

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

June 13, 2014

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

PSF: 14MD-054

Maui

Grant of Term, Non-Exclusive Easement to Lanai Resorts, LLC dba Pulama Lanai for Pier Pilings Encroachment Purposes, Pulawai, Lanai, Seaward of Tax Map Key: (2) 4-9-017:002.

APPLICANT:

Lanai Resorts, LLC; dba Pulama Lanai

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of parcel 002, Pulawai, Lanai, identified by Tax Map Key: (2) 4-9-17, as shown on the attached map labeled Exhibit A.

AREA:

200 square feet, more or less.

ZONING:

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing pier piling remnants of cattle chute from, over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Based on historical research, Office of Conservation and Coastal Lands (OCCL) staff observed the subject pier pilings are remnants from a cattle chute that was used to load cattle onto ships and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See attached Exemption Notification.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Comply with County of Maui Special Management Area rules and regulations;
- 4) Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

REMARKS:

In connection with an application by Pulama Lanai for shoreline certification, the State Survey Office conducted a ground inspection on September 19, 2013 and identified two shoreline encroachments along Parcel 2 of TMK 4-9-17. One of the encroachments is the pier pilings, which is the subject of this request for easement. (The other encroachment is a set of concrete stairs leading to a tide pool, and is the subject of a separate request for easement.) See letter from State Land Surveyor Reid K. Siarot to Ryan M. Suzuki dated October 1, 2013, attached as Exhibit B. The State Surveyor's letter notes that the pier pilings were identified in a 2008 site inspection; however, a review of district files indicates that there was no easement or permit with regards to this encroachment. Pulama Lanai acquired the adjoining property from the previous landowner in 2012.

The pier pilings are remnants of an old cattle chute used to load cattle onto ships during the period when Lanai boasted a cattle industry. The cattle chute was constructed in the early 1900s, but by the 1950s the cattle ranching on Lanai had ceased and the chute fell into disuse. Today, all that remains of the cattle chute is the pier pilings, which is noted as Site 50-40-98-1522 on the State Inventory of Historic Properties.

By letter dated November 12, 2013, Pulama Lanai, through its attorney, sought resolution from the Office of Conservation and Coastal Lands (OCCL) of any conservation district violations with respect to the pier pilings. Research by OCCL staff confirmed that the pier pilings are remnants of a nonconforming use. Therefore, an after-the-fact conservation district use permit to cure the matter is not required. OCCL noted that the Board of Land and Natural Resources has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. Due to the historic significance of the pier pilings, however, OCCL recommended that there be discussions with Maui District Land Office and the Historic Preservation Division. See letter from OCCL Administrator Sam Lemmo to Yvonne Izu, dated December 12, 2013, attached as Exhibit C. Currently, Pulama Lanai is interested in maintaining this historical site and has no intention of removing the pier pilings. Thus, Pulama Lanai is asking for an easement for this encroachment.

Further, staff is recommending that the Board authorize the acceptance of a security

deposit from the Applicant in the form of a performance bond. This will allow the Applicant to process the shoreline certification which is needed for the Applicant to pursue a Special Management Area Use Permit for a development within the same TMK, but at a distance from the location of the pier pilings. As standard practice, staff does not allow a shoreline certification to be processed until all encroachments have been resolved through the full execution of legal documents or removal of the encroachments. In the past, shoreline certifications or other approvals were released prior to full document execution and staff found it difficult to compel the Applicant to execute the documents and make payment. Therefore, staff offers this alternative method of collecting a deposit to enable the Applicant to pursue permits and approvals with less risk that the Applicant will not execute the documents. While such a deposit does not completely ensure that the documents will be executed, it does show a strong commitment by the Applicant to enter into an agreement with the State.

Staff discussed the deposit amount with the Applicant, who expressed willingness to provide a deposit in the amount of \$1 million for both encroachments in this area. Staff believes that a deposit of \$500,000 for both encroachments should be adequate based on the land area involved, or \$250,000 for each encroachment. Accordingly, staff recommends a security deposit in the amount of \$250,000 for the pier pilings. The actual consideration for the easement will be determined by a full independent appraisal pursuant to Board approval. Upon execution of the legal documents, this deposit will be applied towards the consideration amount and other applicable charges. If the deposit amount is more than the total, then the Applicant shall be reimbursed any difference (and vice versa). If the Applicant does not execute the document, the Applicant shall be required to remove the encroachments to the satisfaction of the Department or to forfeit the deposit in full which the Department may then use to remove the encroachments.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Governor's approval and Legislative Concurrent Resolution will have to be obtained after obtaining Board approval for this disposition. Upon approval of today's request, the applicant is reminded of the requirement for a concurrent resolution from both houses of the legislature under Section 171-53(c), HRS, prior to the issuance of the requested easement.


