

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

June 27, 2014

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

PSF No.: 08MD-047
Maui

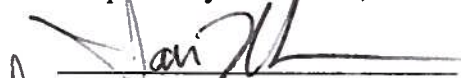
Status of the Lawsuit filed by Plaintiffs Malama Kahakai and Dana Naone Hall v. 3900 WA Associates, LLC, dba The Four Seasons Resort Maui at Wailea, The Board of Land and Natural Resources, State of Hawaii, et al., Civil No. 13-1-0219(2) filed in the Circuit Court of the Second Circuit, State of Hawaii (Maui County).

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

At its meeting on January 25, 2013, under Agenda Item D-5, the Board of Land and Natural Resources ("BLNR") approved a request by 3900 WA Associates, LLC, dba The Four Seasons Resort Maui at Wailea ("Four Seasons") for a term, non-exclusive easement primarily allowing, subject to certain conditions, the presetting of a limited number of beach chairs on unencumbered State land seaward of the shoreline. The BLNR also declared the proposed action exempt from the preparation of an environmental assessment. On February 15, 2013, Malama Kahakai and Dana Naole Hall, filed a lawsuit challenging the BLNR's approval of the non-exclusive easement. At its meeting on June 28, 2013, under Agenda Item D-6, the BLNR approved a request by Four Seasons to rescind the approval of the easement and exemption determination. A copy of the June 28, 2013 submittal is attached as Exhibit A.


The BLNR may hold a discussion in Executive Session to discuss the status of the lawsuit with its attorney, and to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson

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

June 28, 2013

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

PSF No: 08MD-047
Maui

Rescind Prior Board Action of January 25, 2013, Agenda Item D-5, Grant of Term, Non-Exclusive Easement to 3900 WA Associates, LLC, a Delaware limited liability company for Encroachments related to the Presetting of Chairs on the Beach Purposes, Honuaula, Maui, TMK (2) 2-1-023: seaward of 007.

BACKGROUND:

At its meeting on January 25, 2013, under Agenda Item D-5, the Board approved the granting of a non-exclusive easement to 3900 WA Associates, LLC, a Delaware limited liability company. ("Applicant"). A copy of the approved Board submittal is attached as Exhibit 1. Applicant is the owner of the Four Seasons Resort Maui at Wailea ("Resort"). The non-exclusive easement allowed the Applicant to pre-set beach chairs on lands seaward of the shoreline fronting the Resort during a limited period of time, between 6:30 A.M. and 8:00 A.M. daily. After 8:00 A.M., any unoccupied chairs would be removed, and any chairs placed on the beach would be done on an "on-demand" basis only. Furthermore, the non-exclusive easement would not allow the displacement of any members of the public using the beach.

REMARKS:

On February 15, 2013, Malama Kahakai and Dana Naone Hall ("Plaintiffs"), filed a complaint for declaratory, injunctive and other relief against Applicant, the Board and the Department among others, challenging the Board's approval of the non-exclusive easement. On June 10, 2013, Applicant, through their legal counsel, delivered a letter to the Department requesting that the Board "(a) vacate its Approval and (b) allow 3900 WA Associates to withdraw its application." A copy of the letter is attached as Exhibit 2. If the Board grants the Applicant's request, the Department will continue to work with the Applicant to resolve any outstanding encroachment issues.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of January 25, 2013, under agenda item D-5.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 28, 2013 *90*

D-6

EXHIBIT "A"

Respectfully Submitted,



Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



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

January 25, 2013

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

PSF No.: 08MD-047
Maui

Grant of Term, Non-Exclusive Easement to 3900 WA Associates, LLC, a Delaware limited liability company for Encroachments related to the Presetting of Chairs on the Beach Purposes, Honuaua, Maui, Tax Map Key: (2) 2-1-023: seaward of 007.

APPLICANT:

3900 WA Associates, LLC, a Delaware limited liability company.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Lot 102 of Land Court Application 1804 (Map 28) situate at Honuaua, Maui identified by Tax Map Key: (2) 2-1-023:007, as shown on the attached map labeled Exhibit A.

