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DEPARTMENT OF LAND AND NATURAL RESOURCES
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SEP 24 2013

CDUA MA 3689

Genevieve Salmonson
Office of Environmental Quality Control
Department of Health, State of Hawai'i
235 S. Beretania Street, Room 702
Honolulu, Hawai'i 96813

REC'D
13 SEP 24 P2:21
OFFICE OF ENVIRONMENTAL
QUALITY CONTROL

Dear Ms. Salmonson,

With this letter, the Office of Conservation and Coastal Lands (OCCL) hereby transmits the final environmental assessment and finding of no significant impact (FEA-FONSI) for an After-the-Fact Seawall and Stairs, located at Alaeloa, Lahaina, Island of Maui – TMK: (2) 4-3-015:001, Maui for publication in the next available edition of the Environmental Notice.

The Draft Environmental Assessment and Anticipated Finding of No Significant Impact (DEA-AFONSI) was published in OEQC's March 8, 2013 *Environmental Notice*. The FEA includes copies of public comments and the corresponding responses from the applicant that were received during the 30-day public comment period on the DEA-AFONSI.

We have determined that this project will not have significant environmental effects, and have therefore issued a FONSI. The FONSI does not constitute approval of the CDUA; authority to grant or deny the final permit lies with the Board of Land and Natural Resources.

Enclosed is a completed OEQC Publication Form, a copy of the FEA-FONSI, an Adobe Acrobat PDF file of the same, and an electronic copy of the publication form in MS Word. Simultaneous with this letter, we have submitted the summary of the action in a text file by electronic mail to your office.

If there are any questions, please contact Sam Lemmo at 587-0377.

Sincerely,

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

Enclosures: *Final EA, OEQC Pub Form*
Disc: *FEA, OEQC Pub Form*

APPLICANT ACTIONS
SECTION 343-5(C), HRS
PUBLICATION FORM (JANUARY 2013 REVISION)

Project Name Schweitzer Shoreline Erosion Control
Island: Maui
District: Lahaina
TMK: (2) 4-3-015:001
Permits: Conservation District Use

Approving Agency:

Office of Conservation and Coastal Lands, Department of Land and Natural Resources,
Kalanimoku Building, 1151 Punchbowl Street, Room 131, Honolulu, Hawaii 96813,
Contact: Samuel J. Lemmo, OCCL Administrator, Telephone: (808) 587-0377

Applicant:

Henry Schweitzer and Diane Schweitzer
1885 Lower Honoapiilani Road
Lahaina, Hawaii 96761
Contact: Paul R. Mancini, Esq., Telephone: (808) 874-8351

Consultant:

Chris Hart & Partners, Inc.
115 N. Market Street, Wailuku, Hawaii 96793
Contact: R. Raymond Cabebe, Land Planner, Telephone: (808) 242-1955

Status (check one only):

- DEA-AFNSI Submit the approving agency notice of determination/transmittal on agency letterhead, a hard copy of DEA, a completed OEQC publication form, along with an electronic word processing summary and a PDF copy (you may send both summary and PDF to oeqchawaii@doh.hawaii.gov; a 30-day comment period ensues upon publication in the periodic bulletin.
- FEA-FONSI Submit the approving agency notice of determination/transmittal on agency letterhead, a hard copy of the FEA, an OEQC publication form, along with an electronic word processing summary and a PDF copy (send both summary and PDF to oeqchawaii@doh.hawaii.gov; no comment period ensues upon publication in the periodic bulletin.
- FEA-EISPN Submit the approving agency notice of determination/transmittal on agency letterhead, a hard copy of the FEA, an OEQC publication form, along with an electronic word processing summary and PDF copy (you may send both summary and PDF to oeqchawaii@doh.hawaii.gov; a 30-day consultation period ensues upon publication in the periodic bulletin.
- Act 172-12 EISPN Submit the approving agency notice of determination on agency letterhead, an OEQC publication form, and an electronic word processing summary (you may send the summary to oeqchawaii@doh.hawaii.gov. NO environmental assessment is required and a 30-day consultation period upon publication in the periodic bulletin.
- DEIS The applicant simultaneously transmits to both the OEQC and the approving agency, a hard copy of the DEIS, a completed OEQC publication form, a distribution list, along with an electronic word processing summary and PDF copy of the DEIS (you may send both the summary and PDF to oeqc@doh.hawaii.gov); a 45-day comment period ensues upon publication in the periodic bulletin.
- FEIS The applicant simultaneously transmits to both the OEQC and the approving agency, a hard copy of the FEIS, a completed OEQC publication form, a distribution list, along with an electronic word processing summary and PDF copy of the FEIS (you may send both the summary and PDF to oeqc@doh.hawaii.gov); no comment period ensues upon publication in the periodic bulletin.
- Section 11-200-23 Determination The approving agency simultaneously transmits its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS to both OEQC and the applicant. No comment period ensues upon publication in the periodic bulletin.
- Statutory hammer Acceptance The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it failed to timely make a determination on the acceptance or nonacceptance of the applicant's FEIS under Section 343-5(c), HRS, and that the applicant's FEIS is deemed accepted as a matter of law.
- Section 11-200-27 Determination The approving agency simultaneously transmits its notice to both the applicant and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that a supplemental EIS is not required. No EA is required and no comment period ensues upon publication in the periodic bulletin.
- Withdrawal (explain)