**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-9-017:002, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
  
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Lanai Resorts, LLC covering the subject area for pier pilings encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
  
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-9-017:002, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  
  - C. Review and approval by the Department of the Attorney General; and
  
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  
  - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

4. Authorize the Department to accept a deposit in the amount of two hundred fifty thousand dollars (\$250,000) from the Applicant as an estimated easement consideration pursuant to the conditions set forth in the Remarks section above.

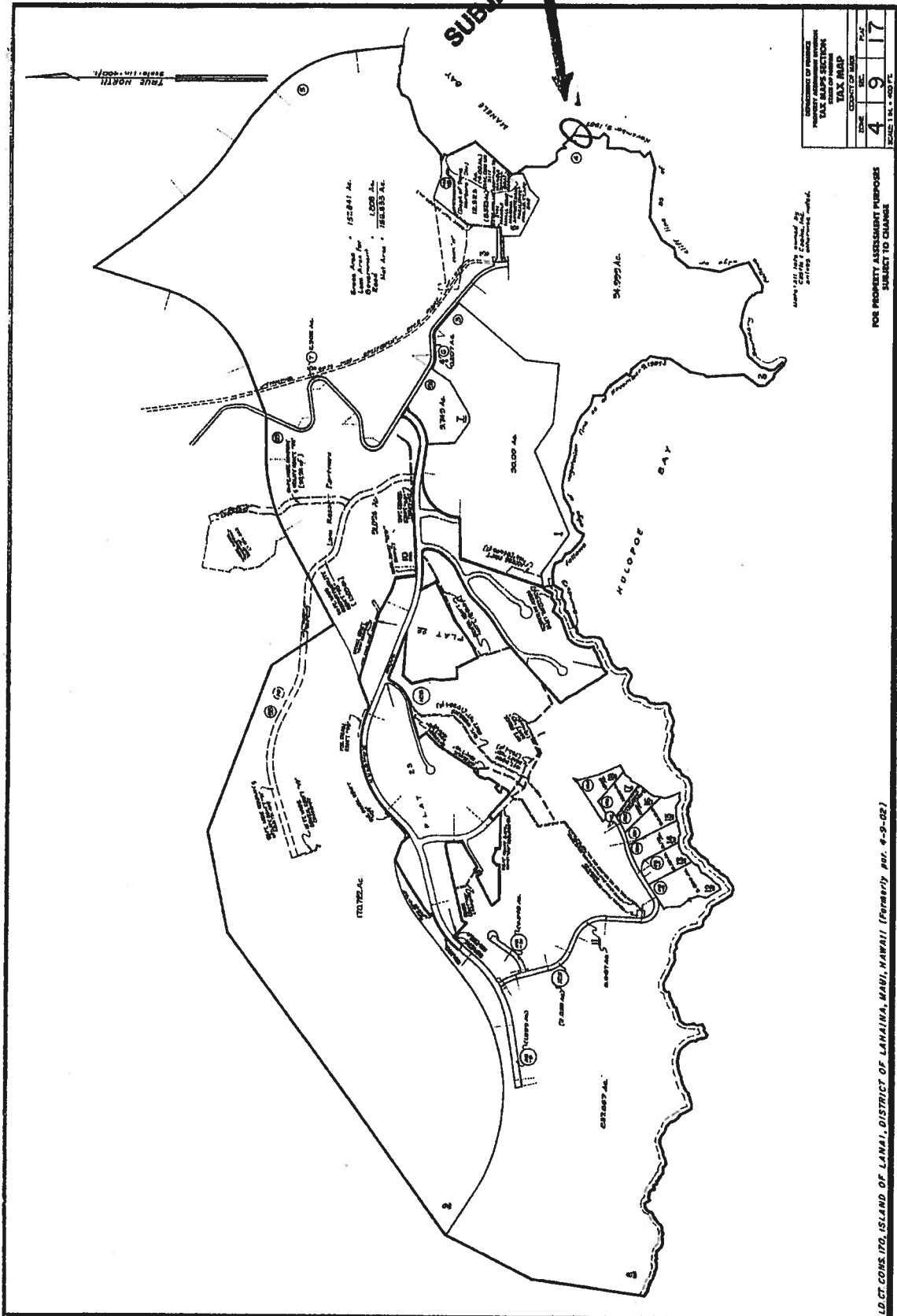
Respectfully Submitted,

  
\_\_\_\_\_  
Daniel Ornellas, District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson





