lands.

(18) "Party" means each person or agency named or admitted as a party.

(19) "Person" means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.

(20) "Presiding Officer" means the person conducting the hearing, which shall be the chairperson, or the chairperson's designated representative.

(21) "Primary Restoration Damages" means the costs to restore the damaged site to its prior baseline state.

(22) "Site Plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

(23) "Willful violation" means an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.

APPENDIX C: REFERENCES

Cesar, H., van Beukering, P., Pintz, S., Dierking J. 2002. Economic valuation of the coral reefs of Hawaii. NOAA Final Report NA 160A1449.

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APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

The following are only brief past estimates used in Hawaii and other states; they are by no means comprehensive or limiting. These are intended to be examples for possible assessments and remediation efforts not as templates. As previously stated each case will be handled individually to account for unique ecological, economic and cultural impacts. The following are organized by habitat type.

Coral

Florida Department of Environmental Protection (Civil Damages):
The DEP can impose fines of up to $1,000/m^2$ of reef damaged and is dependent on the absence of extenuating circumstances such as weather conditions, disregard of safe boating practices, navigational error, whether the vessel operator was under the influence of drugs or alcohol etc.

Cesar et al 2002 (Ecosystem Service Valuation)
Cesar et al. used a Simple Coral Reef Ecological Economic Model (SCREEM) to assess Hawaiian coral reefs based on the annual benefits of the coral reefs to recreation/tourism, property amenities, biodiversity, fisheries and education. The annual benefits and total economic value could then be expressed on a 'per area' basis. This study found the total annual benefits of the coral reefs of Hanauma Bay to be $37.57 million ($2,568/m^2$), of the coral reefs in Kihei to be $28.09 million ($65/m^2$) and the coral reefs on the Kona coast to be $17.68 million ($19/m^2$).

Pilaa enforcement (KA-02-10) (Primary Restoration Cost)
Damage to Coral reef ecosystems was assessed for restoration activities according to Florida guidelines, as $5,830,000 for 5,380 m^2 of coral reef damage. This calculation

was similar to the estimated cost of remediation efforts $390,000 to clean 5,000 yd^3 of beach sand. However between 30,000-50,000 yd^3 was estimated to be impacted, totaling $2,300,000-$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately $845,000 (for the 13 acres, or $65,000 for $10m^2$). This totaled between $3,100,000 and $4,700,000, and did not include coral colony re-establishment. An additional $630,000 was estimated for the 10-year monitoring period, (however studies by Cesar et al. 2003 estimated a 25 year period for recovery of ecological impacts).

Thus damage to corals may be calculated as follows:

Number of square meters of coral damaged

X Multiplied by $1,000 (or estimated value of coral on per/area basis)

(#m2 x $1000)

Plus the estimated net present value of ecosystem services lost until recovery. (This may be more if damage to an area such as Hanauma Bay with increased recreational economic revenue.)

+Plus cost of Remediation

+Plus Cost of cleaning sediment from reef

+Plus Cost of cleaning sediment/mud from beach sand

+Plus Cost of coral reestablishment

+Plus Cost of Monitoring

+Plus Cost of Management

Seagrass beds (Compensatory Damage)

The Florida DEP fines offenders $100/$yd^2$ of damage to seagrass beds for the first yd^2 damaged and $75/$yd^2$ per each additional yd^2 damaged.

$100 for the first yard damaged

+$75 per each additional yard

or net present total value of ecosystem services lost until recovery

+vegetation planting

+monitoring

Sand Beaches (ex. Of Primary Restoration Costs)

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts should be included in the assessment of damaged, degraded or lost sandy beaches. As one of Hawaii's greatest natural resources the following should be included in the minimum penalty assessment, however, as ecological valuation and research continue, more comprehensive estimates may be produced. In KA-02-10 Pilaa, $390,000 fine was estimated to clean 5,000 yd^3 of beach.

+Cost of lost revenue due to altered Beach resources (compensatory)

+primary restoration costs

+Plus cost of cleaning of sediment/mud from beach area (if necessary)

+Plus cost of beach nourishment (sand replacement)

+Plus cost of native dune vegetation

(In some circumstances the loss of beach resources may be assessed in conjunction with other ecological impacts listed above, such as coral reefs and sea grass beds.)

APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator's Name(s):_____

TMK:_____

OCCL Staff Member:_____

Date:_____

Part 1- Penalties

	Violation Type	Permit Prefix (D,C, B)	Harm to Resource (actual & potential)	Tree or Vegetation Status	Penalty Range	Adjustments (Mark Adj. Choice #1-8)	Multi-day (# days)	Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Penalty Total:

Penalty Adjustments and Descriptions (please attach additional adjustments and descriptions, including but not limited to those listed in §13-1-70)

1. Actual environmental damage extent (onsite)

   Description:_____

   _____

2. Actual environmental damage extent (offsite)

   Description:_____

   _____

3. Does the violator's have a history of violations?

   _____

   _____

4. Was the violation repetitious or of a long duration?

   _____

   _____

5. Was the violator Responsive and exhibit a level of cooperation of with the Department and/or Staff?

   _____

   _____

6. Does the Violator have a Financial Hardship?

   _____

   _____

7. Did the violator receive Economic or commercial gain through non-compliance?

   _____

   _____

8. Other.

   Description:_____

   _____

Total Adjustment: up/down_____

Multi-day penalties

Number of days to multiply penalty:_____

Reasoning:_____

_____

_____

Total multi-day: _____