AREA:

2,400 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 25, 2013 J.O.

D-5
EXHIBIT " 1 "

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Right, privilege and authority to preset beach chairs for use by hotel guests over, under and across State-owned land within the easement area, subject to the terms and conditions described within.

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:

Ten (10) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

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

REMARKS:

Applicant, the owner of the Four Seasons Resort Maui at Wailea, requests approval of a ten year non-exclusive easement on State land seaward of the resort property. The purpose of the easement is to allow the resort to preset beach chairs for the exclusive use by resort guests on the beach area. In the course of processing an application for shoreline certification for the resort property, the State Surveyor and Department staff conducted a site visit of the property and located the shoreline along the steep bank face with well-established Naupaka growth. Therefore, the beach area seaward of the vegetation where the presetting would occur is located in the shoreline area and thus on land owned by the State.

Applicant desires the easement to consist of two rectangular shaped areas on each side of a corridor leading from the resort to the beach area. Each area would measure approximately 40 feet wide by 30 feet in length, for a total easement area of approximately 2,400 square feet. The public beach will not contain any markings or other demarcation line identifying the easement areas. As such, to provide some flexibility to hotel staff who will be the ones placing the chairs on the beach on a daily basis, the applicant and staff propose that the chairs will be situated within the two (2) 40' by 30' easement areas, and the easement areas shall be situated inside a larger envelope area A measuring 70' by 70', and envelope area B measuring 50' by 90'. This will allow some flexibility in the actual placement of the chairs on the beach to avoid the hotel staff having to become experts in surveying or GPS (global positioning system). In addition, the easements will not have a fixed location as the resort will only preset the chairs on the dry sand area, which is dependent upon the location of the high water mark on a given day. For example, the location of the larger envelope areas will be twelve (12) feet mauka of the high water mark for that particular day, or twelve (12) feet from the certified shoreline (mauka end of the sandy beach). In addition, the envelope areas will be located at least twelve (12) feet apart from each other. Therefore, no submerged lands will be utilized under this easement. Please refer to the material in Exhibit B for further information.

The proposed easement shall be non-exclusive, so the presetting of the chairs may be altered as needed from time to time to accommodate other uses of the beach area, such as a one-time event. In such instance, the Chairperson may negotiate the use of the beach area to accommodate the respective parties via a right-of-entry agreement. Furthermore, there are additional encroachments consisting of canoes and unused beach chairs stored in the shoreline area. This proposed easement does not address those encroachments, only the presetting of beach chairs. The applicant will address those encroachments separately, and return to the Board for approval of second easement to resolve the

additional encroachments.¹

Applicant requests the ability to preset approximately 30 to 35 beach chairs each morning no earlier than 6:30 A.M., with the exception of the resort's two busiest periods of the year, December 18th through January 2nd, and the spring break period defined as beginning the 10th day preceding Easter to the immediately following Thursday. During those periods the presetting would commence no earlier than 30 minutes before sunrise. Beginning at 8 A.M., and throughout the day, resort staff assigned to the beach area will remove any chairs that are determined to be unoccupied by resort guests. Thereafter, chairs may be returned to the beach area only at the request of a guest and as available space on the beach area will allow. Resort staff shall remove all chairs no later than 60 minutes after sunset, unless occupied by a guest. In the event of such an occurrence, the chair shall be removed within 30 minutes after the guest surrenders the chair.

Given the unique circumstances associated with this easement request, it is recommended that the Board approve the easement for a limited ten-year term. This will allow the Department to monitor the easement and determine if such terms and conditions will be appropriate for future dispositions. If management of the easement is successful, then the easement can be renewed at the end of the term. If there are persistent issues that need to be resolved, the Department can address them without being bound to a longer term disposition.

