

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
**Honolulu, Hawaii**

March 28, 2014

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

**REGARDING:** Proposed MEMORANDUM OF UNDERSTANDING between THE STATE OF HAWAII, Department of Land and Natural Resources, by its Board of Land and Natural Resources and the KAA NAPALI OPERATORS ASSOCIATION, INC. to Help Fund the Kaanapali Beach Restoration Project Design and Permitting

The Department of Land and Natural Resources (DLNR) is proposing to conduct a beach restoration project at Kaanapali Beach in partnership with the Kaanapali Operators Association (KOA). The Project will entail design and permitting for the extraction and placement of approximately 75,000 cubic yards of compatible carbonate marine sand to restore the beach to its former width, particularly in the chronically-eroded shoreline area south of Hanakaoo Point (**Attachment A**). The total cost for this portion of the restoration project (design and permitting) is estimated at \$800,700.

The proposed public-private partnership between DLNR and KOA follows on the success of the 2012 Waikiki Beach Restoration Project to restore the vital public and visitor beach resources at Kaanapali, which have suffered from chronic and seasonal erosion over the past few decades.

The DLNR is seeking a CIP project in the FY '14 budget to appropriate \$400,350 of funds from the DLNR Special Beach Fund and identifying additional sources of money from KOA. KOA is currently offering to contribute half the funds (\$400,350) towards the project.

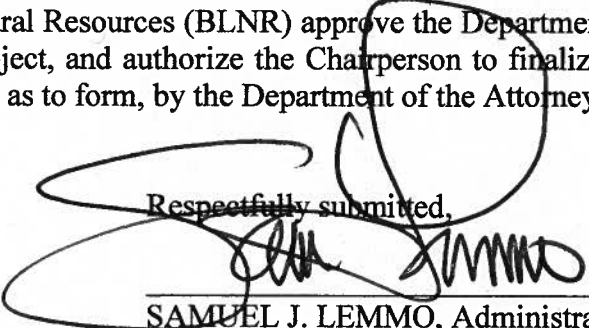
The proposed Memorandum of Understanding (MOU) for \$800,700 is attached (**Attachment B**). The Department of the Attorney General is currently reviewing the MOU. The proposed donor, KOA, is in agreement with the proposed language of the MOU.

**Board of Land and  
Natural Resources**

**RECOMMEDATION:**

That the Board of Land and Natural Resources (BLNR) approve the Department entering into an MOU for the subject project, and authorize the Chairperson to finalize and sign the MOU subject to the approval, as to form, by the Department of the Attorney General.

Respectfully submitted,

  
\_\_\_\_\_  
SAMUEL J. LEMMO, Administrator  
Office of Conservation and Coastal Lands

Approved for submittal:

By:

  
\_\_\_\_\_  
WILLIAM J. AILA, JR., Chairperson  
Board of Land and Natural Resources