Summary (Provide proposed action and purpose/need in less than 200 words. Please keep the summary brief and on this one page):

The property owner proposes to retain a seawall and stair structure that was constructed by a contractor on the subject property in 1980 on what was then understood to be private property and pursuant to permits applied for and issued by the County of Maui. It was discovered in 2012 that the contractor built the structure makai of a certified shoreline boundary that was obtained in 1980 for the purposes of obtaining the County of Maui permits.

The Board of Land and Natural Resources considered the circumstances under which the structure was constructed in 1980 and authorized the property owner to file for a Conservation District Use Permit in order to obtain an easement on the State of Hawaii property.

The seawall and stairs are consistent with the existing walls to the north and south of the property and will protect the upland portion of the property from erosion due to storm waves and will also protect the beach and nearshore waters from impacts related to eroded soils transported by wave action and/or inland runoff. Removal of the structure would result in erosion of the subject property and turbidity in nearshore coastal waters.

FINAL
HRS CHAPTER 343 ENVIRONMENTAL ASSESSMENT
In Support Of
CONSERVATION DISTRICT
USE APPLICATION
for

SCHWEITZER
SHORELINE EROSION
CONTROL

4885 Lower Honoapiilani Road
Lahaina, Maui, Hawaii
Tax Map Key: (2) 4-3-015:001

Prepared for:

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Phone: (808) 871-8351

Prepared by:

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SEPTEMBER 2013



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APPENDICES

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| <u>Appendix F</u> | <u>Resolution Agreement, approved by Maui Planning Commission August 13, 2013</u> |



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I. PROJECT INFORMATION

A. PREFACE

The Schweitzer property is a residential shoreline development on a 15,756 square foot site along the coast of West Maui. The site consists of two residential structures which, according to Maui County Real Property Tax records, were originally built in 1966 and 1980. The site is double terraced with two landscape retaining walls and a seawall and stair structure along the shoreline.

B. PURPOSE OF THE REQUEST

The purpose of this Environmental Assessment (EA) is to analyze the impacts related to the existing seawall and stairs *makai* of the shoreline boundary of the subject property which provides shoreline erosion control. Preparation of an EA is required in compliance with the provisions of HRS Chapter 343, since the existing structure involves an action within the Conservation District. This EA is submitted in support of an After-the-Fact Conservation District Use Application (CDUA) for the existing seawall and stair structure.

C. PROJECT PROFILE

| | |
|--------------------|---|
| Project: | Shoreline Erosion Control |
| Project Address: | 4885 Lower Honoapiilani Road Lahaina, Maui, Hawaii 96761 |
| Project TMK: | (2) 4-3-015:001 |
| Parcel Size: | 15,756 square feet |
| Existing Land Use: | Single Family Residential |
| Access: | Lower Honoapiilani Road |

D. IDENTIFICATION OF THE APPLICANT/OWNER

| | |
|-------------|--|
| Land Owner: | Henry H. Schweitzer, Diane A. Schweitzer, & Matthew H. Schweitzer |
| Address: | 4885 Lower Honoapiilani Road Lahaina, Maui, Hawaii 96761 |



Contact: Mr. Paul R. Mancini, Esq.
Mancini Welch & Geiger
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Kahului, Hawaii 96732
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Facsimile: (808) 871-0732

Email: prm@mrwlaw.com

E. CONSULTANTS

Land Use Environmental Planner: Chris Hart & Partners, Inc.
115 N. Market Street
Wailuku, Maui, Hawaii 96793

Phone: Voice: (808) 242-1955
Facsimile: (808) 242-1956

Contact: Mr. R. Raymond Cabebe
Email: rcabebe@chpmaui.com

Coastal Engineer: Sea Engineering, Inc.
41-305 Kalaniana'ole Highway
Waimanalo, Hawaii 96795-1820

Phone: Voice: (808) 259-7966
Facsimile: (808) 259-8143

Contact: Mr. Jim Barry
Email: sei@seaengineering.com

F. ACCEPTING AGENCY

Agency: Office of Conservation and Coastal Lands
State of Hawaii Department of Land &
Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Phone: Voice: (808) 587-0382
Facsimile: (808) 270-7634

Contact: Mr. Samuel J. Lemmo



G. MAJOR LAND USE, DEVELOPMENT AND CONSTRUCTION APPROVALS

1. Conservation District Use Permit from the State Department of Land and Natural Resources.
2. Building Permit from the Department of Public Works.