**SUBJECT AREA**

DEPARTMENT OF LAND AND NATURAL RESOURCES	DATE: 4/9/17
LAND MAPS SECTION	SCALE: 1 in. = 400 ft.
TAX MAP	
ZONE: 4917	

FOR PROPERTY ASSESSMENT PURPOSES  
SUBJECT TO CHANGE

LD CT CONS TO, ISLAND OF LANAI, DISTRICT OF LANAINA, MAUI, HAWAII (FORMERLY PR. 4-9-02)

**EXHIBIT A**

NEIL ABERCROMBIE  
GOVERNOR



DEAN H. SEKI  
COMPTROLLER  
MARIA E. ZIELINSKI  
DEPUTY COMPTROLLER

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

Response refer to:  
L-197(13)  
LA-010

October 1, 2013

Mr. Ryan M. Suzuki  
R. M. Towill Corporation  
2024 N. King Street, Suite 200  
Honolulu, Hawaii'i 96819

Dear Mr. Suzuki:

Subject: Shoreline Certification Application  
TMK 4-9-17: Por. 02 & 08  
Owner: Pulama Lanai  
Lana'i, Hawaii'i

This shoreline was inspected on the ground on September 19, 2013 and as a result, the proposed shoreline was determined to in an acceptable location for certification. However, two shoreline encroachments were identified along Parcel 2 of TMK 4-9-17 (see enclosed photos). Encroachments include pier pilings (identified in a 2008 site inspection) and a concrete stairway with metal handrails and a concrete foundation. Before we can proceed, DLNR's Hawaii'i Administrative Rules Section 13-222-19 require the encroachments be resolved. Please contact the Maui District Branch of the Department of Land and Natural Resources Land Division at 984-8103 to resolve these encroachments.

After resolving the encroachments, please provide documents confirming the resolution of the encroachments so that the certification process can be completed.

Should you have any questions on this application, please call me at 586-0390.

Very truly yours,

Handwritten signature of Reid K. Siarot in black ink.  
REID K. SIAROT  
State Land Surveyor

Enclosure

cc: Ian Hirokawa  
Andy Bohlander  
Maui District Land Office, DLNR

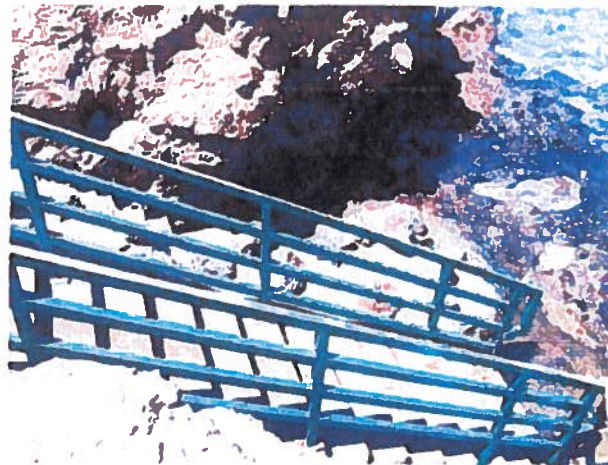
Exhibit B



**Photos:**



Top left: Looking north at the pier pilings, circled in red. Right: looking makai at the pilings, located in the tide pools.



Top left: looking north along the western side of the headland, toward the beach at Hulopoe Bay. Top right: looking down at the stairs and the concrete foundation in the tide pools.