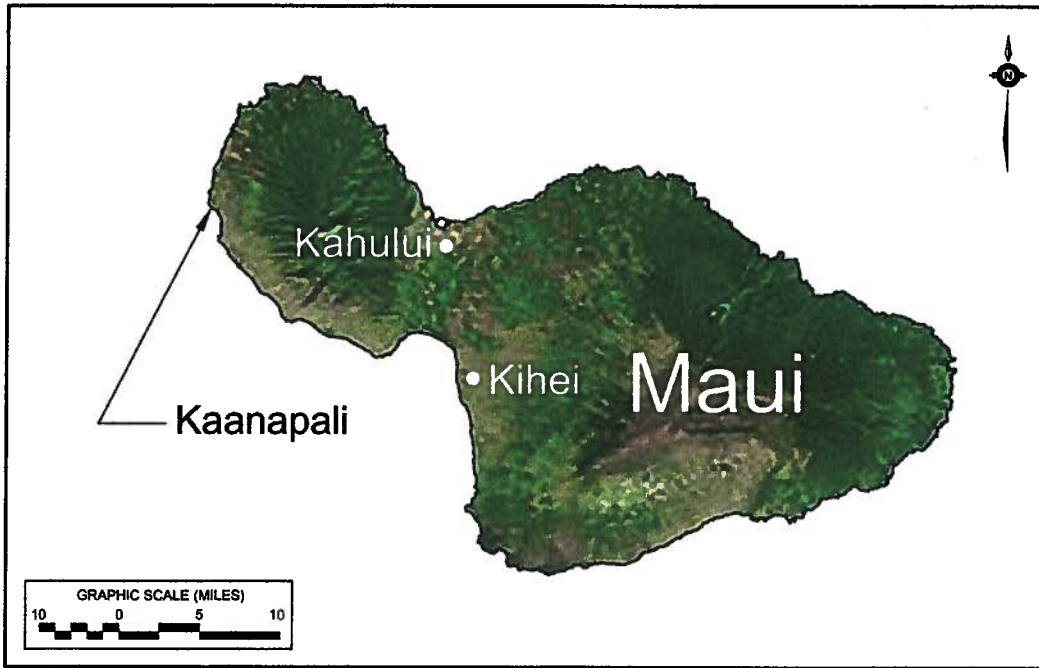


Figure 1-1 Kaanapali location map

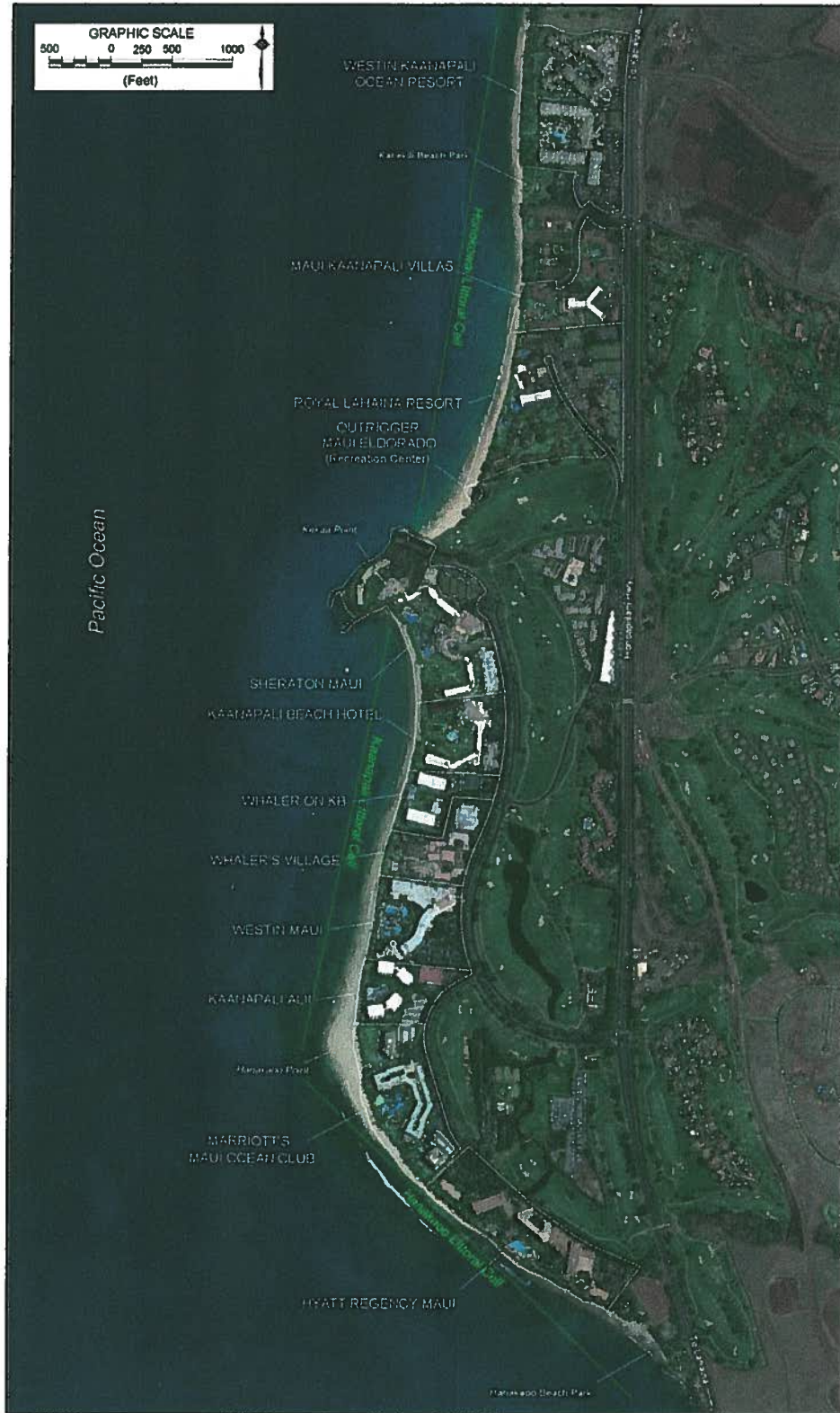


Figure 1-2 Kaanapali overview

## MEMORANDUM OF UNDERSTANDING

### (KAANAPALI BEACH RESTORATION, ENVIRONMENTAL IMPACT STATEMENT, DESIGN AND SPECIFICATIONS, PERMITS, MONITORING)

This memorandum of understanding (MOU), dated \_\_\_\_\_, outlines the agreement between the State of Hawaii, Department of Land and Natural Resources (DLNR) and the Ka'anapali Operations Association, Inc. (KOA) regarding beach restoration at Ka'anapali, Maui.

#### RECITALS

- A. Ka'anapali Operations Association, Inc., in concert with DLNR, through its Board of Land and Natural Resources (BLNR) and Office of Conservation and Coastal Lands (OCCL), enter into this agreement to fund an Environmental Impact Statement (EIS), obtain all necessary permits, and develop detailed project plans at Ka'anapali Beach, to restore the beach to its former width fronting the Hyatt and Marriott Hotels and Hanakao Beach Park (hereafter collectively referred to as "planning and permitting").
- B. The work will primarily entail the design and development of a State and Federal EIS and project plan for the extraction and placement of approximately 75,000 cubic yards of compatible calcium carbonate marine sand from offshore sources with approximately 50,000 cubic yards to be placed between Hanakao Beach Park and Black Rock, Ka'anapali Beach, to restore the beach to its former beach width as it existed in March, 1988, and enhancing the dry beach volume from Hanakao Beach Park to Black Rock, Ka'anapali Beach, with approximately 25,000 cubic yards of sand.
- C. This MOU covers the acquisition of all necessary permits, and detailed plans and specifications. This MOU does not include project construction, which will be managed under a separate and subsequent agreement and funding mechanism.
- D. The intent of this work is to protect, preserve, and restore the natural beach resource at Ka'anapali for the benefit of the public at large; to alleviate hazards to upland development from chronic (long-term) and seasonal beach erosion utilizing beach restoration as an alternative to hardened shoreline protection; and to plan for and design the optimal delivery method for beach restoration and berm enhancement in full compliance with environmentally sound planning and design principles as determined through the establishment of an acceptable project design and EIS; and to gain all permitting necessary to initiate the project, and to provide for construction monitoring and an after action report.