H. PRE-CONSULTED AGENCIES & PRIVATE INTERESTS

COUNTY OF MAUI

1. Department of Planning

STATE OF HAWAII

1. Department of Land & Natural Resources, Office of Coastal Conservation Lands (OCCL)
2. Board of Land & Natural Resources

I. CONSULTED AGENCIES & PRIVATE INTERESTS

The Draft Environmental Assessment for the Schweitzer Shoreline Erosion Control was published on March 8, 2013 by the State Office of Environmental Quality Control (OEQC) in its Environmental Notice bulletin. The publication initiated a 30-day public review period ending on April 8, 2013. The Draft EA was mailed to the agencies below. All comment and response letters are found in Appendix "E", unless noted otherwise.

PUBLIC AGENCIES:

Federal

1. U.S. Army Corps of Engineers

State

1. Historic Preservation Division, Department of Land and Natural Resources
2. Maui District Land Office, Department of Land and Natural Resources
3. Office of Hawaiian Affairs
4. Office of Environmental Quality Control
5. Lahaina Public Library

County

1. Department of Planning



II. DESCRIPTION OF THE PROPERTY AND PROPOSED ACTION

A. PROPERTY LOCATION AND DESCRIPTION

The subject property is located at 4885 Lower Honoapiilani Road, Island of Maui, Hawaii, Tax Map Key (2) 4-3-015:001 (See: Figures No. 1 “Regional Location Map”, No. 2 “Aerial Map”, and No. 3 “Tax Map”). The property is located on the northwest coast of West Maui, approximately 7 miles north of central Lahaina Town and approximately 1.5 miles south of the resort community of Kapalua. The project site is situated along Keonenui Bay, between Haukoe and Alaeloa Points, in an area collectively referred to as Alaeloa. Access to the property is via Lower Honoapiilani Road.

The 15,756 square foot parcel is located on Keonenui Bay, approximately midway between Haukoe and Alaeloa Points. The property ranges in elevation from sea level at its *makai* boundary to approximately 45 feet above mean sea level (AMSL) at the *mauka* boundary with Lower Honoapiilani Road. Erosion has been ongoing along this entire shoreline area for a considerable length of time.

B. EXISTING LAND USE

Existing structures on the parcel include two single family dwellings (1,381 sq. ft. - 1966 and 500 sq. ft. - 1980). The properties fronting the entirety of the shoreline between Haukoe and Alaeloa Points are armored by individual seawalls or similar protection that together form a nearly contiguous structure along the shoreline.

C. LAND USE DESIGNATIONS

The project site lies in the State *Urban* District, is proposed for *Single-Family* use by the West Maui Community Plan and is zoned *R-3 Residential District* by Maui County. The site is located within the *Special Management Area* (SMA), the area of jurisdiction of the Hawaii Coastal Zone Management (CZM) program. The subject seawall and stairs are located *makai* of the most recent certified shoreline; therefore, it lies within the State *Conservation District*.



| | |
|--------------------------------|---|
| State Land Use Classification: | Urban & Conservation (See: Figure No. 4, "State Land Use Boundary Map") |
| West Maui Community Plan: | SF Single Family (See: Figure No. 5, "West Maui Community Plan ") |
| County Zoning: | R-3 Residential (See: Figure No. 6, "County Zoning Map") |
| Flood Zone Designation: | X: Outside 0.2% annual chance floodplain; AE: 100-year floodplain (BFE: 17 ft.) (See: Figure No. 7, "Flood Insurance Rate Map") |
| Special Designations: | Special Management Area (<i>mauka</i> of shoreline); Resource Conservation Subzone (<i>makai</i> of shoreline) |