NEIL A. BENCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AHL, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESTORATION SERVICES

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

REF:OCCL:TM

Shoreline Encroachment: LA 14-01

DEC 12 2013

Yvonne Y. Izu  
Moriyama, Lau & Fong LLP.  
400 Davies Pacific center  
841 Bishop St.  
Honolulu, HI 96813

SUBJECT: Shoreline Encroachment Located at Palawai, Lāna`i, Makai of TMK: (2) 4-9-017:002

Dear Ms. Izu:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your submitted information regarding the subject matter and has also reviewed George C. Munro's 2007 publication entitled *The Story of Lāna`i (Exhibit A & B)*. Based upon this information, it appears the pier pilings in question are remnants of a nonconforming use and was utilized as a cattle chute to load cattle onto ships. According to Munro, it is believed that all cattle were removed from the island and cattle ranching ceased in the 1950's.

Further the site has been noted as Site 50-40-98-1522 on the State Inventory of Historic Properties and may qualify for the State and/or National Register. Properties listed in the inventory receive the same level of regulatory protection, regardless of their register status.

The Board of Land and Natural Resource (BLNR) has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. Due to the historic significance of the site, we recommend that you discuss this matter with the Maui District Land Office and Historic Preservation Division.

Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at (808) 587-0382.

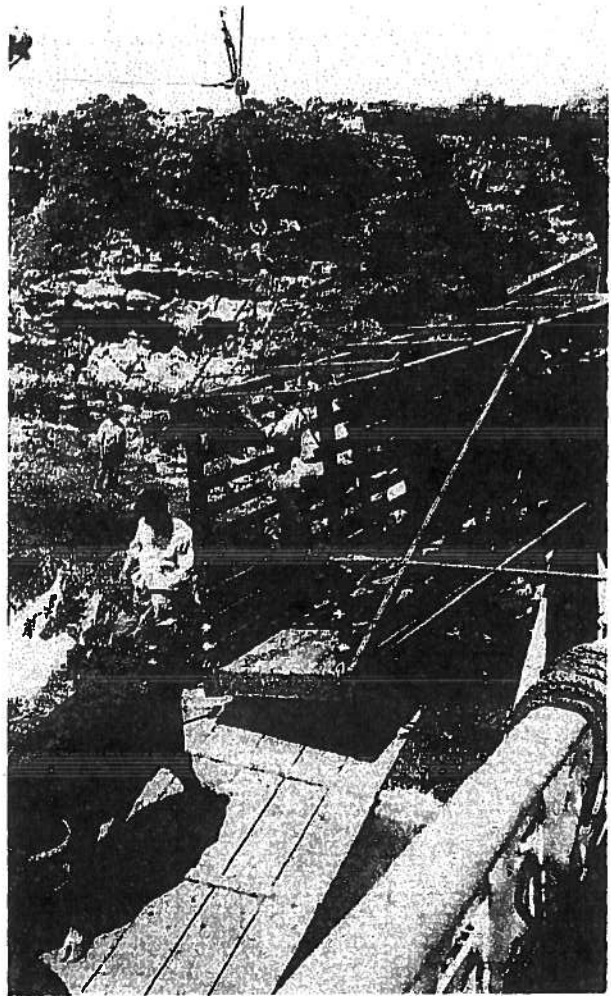
Sincerely,

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

C: Chairperson  
MDLO/HPD  
Maui County  
-Planning Department

EXHIBIT "C"

S.S. Likelike being  
loaded with cattle  
(Kenneth Emory album,  
Munro family collection)