- E. KOA previously engaged the services of a coastal engineering company to conduct a feasibility analysis and scope of work for a beach restoration project at Ka'anapali. It has been determined that a project is feasible. The planning and permitting portion of the project cost is estimated to be up to approximately \$800,000. Thus, the DLNR wishes to enter into an MOU with KOA for up to \$800,000 to cover the cost of planning and permitting for the beach restoration project. The source of public

funds for this project is the State's Special Beach Restoration Fund which is supported by revenues from the Tourism Accommodations Tax (TAT) and by mutual agreement between the Hawaii Tourism Authority and the Board of Land and Natural Resources.

- F. The DLNR will engage a third-party consultant to complete the environmental, planning, permitting, and project design and management elements.
- G. KOA and DLNR will jointly manage planning and permitting. The DLNR and KOA desire to memorialize their understanding of the terms and conditions upon which DLNR and KOA will provide said funds.

### AGREEMENT

Now, THEREFORE, DLNR and KOA hereby agree as follows:

1. Contribution. KOA agrees to contribute to the DLNR, FOUR HUNDRED THOUSAND DOLLARS (the "KOA Contribution") toward the cost of planning and permitting, upon and subject to the terms and conditions set forth in this MOU. The DLNR agrees to fund FIFTY PERCENT (FOUR HUNDRED THOUSAND DOLLARS) of the planning and permitting costs under this MOU with funds from the Beach Restoration Special Fund, subject to Legislative approval.
2. Use of Funds. The DLNR agrees that the funding provided by KOA shall be used solely as set forth in this MOU to support a beach restoration project extending from Hanakao Beach Park to Black Rock, Ka'anapali Beach.
3. Restoration of the beach at Kaanapali. Once the project design is completed and an acceptable EIS approved, KOA and DLNR will proceed to implement a beach restoration project for the placement of approximately 75,000 cubic yards of sand on the beach at Kaanapali as described above in accordance with State approvals.
4. Cost of Restoration. The current estimated cost of the construction component of the restoration of the beach as described above is approximately SIX MILLION EIGHT HUNDRED TEN THOUSAND TWO HUNDRED DOLLARS (\$6,810,200).
5. Joint Funding of Beach Restoration. KOA and DLNR agree to pursue joint funding of the construction portion of the beach restoration (Restoration) once the EIS and design are completed, currently forecast to be in 2016. KOA will accrue one-half of the estimated cost of the Restoration and the DLNR shall accrue one-half of the cost of the Restoration to be paid through its Beach Restoration Special Fund subject to Legislative approval.
6. Conditions of Funding. KOA's obligation to deposit the KOA Contribution shall be conditioned upon the satisfaction in all material respects of each of the following provisions.