D. PROJECT BACKGROUND AND NEED

The existing seawall and stair structure was constructed in the early 1980s (**See:** Figure No. 8, "Photographs"). Footing reinforcement and a stair extension were added on later. The shoreline fronting the parcel was last certified on February 4, 1980 based on a survey prepared by George F. Newcomer Land Surveyor (**See:** Appendix "A", "Shoreline Survey Map"). A current survey locates the seawall and the stairs, except for the two topmost treads, *makai* of this shoreline (**See:** Appendix "B", "Survey of Lot 44-B-1"). On September 28, 2012, the Board of Land and Natural Resources (BLNR) reviewed the Conservation District Enforcement File MA 09-54 "Alleged Unauthorized Seawall and Stairs by Henry and Diane Schweitzer" along with a report prepared by the Office of Conservation and Coastal Lands (OCCL) (**See:** Appendix "C"). The report contains a chronology of events pertaining to the existing seawall and stairs. At its September 28, 2012 meeting, the BLNR levied a fine and set a deadline of 120 days to either remove the seawall and stairs or apply for an after-the-fact permit. The land owners have filed the CDUA and this Draft EA in compliance with the BLNR's decision.

The Applicant entered into a Resolution Agreement with the County of Maui that was approved on August 13, 2013 by the Maui Planning Commission with an anticipated signing by the Mayor of Maui County (**See:** Appendix "F"). This agreement contains the options for the top two (2) steps of the stairway that lie in the shoreline area that will either be removed or applications for an SMA authorization and Shoreline Setback Variance will be submitted to allow the steps to remain. A



fine of \$5,000.00 (five thousand dollars) will be paid to the County of Maui in connection with the two steps within the shoreline area.

Most of the shoreline at Keonenui Bay is either naturally hardened or artificially armored with vertical reinforced concrete stone masonry seawalls. Due to the hardened shoreline, the natural wave action in the area is magnified and continues to erode the clay and ash substrate below the base of the unprotected natural walls of Keonenui Bay, threatening public safety and adding silt to the adjacent coastal waters.

Allowing the seawall and stairs to remain enhances public safety and create a long-term solution that will stabilize the shoreline of Keonenui Bay in order to:

- Prevent future erosion of the property and potential undermining of neighboring shoreline protection structures; and
- Prevent earthen soils from eroding and causing siltation of the coastal waters.

E. ALTERNATIVES

A Memorandum pertaining to a “Coastal Engineering Site Visit at Keonenui Bay” was prepared by Mr. Jim Barry of Sea Engineering, Inc. (**See:** Appendix “D”). The following alternatives include Mr. Barry’s evaluation of shoreline conditions and conclusions. In the Sea Engineering Memorandum, there was only one alternative considered in determining the preferred option:

Removal of Seawall and Stairs: This alternative would remove the seawall and stair structure.

Positive Impacts: The Sea Engineering Memorandum (J. Barry, December 2012, p. 13) states that:

Removal of the Schweitzer structures would result in:

- *Minor increase in beach width;*

Negative Impacts: The Sea Engineering Memorandum (J. Barry, December 2012, p. 13) states that:

Removal of the Schweitzer structures would result in:

- *Exposure and potential damage due to flanking of the Kahana Sunset and Lusardi seawalls;*



- *Likely exposure of a mudstone escarpment buried behind the existing wall, however there is great uncertainty as to the buried terrain;*
- *Increased substrate erosion and consequent turbidity of nearshore waters;*
- *Erosion of a floodway during extreme floods;*
- *Potential loss of at least one Schweitzer landscape wall*

The Sea Engineering Memorandum concludes its analysis of the seawall and stair removal with: “Changes in overall beach morphology due to structure removal are likely to be minor, however the potential flanking of structures on the neighboring properties is a major concern.” (p. 13) For this reason, this alternative was deemed infeasible and dropped from consideration.

Other Alternatives:

Removal of Seawall and Stairs and Small Scale Beach Nourishment: This alternative would involve the removal of the seawall and stair structure and placement of beach quality sand from an outside sand source.

Positive Impacts: This nonstructural alternative would provide a natural solution to the problem of stabilizing the shoreline. A sandy beach in this area enhances the economic value of this property as well as all of the other properties along Keonenui Bay.

Negative Impacts: The addition of sand to just one property along a beach is generally not effective as the sand will quickly spread over a wide area. While sand can be redistributed by “sand pushing” to create an artificial berm, a period of high swells would quickly diminish the quantity of sand, requiring replenishment. In addition, good quality beach sand is in short supply in the Hawaiian Islands.

Removal of Seawall and Stairs and Beach Enhancement with Landscaping: This alternative would remove the seawall and stair structure and placement of shoreline compatible plantings. Native plants such as Naupaka and Pohuehue could be utilized.

Positive Impacts: This nonstructural alternative would provide a natural solution to the problem of stabilizing the shoreline. Historical evidence has shown that vegetation provides protection from seasonal to mild episodic wave action.