No agency comments were solicited because the actions authorized under the easement are very similar to those conducted by the general public on a daily basis on beaches across the entire state. The easement will not allow any permanent or long term alteration of the beach area, unlike other standard shoreline easements for structures and improvements. Furthermore, given the limited duration of the preset, impact on the area will be minimal.

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.

RECOMMENDATION: That the Board:

1. Declare that, after considering the Department's previous exemption from 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

¹ The applicant Hotel hasn't yet decided whether to ask the BLNR to allow the other encroachments to remain by virtue of another nonexclusive easement, or remove the encroachments from within the shoreline and public land area.

ownership of the abutting parcel described as Tax Map Key: (2) 2-1-023:007, 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 3900 WA Associates, LLC covering the subject area for beach chair preset purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-1-023:007, 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.

Respectfully Submitted,



Ian Hirokawa
Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

N



PLAT 08

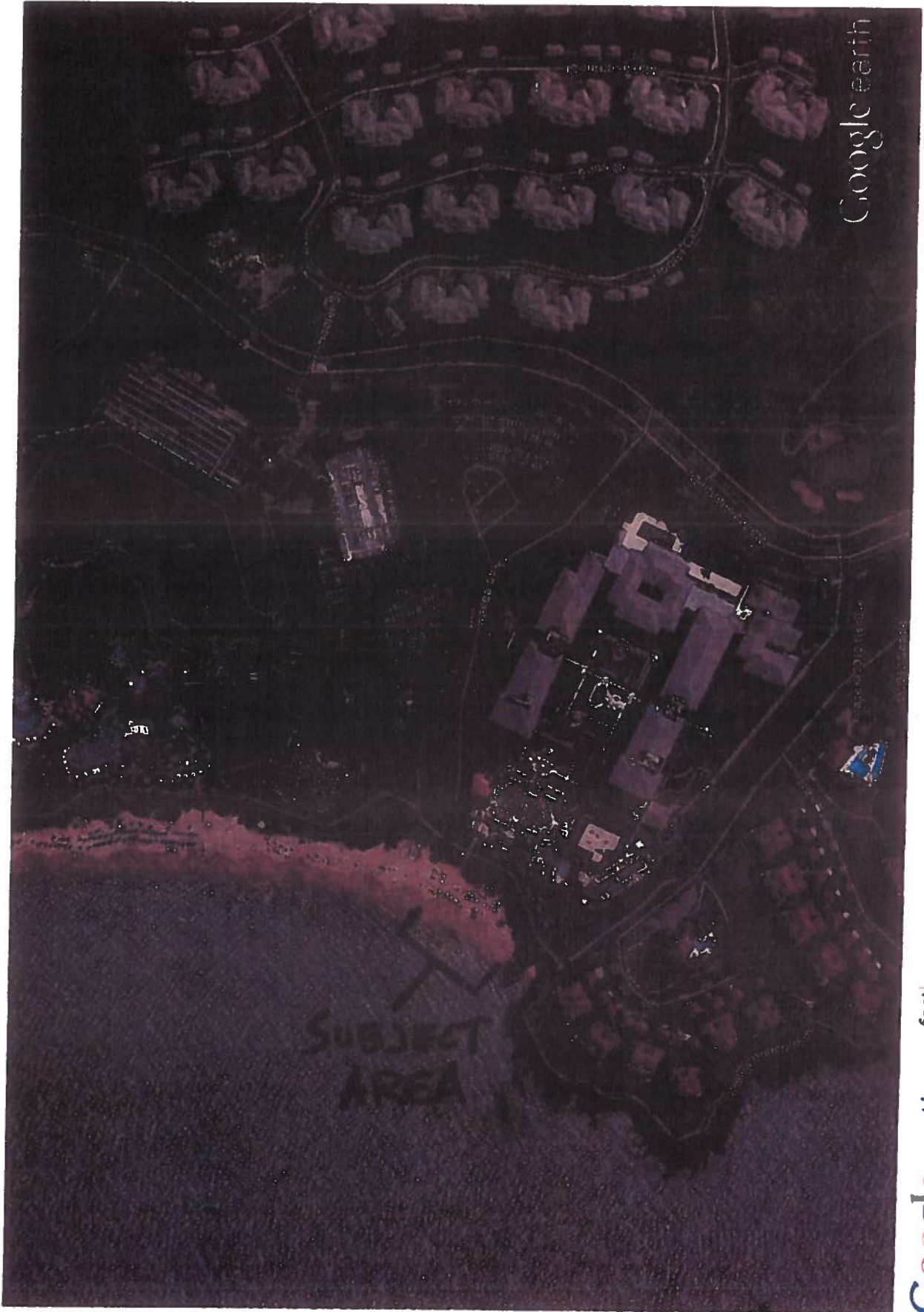


EXHIBIT "A"

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF REVENUE COUNTY OF MAUI TAX MAPS SECTION TAX MAP	
DATE	2 1 00
BY	1 1 00
SCALE	AS SHOWN

Copyright 2000 by B.S.



Google earth



500

1000

feet
meters

Google earth

EXHIBIT "A"

From David Nakamura
To "Russell.Y.Tsujit
Cc Thomas Steinhau
Date 01/07/2013 10:12 AM
Subject Four Seasons

Russell,

On the chair pre-setting areas, I enclose a photograph and a survey map which show the 2 "envelopes" within which each of the 2 30' x 40' pre-setting areas will be located on a given day. The pre-setting envelope labeled A is 70' x 70' and envelope B is 50' x 90'. Neither envelopes A nor B will be located closer than 12 feet to each other, to the certified shoreline boundary, or to the upper reaches of the waves at high tide on a given day. As I mentioned earlier, the reasons for the "envelopes" is to give the resort flexibility to locate the two 30' x 40' pre-setting areas in the event of either abnormal high tides or beach erosion, or the occupancy by non-guests of portions of the beach.

Lastly, for your information, the resort's surveyor will be at the property this week to locate the canoe and beach chair/equipment storage areas.

Please contact me should you have any questions.

David H. Nakamura

David H. Nakamura/ar

EXHIBIT "B"