7. Disbursement: The DLNR requires that all money to be used for the consultant contract be available for use when it executes the consultant contract. The DLNR shall provide KOA with not less than three weeks' written notice of the estimated consultant contract execution date. KOA shall ensure that the funding is transferred to the DLNR no less than one day before the execution of the consultant contract in the form of a check made payable to the State of Hawaii, Department of Land and Natural Resources. KOA may periodically contact the DLNR prior to receiving aforesaid written notice to find out the current month being targeted for advertising. The funds deposited by KOA pursuant to this agreement shall be held in a separate account and shall not be commingled with other funds of the State.
8. DLNR's Disbursement of Money to the Contractor: The DLNR shall fund each progress payment by drawing down on the accounts of KOA and DLNR who are funding the total cost of the work under this MOU, in direct proportion to their original contributions.
9. Return of Funds: Any funds comprising the KOA Contribution shall be returned to KOA as set forth hereinbelow:
  - a. If for any reason the DLNR is unable to award a contract for a consultant as provided in paragraph F above, the DLNR shall provide written notification to KOA and shall promptly return the entire KOA Contribution to KOA.
  - b. If for any reason a contract for the purposes of this MOU is awarded but there are circumstances which arise which prevent or otherwise make impracticable its completion, the DLNR shall promptly return any unused portion of the KOA Contribution to KOA.
  - c. If, after the DLNR's final acceptance of work covered by this MOU and DLNR's final payment to the consultant is made, there are any unused funds, the DLNR shall promptly return any unused portion of the KOA Contribution to KOA.
10. Beach Restoration Subject to Further Legislative Approvals. KOA and DLNR agree that further approval by the State of Hawaii Legislature may be required to fund the beach restoration project once the EIS is completed and accepted and permits obtained.
11. Miscellaneous Provisions.
  - a. Partial Invalidity. If any provision of this MOU or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions of this MOU, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
  - b. Governing Law. This MOU shall be construed, interpreted and applied in accordance with the laws of the State of Hawaii.



- c. No Third Party Beneficiaries. No term or provision of this MOU is intended to be, or shall it be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- d. No Partnership. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.
- e. Modifications. This MOU may not be modified except by a written agreement signed by both parties.
- f. Binding on and Inuring to Benefit of Successors and Assigns. This MOU shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and assigns.
- g. Notices. All notices and other communications in connection with this MOU shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission, e-mail, or internationally recognized courier service, or three (3) days after being sent by United States mail, as the case may be, using the information of the DLNR and KOA as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below, or the non-receipt of any facsimile transmission sent to the facsimile number set forth below resulting from the non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purposes of this MOU.

DLNR: Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
1151 Punchbowl Street  
Honolulu, Hawaii  
Facsimile No.: (808) 587-0377  
Email address: sam.j.lemmo@hawaii.gov

KOA: Kaanapali Operations Association, Inc.  
P.O. Box 11135  
Lahaina, Hawaii  
Facsimile No.: (808) 661-7371  
Email address: whedani@aol.com



Counterparts: Facsimile Execution. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile or email shall be deemed for all purposes to be an original, executed counterpart thereof.

IN WITNESS WHEREOF, the DLNR and KOA have executed this Memorandum of Understanding as of the date first above written.

Approved as to form:	Kaanapali Operations Association, Inc.
By _____	By _____
Title: _____	Print name: <u>Wayne N. Hedani</u>
	Title: <u>President &amp; General Manager</u>
Approved as to form:	State of Hawaii, Department of Land and Natural Resources
By _____	By _____
Deputy Attorney General	William J. Aila, Jr., Chairperson Board of Land and Natural Resources
	Approved by the Board of Land and Natural Resources at its meeting held on _____