Negative Impacts: Nearly all other properties along Keonenui Bay has some form of hardened shoreline. Since this would be the least path of resistance, wave energy would be directed here. Although vegetation would provide protection from mild erosional events, a severe wave event would quickly decimate the planting. Erosion at this property would expose the flanks of neighboring properties.

Removal of Seawall and Stairs and Replace with Engineered Revetment or Beachwall: This alternative would remove the seawall and stair structure and construction of an engineered revetment or beachwall. A revetment is a sloping uncemented structure built with boulder size rock. A beachwall, also known as a “Hayashi” wall, is a rock structure composed of two sections of different slopes. The toe section mimics the existing beach slope while the upper section is steeper to provide protection of property.

Positive Impacts: Both of these alternatives are hard structures that provide stable protection of property. Because the sloping surface offers minimal wave reflection, wave energy is theoretically dissipated in the natural manner of the existing beach slope. In some instances, if sand exists offshore, beach accretion may be possible. Properly constructed, the structures are highly resistant to severe wave events.

Negative Impacts: These structures require major excavation in order to be anchored and positioned properly. The horizontal width of these structures require twelve (12) feet at a minimum and likely require Federal permits, in addition to State and County permits. This alternative would be the most costly.

F. DESCRIPTION OF PROPOSED ACTION (PREFERRED ALTERNATIVE)

The Applicant proposes to allow the existing seawall and stair structure, sited *makai* of the shoreline certified by the State on February 4, 1980, to remain. The seawall and stairs were structurally engineered as a shoreline armoring system in order to stabilize the shoreline. A detailed description of the seawall and stairs are contained in the Sea Engineering Memorandum (J. Barry, December 2012, pp. 5-8) in Appendix “D”. At the same time, other properties along Keonenui Bay were beginning to also armor their properties against erosion. The Sea Engineering Memorandum (J. Barry, December 2012, p. 6) states that “[the seawall] is in generally good condition, with most of the rock facing intact.” The memorandum goes on to say “Some remedial



action will likely need to be taken to maintain the integrity of the seawall and stairs. The critical need for this repair is some years away, and it would likely take the form of replacing the existing footing protection with a deeper excavation and cut-off wall.” (p. 11) The memorandum summarizes the “No Action” analysis as follows (pp. 12-13):

No Action would result in:

- *No change in existing morphology, except for slow erosion of the mudstone substrate similar to that occurring at present and along the remainder of the beach;*
- *Continuity and mutual protection of the Kahana Sunset/Schweitzer/Lusardi seawalls;*
- *Hardened floodway during extreme flood conditions;*
- *No change in shoreline position.*

In its analysis of the effect of the seawall, the report states:

During high wave events, the seawall and stairs present a reflecting surface to incoming waves that is likely detrimental to beach sand deposition. However, this is a temporary effect that is relieved during milder conditions, and it is not clear that the native shoreline would be a substantial improvement due to its high relief and propensity to form steep escarpments. The Kahana Sunset/Schweitzer/Lusardi sequence of seawalls presents an integrated shoreline defense against coastal erosion, and is helpful in the prevention of turbidity caused by erosion of the mudstone substrate.

Keonenui Bay is also a pathway for upland drainage areas. There are retainage and settling basins associate with the drainage, but apparently the design conditions are sometimes exceeded. Photographs held by the property owners and taken during flood events show that a floodway exists along the northeast property line, with egress onto the beach via the stairs. The concrete pathways and stairs serve to protect this area from erosion and entrenchment during these events.

As stated in the aforementioned Resolution Agreement with the County of Maui that was approved on August 13, 2013, the top two (2) steps of the stairway that lie in the shoreline area will either be removed or applications for an SMA authorization and Shoreline Setback Variance will be submitted to allow the steps to remain.



III. DESCRIPTION OF THE EXISTING ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATION MEASURES

A. PHYSICAL ENVIRONMENT

1. Land Use

Existing Conditions. The subject property is located in an area known as Alaeloa, at TMK: (2) 4-3-015:001 (See: Figures No. 1 “Regional Location Map”, No. 2 “Aerial Map”, and No. 3 “Tax Map”). The parcel is located along Keonenui Bay, situated on the northwest coast of West Maui, seven miles north of Lahaina Town and 1.5 miles south of Kapalua. The parcel and surrounding parcels are zoned for residential use.