Munro, George C. (2007) The Story of Lanai

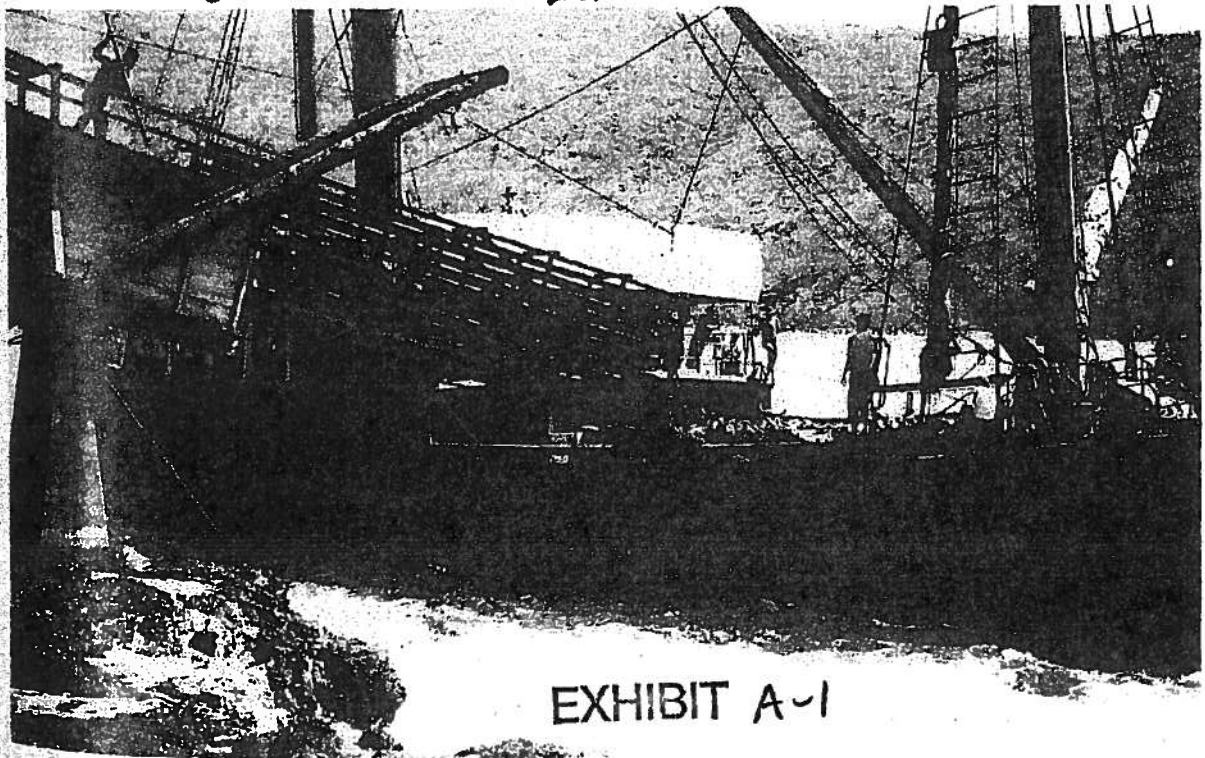
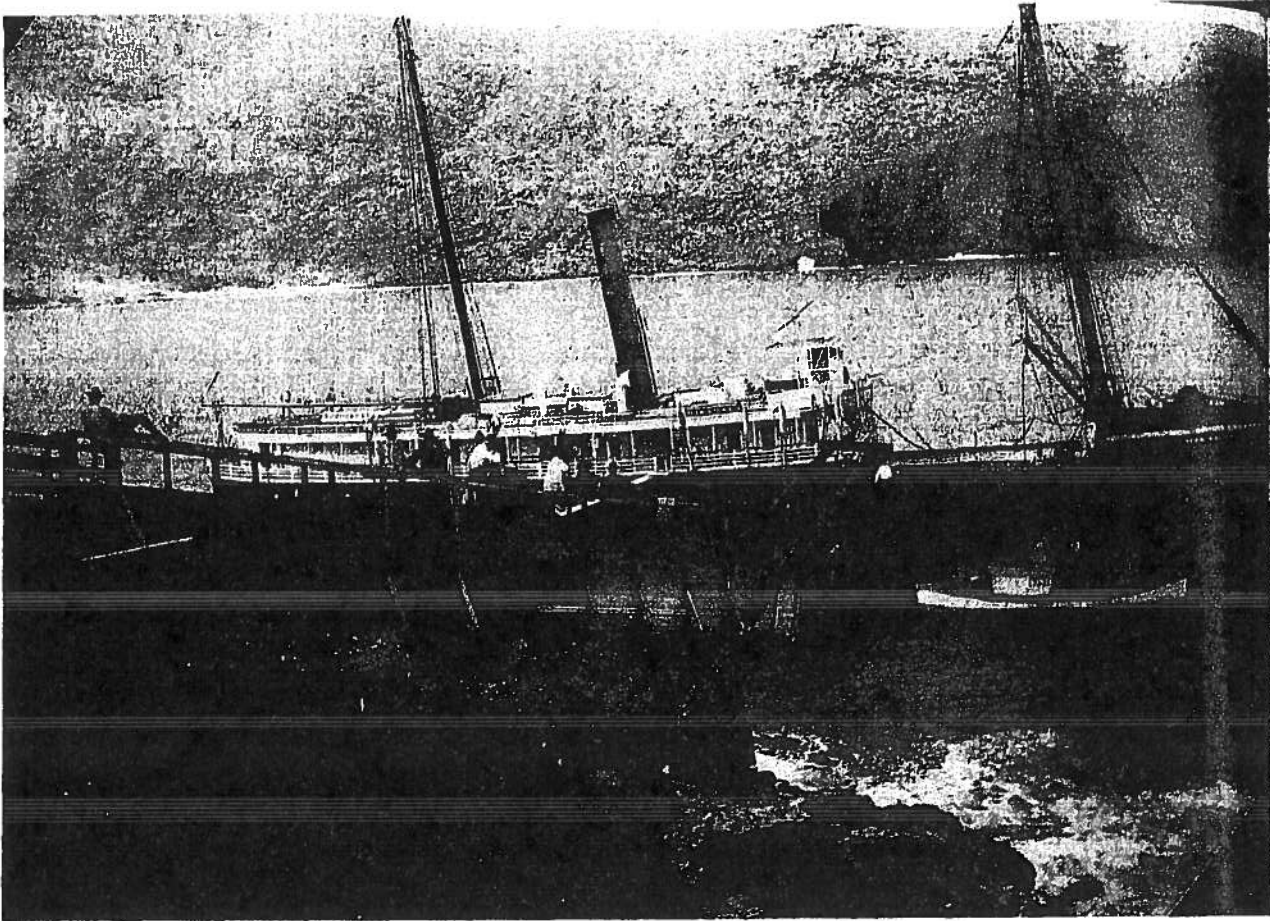