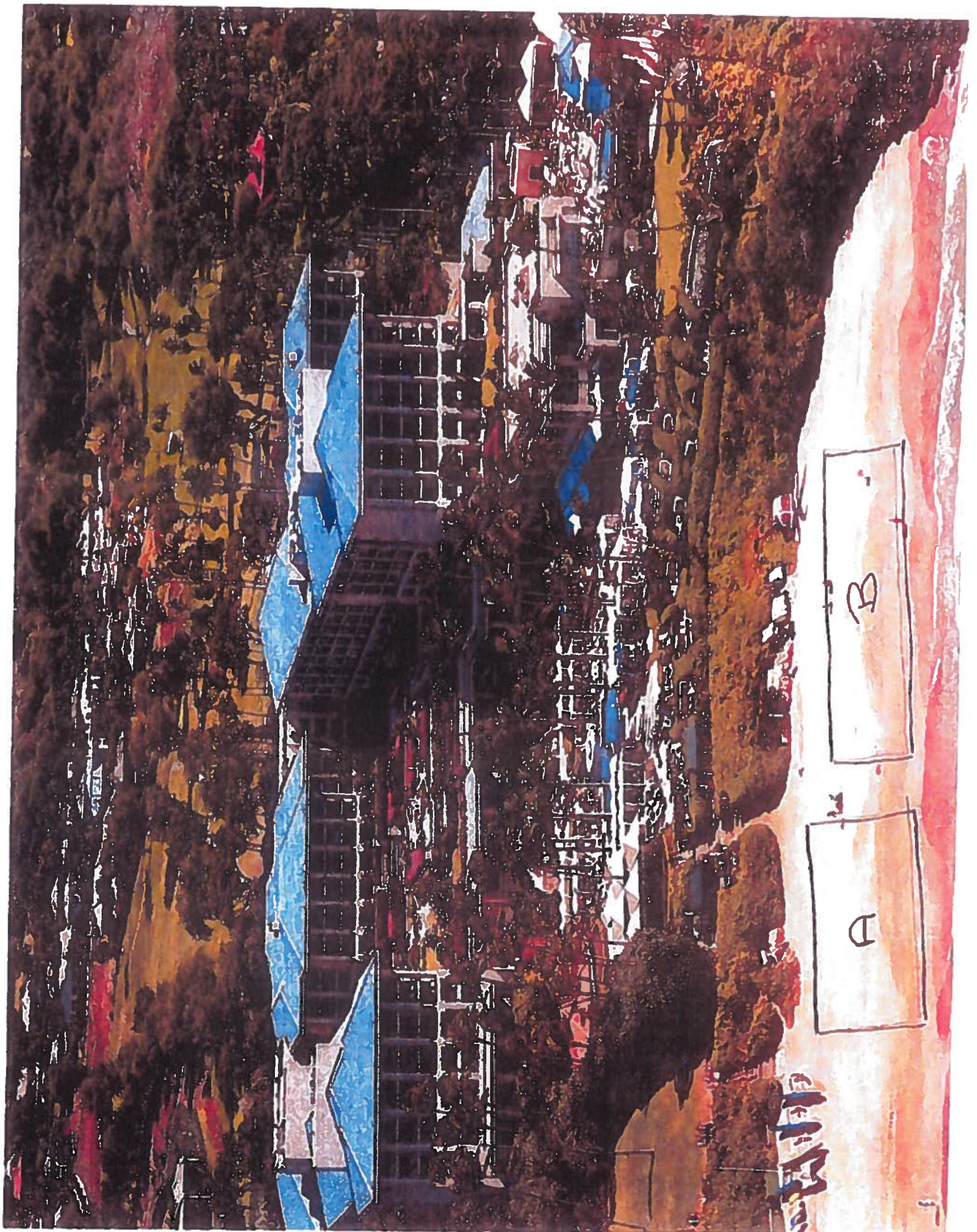


EXHIBIT "B"