The following is a description of zoning, community plan designations, and existing land uses adjacent and in close proximity to the subject property:

| | |
|---------------|--|
| North: | <u>Zoning:</u> R-3 Residential <u>Community Plan:</u> Single Family <u>State Land Use:</u> Urban Existing uses: Apartment-Condominium. |
| South: | <u>Zoning:</u> R-3 Residential <u>Community Plan:</u> Single Family <u>State Land Use:</u> Urban Existing uses: Single-Family Residence. |
| East: | <u>Zoning:</u> R-3 Residential <u>Community Plan:</u> Single Family <u>State Land Use:</u> Urban Existing uses: Lower Honoapiilani Rd.; Single-Family. |
| West: | <u>Zoning:</u> N/A <u>Community Plan:</u> N/A <u>State Land Use:</u> Conservation Existing uses: Intermittent beach, Pacific Ocean. |



Potential Impacts and Mitigation Measures. The site of the existing seawall and stair structure is located within an area that is designated conservation and adjacent to lands zoned for residential use and community planned for single family residential uses.

2. Shoreline Conditions and Processes

Existing Conditions. The subject property is located along Keonenui Bay, between Alaeloa Point and Haukoe Point, approximately 3500 feet south of Napili Bay. The beach in the project vicinity is a pocket beach typical of this stretch of coastline, about 500 - 600 feet long and nestled between the two headlands, which protrude 400 to 500 feet seaward. The property north the subject property is a condominium hotel complex and to the south are single family residences. Vertical rock and concrete walls protect the properties along the entire bay. A reef system, approximately 400 meters (1,300 feet) offshore, has a significant influence on wave energy as it approaches the shoreline.

A University of Hawaii Coastal Geology Group study showed an approximately one (1) foot average yearly erosion rate between 1912 and 1997 and an average decrease in beach width of 42% between 1949 and 1997 (See: Figure No. 9, "Annual Erosion Hazard Rate Map"). The Sea Engineering Memorandum (J. Barry, 2012, p. 3) references a 2000 analysis that "indicated that the beach is dynamic, with large seasonal shifts in the beach toe position."

Along the bay, the sandy beach has its greatest width fronting the Kahana Sunset to the north, along approximately 180 feet of its *makai* boundary. Farther north, the substrate at the base of the cliff is a volcanic conglomerate of variable hardness, with remnants of CRM facing in some areas. To the south, the beach narrows dramatically, transitioning to an irregular, rough, rocky shore.

Potential Impacts and Mitigation Measures. The approximately 59-foot long seawall and stairs tie into adjoining shoreline hardening structures to the north and south. As noted, most of the shoreline fronting Keonenui Bay is already armored with vertical walls. Therefore, the existing seawall and stair structure is not anticipated to significantly impact existing coastal processes, and should not aggravate or contribute to further erosion.

3. Marine Resources

Existing Conditions. The nearshore seafloor in Keonenui Bay consists primarily of sand in the central part of the bay, and coral, limestone and rock along the perimeter



and beyond about 400 feet offshore. There is a reef system, approximately 400 meters (1,300 feet) offshore.

Potential Impacts and Mitigation Measures. The existing seawall and stairs on the subject property has an elevation of approximately 15 feet AMSL at its highest point, and as such is expected to have no direct impact on marine resources or the nearshore environment. In the long term, the structure may serve to improve turbidity conditions in the bay, given that it will mitigate further erosion of the silty clay substrate.

4. Topography and Soils

Existing Conditions. The elevation on the project site ranges from approximately 45 feet above mean sea level (AMSL) along Lower Honoapiilani Road to approximately 6 feet AMSL at the base of the existing seawall along the intermittent sandy beach. The ground is generally sloping approximately 14% downward in a westerly direction toward the ocean.

According to the “Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai and Lanai, State of Hawaii (August 1972),” prepared by the United States Department of Agriculture Soil Conservation Service, the soils within the project site are classified as Kahana Silty Clay, 7 to 15 percent slopes, and (KbC) and Rough Broken and Stony Land (rRS). KbC is characterized by slow runoff, slight to moderate erosion hazard, and moderately rapid permeability. The rRS series consists of very steep, stony areas where runoff is rapid.

Potential Impacts and Mitigation Measures. The existing seawall prevents erosion and loss of property. There are no impacts to the existing topography and soil conditions.

5. Flood and Tsunami Zone

According to the United States Federal Emergency Management Agency (FEMA) FIRM Panel No. 1500030264E, dated September 25, 2009, the project site is situated in flood zones AE and X. Description as follows:

| Zone | Definition |
|------|---|
| AE | 1% annual chance flood (100-year flood). Base Flood Elevation (BFE) determined. |
| X | Areas determined to be outside the 0.2% annual chance floodplain. |



The BFE for the AE zone is 17 feet (See: Figure No. 7, “Flood Insurance Rate Map”).