EXHIBIT A-1



*Drawing against the tidal shelf cattle chute and loading honey  
(Kenneth Emory album, Munro family collection)*

deep water and supported there by posts. Into this another chute was telescoped which, when run out over the water, reached to the deck of the steamer. By using a calf led down the chute, the large cattle were induced to follow, and the loading was done in a few minutes. The calf was brought ashore ready for the next shipment. The steamer then pulled out, and the cattle were tied up as she proceeded on her way.

Even with this method, the work could still prove more or less harassing with changes of weather. On one occasion the steamer pitched as the cattle were in the chute. As the ship rose, her side caught the end of the chute; it buckled, and chute and cattle were precipitated into the water. One or two animals were drowned. One landed at the foot of the cliff and could not be brought out so had to be killed where it was. Another swam seaward and, chased by the steamer, was eventually overhauled and taken aboard. The purser said it was interesting to see it swim. When it tired, it lay on its side and rested awhile, starting off again as it got its wind.

After the Hawaiian Pineapple Company built the Kaumālapa'u Harbor and wharf, the cattle were shipped from the wharf through a chute. The pen and chutes were movable and, when not in use, kept out of the way of other work.

*Munro, George C. (2007) The Story of Kōnāli*

EXHIBIT B-1



**EXHIBIT MAP**

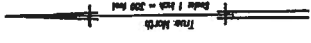
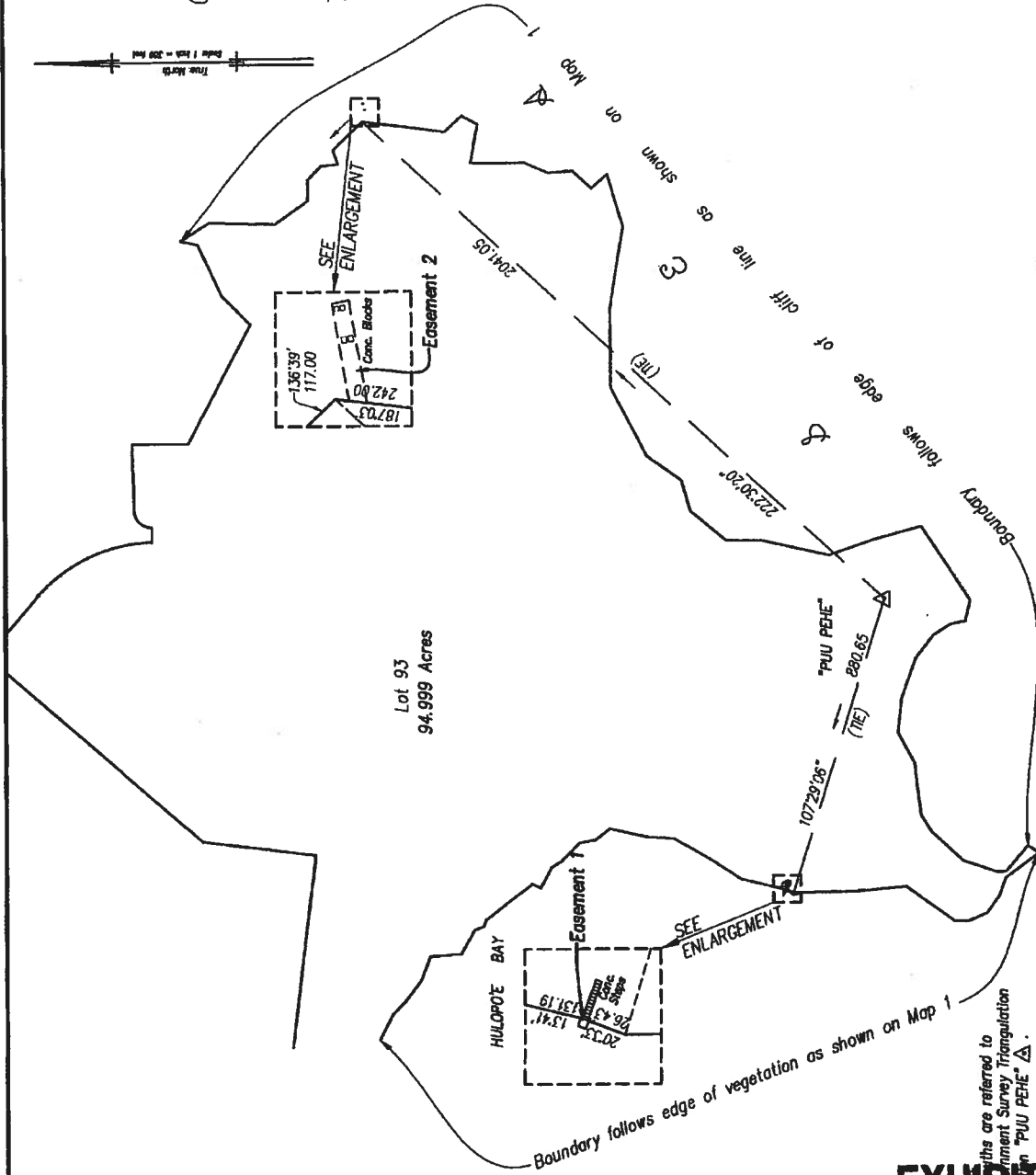
LOTS 93 AS SHOWN ON MAP 12  
OF LAND COURT CONSOLIDATION 170

ISLAND OF LANAI, HAWAII

TAX MAP KEY: (2)4-9-17: POR. 02

Owner: Pulama Lanai  
733 Bishop Street, Suite 200  
Honolulu, Hawaii 96813

Property Address: Island of Lanai



2024 N. King Street, Suite 200  
Honolulu, Hawaii 96817  
March 24, 2013

**P. M. TOWILL CORPORATION**  
SINCE 1968

**EXHIBIT "D"**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 13, 2014

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**JESSE K. SOUKI**  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**EXEMPTION NOTIFICATION**

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

**Project Title:** Issuance of a Term Non-Exclusive Easement to Lanai Resorts, LLC

**Project /Reference No.:** PSF No. 14MD-054

**Project Location:** Pulawai, Lanai, Hawaii

**Project Description:** Granting a long-term easement for pier pilings encroachment purposes.

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

**Exemption Class No. and Description:** In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, which states: "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" [HAR § 11-200-8(a)(1)], and Exemption Class No. 4, "Minor alteration in the conditions of land, water, or vegetation."

**Consulted Parties:** Mr. Sam Lemmo of the Office of Conservation and Coastal Lands was consulted as a source of authority having jurisdiction or expertise in this matter, and concurs that the exemptions identified above are applicable to, and appropriate for, the proposed request, and that the encroachment does not obstruct public access.

**Recommendation:** It is anticipated that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

*N*

  
\_\_\_\_\_  
William J. Aila, Chairperson

5/28/14  
\_\_\_\_\_  
Date