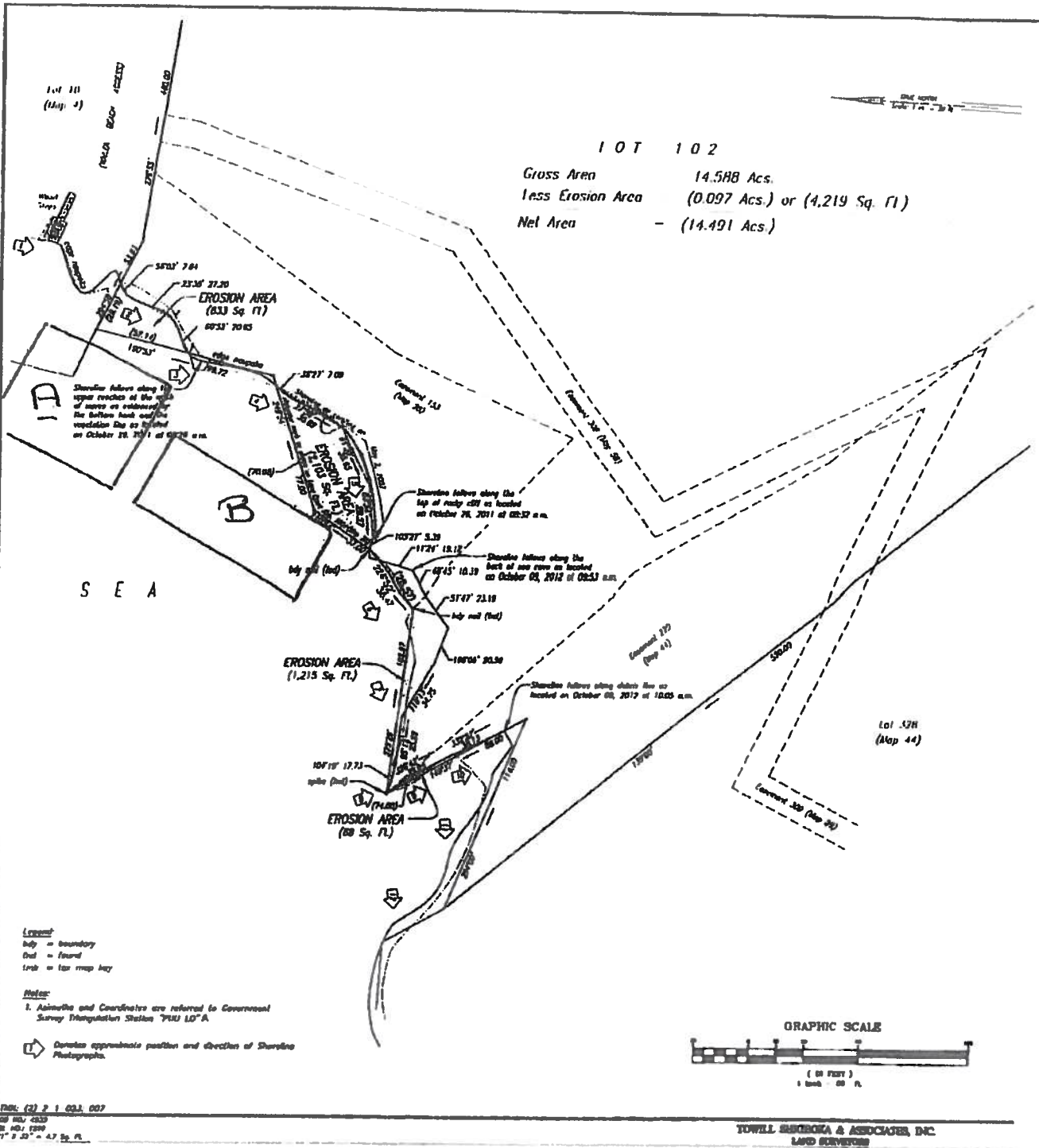


EXHIBIT "B"

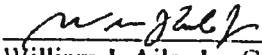
TOWILL SURVEYING & ASSOCIATES, INC. 10/11/12 10:00 AM

TOWILL (2) P 1 021.007
 JOB NO. 4333
 7/1/12 10:00
 71' x 20' = 4.7 Sq. Ft.


TOWILL SURVEYING & ASSOCIATES, INC.
 LAND SURVEYORS

Recommendation:

It is recommended that the Board find 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.



William J. Aila, Jr., Chairperson



Date

6/15/13

June 10, 2013

Regular Mail and Email (dlnr@hawaii.gov)

William J. Aila, Jr., Chairperson
Board of Land and Natural Resources of Land Division
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Re: PSF No. 08MD-047
3900 WA Associates, LLC

Dear Chairperson Aila:

I represent 3900 WA Associates, LLC (Four Seasons Resort Maui) ("3900 WA Associates").


At its meeting on January 25, 2013 (agenda item D-5), the Board of Land and Natural Resources (the "Board") approved the grant of a term, non-exclusive easement to 3900 WA Associates for encroachments related to the presetting of chairs for a portion of the area seaward of my client's property, located at Honuaula, Maui, Hawai'i, bearing tax map key number (2) 2-1-023:007 (the "Approval").

3900 WA Associates desires to withdraw its application (PSF No. 08MD-047) which resulted in the Board's Approval. My client therefore respectfully requests that the Board: (a) vacate its Approval and (b) allow 3900 WA Associates to withdraw its application.

This request does not affect the pendency of 3900 WA Associate's application submitted on March 22, 2013, for a right of entry, easement, license, permit or other required approval for uses described therein for the area fronting and seaward of the above referenced property.

Thank you for your consideration of this request.

Sincerely,



David H. Nakamura
McKeon Imlay Mehling
A Limited Liability Law Company

cc: Client

EXHIBIT "2"