The Coastal Engineering Memorandum, prepared by Mr. Jim Barry of Sea Engineering, Inc. (See: Appendix “D”), states the following:

Keonenui Bay is also a pathway for upland drainage areas. There are retainage and settling basins associate with the drainage, but apparently the design conditions are sometimes exceeded. Photographs held by the property owners and taken during flood events show that a floodway exists along the northeast property line, with egress onto the beach via the stairs. (p. 11)

Potential Impacts and Mitigation Measures. The site of the existing seawall and stairs appears to be located in Flood AE, with a BFE of 17 feet. The proposed actions are not anticipated to have any adverse effects with respect to flooding since the structure is not habitable. The structure should not be affected by or have adverse impacts upon its neighbors with regards to flood hazard potential since drainage patterns are not expected to change. The Coastal Engineering Memorandum (J. Barry, December 2012) concludes its assessment of drainage conditions with:

The concrete pathways and stairs serve to protect this area from erosion and entrenchment during these [flood] events. (p. 11)

6. Terrestrial Biota (Flora and Fauna)

Existing Conditions. No wetlands are present on or around the subject property. Existing vegetation on the property is primarily grasses and native and non-native trees and shrubs, largely consisting of landscape planting typical of residential properties in the area. Avifauna typically found in the area includes the common mynah, several species of dove, cardinal, house finch, and house sparrow. Mammals common to this area include cats, dogs, rats, mice, and mongoose. No known rare, endangered, or threatened species of flora or fauna were observed on the subject property. The waters around all of the Hawaiian Islands are known habitats for the Hawaiian monk seal and the green and hawksbill turtles (endangered species); however, there are no officially designated “critical habitats” for these species in the waters surrounding Maui at this time.

Potential Impacts and Mitigation Measures. There are no known significant habitats of rare, endangered or threatened species of flora and fauna located on the subject property. Since this action does not involve any construction activities, no procedures are necessary for the protection of endangered species. Thus, rare,



endangered, or threatened species of flora and fauna will not be impacted by the proposed project.

7. Air Quality

Existing Conditions. Air quality refers to the presence or absence of pollutants in the atmosphere. It is the combined result of the natural background and emissions from many pollution sources. The impact of land development activities on air quality in a proposed development's locale differs by project phase (site preparation, construction, occupancy) and project type. In general, air quality in West Maui is considered relatively good. Non-point source emissions (automobile) are not significant to generate a high concentration of pollutants. The relatively high quality of air can also be attributed to the region's exposure to wind, which quickly disperses concentrations of emissions. West Maui is currently in attainment of all pollutant criteria established by the Clean Air Act, as well as the State of Hawaii Air Quality Standards.

Potential Impacts and Mitigation Measures. No construction is proposed; therefore, no impacts to air quality are anticipated. In the long term, the proposed project is not expected to significantly increase the volume of traffic in the region, which would increase vehicular emissions such as carbon monoxide. Thus, the proposed project is not expected to be detrimental to local air quality.

8. Noise Characteristics

Existing Conditions. The noise level is an important indicator of environmental quality. In an urban environment, noise is due primarily to vehicular traffic, air traffic, heavy machinery, and heating, ventilation, and air-conditioning equipment. Ramifications of various sound levels and types may impact health conditions and an area's aesthetic appeal. Noise levels in the vicinity of the project area are generally low. Traffic noise from Lower Honoapiilani Road and noise associated with the residential uses nearby are the predominant sources of background noise in the vicinity of the subject property.

Potential Impacts and Mitigation Measures. The proposed project is not expected to impact existing noise conditions in the area.



9. Archaeological/Historical Resources

Existing Conditions. This parcel has been in residential use for the past 47 years. Historical evidence indicates that the area was sparsely populated.

Potential Impacts and Mitigation Measures. There are no ground disturbing activities associated with this action; therefore, there are no impacts to significant cultural and historic properties.

10. Visual Resources

Existing Conditions. The subject property is situated along the *makai* side of Lower Honoapiilani Road within a residential area of Napili. The parcel maintains a total of approximately 92 feet of frontage along Lower Honoapiilani Road and has an average lot depth of approximately 214 feet. The approximately 59 foot *makai* boundary of the property abuts the shoreline certified on February 4, 1980.

Napili offers sweeping views of the Pacific Ocean, Lanai, and Molokai. Public views of these resources exist in various locations from Lower Honoapiilani Road and Honoapiilani Highway. The ocean is not visible from Lower Honoapiilani Road fronting the subject property.

Potential Impacts and Mitigation Measures. Since the existing seawall and stairs are at about 15 feet AMSL and there is no new construction associated with this action, the view through the subject property remains unchanged. As such, the proposed project is not anticipated to significantly impact public view corridors, or the visual character of the site and its immediate environs.

B. SOCIO-ECONOMIC ENVIRONMENT

Potential Impacts and Mitigation Measures. Due to its location within an existing developed area, and limited scope, the existing seawall and stair structure will not have any effect on the socio-economic environment (population, housing, economy, and cultural resources).

C. PUBLIC SERVICES

Potential Impacts and Mitigation Measures. Due to its location within an existing developed area, and limited scope, the existing seawall and stair structure will not extend the limits of existing public services (recreational facilities, police and fire



protection, schools, medical facilities and solid waste); therefore, the impact on public services will be minimal.

D. INFRASTRUCTURE

Potential Impacts and Mitigation Measures. The existing seawall and stair structure does not use any energy or water, nor does it directly generate wastewater, storm water runoff, or traffic. Therefore, there are no impacts on infrastructure.



IV. RELATIONSHIP TO GOVERNMENTAL PLANS, POLICIES, AND CONTROLS

A. STATE LAND USE LAW

Chapter 205, Hawaii Revised Statutes, relating to the Land Use Commission, establishes four major land use districts into which all lands in the State are placed. These districts are designated Urban, Rural, Agricultural, and Conservation. The existing seawall and stair structure is located within the Conservation District. The purpose of this Environmental Assessment is to address any impacts of the existing seawall and stair structure on the Resource Subzone and support the after-the-fact Conservation District Use Application (CDUA).

B. COUNTYWIDE POLICY PLAN

The Countywide Policy Plan was adopted by the Maui County Council on March 19, 2010 and provides a long-term vision, principles, goals, policies, and objectives directed toward improving living conditions in the County. The following Themes, Objectives and Policies are applicable to the proposed project:

A. Protect the Natural Environment

Goal: Maui County's natural environment and distinctive open spaces will be preserved, managed, and cared for in perpetuity.

Objective:

3. Improve the stewardship of the natural environment.

Policies:

c. Evaluate development to assess potential short-term and long-term impacts on land, air, aquatic, and marine environments.

Analysis. This environmental assessment analyzes the proposed actions in the context of the natural environment. Since the existing structure was constructed in the early 1980s, there has not been any notable negative short-term or long-term impacts on land, air, aquatic, or marine environments attributable to the structure.



J. Promote Sustainable Land Use and Growth Management

Goal: *Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.*

Objective:

1. *Improve land use management and implement a directed-growth strategy.*

Policies:

b. *Direct urban and rural growth to designated areas.*

Objective:

4. *Improve and increase efficiency in land use planning and management.*

Policies:

b. *Ensure that new development projects requiring discretionary permits demonstrate a community need, show consistency with the General Plan, and provide an analysis of impacts.*

Analysis: This parcel has been in residential use since at least 1966. The area is within the Urban Growth Boundary of the *Maui Island Plan* (December 2012) of the County's 2030 *General Plan Update* (May 2010). This report provides an analysis of the potential impacts of the subject project.

C. MAUI ISLAND PLAN

The 2030 update to the General Plan of the County of Maui was approved by the Maui County Council and signed into law by the Mayor on December 28, 2012. The Maui Island Plan determines the appropriateness of discretionary development proposals. The following Goals, Objectives and Policies of the Maui Island Plan are applicable to the proposed project:

HERITAGE RESOURCES

Shoreline, Reefs, and Nearshore Waters Issues

Goal:

2.2 *An intact, ecologically functional system of reef, shoreline, and nearshore waters that are protected in perpetuity.*

Objective:

2.2.2 *Improved reef health, coastal water quality, and marine life.*

Policies:

2.2.2.e *Strictly regulate shoreline armoring in accordance with adopted*



Shoreline Rules, with an intent to protect the coastal and marine ecosystem.

Analysis. The existing seawall and stair structure helps protect the quality of nearshore waters and reef health by aiding in the prevention of earthen soils from being eroded and transported to the coastal waters via wave action and runoff from *mauka* portions of the site. Since all of the properties along Keonenui Bar are armored, the existing structure does not uniquely impact the coastal and marine ecosystem.

D. WEST MAUI COMMUNITY PLAN

Nine community plan regions have been established in Maui County. Each region's growth and development is guided by a community plan, which contains objectives and policies in accordance with the Maui County General Plan. The purpose of the community plan is to outline a relatively detailed agenda for carrying out these objectives.

The subject property is located within the West Maui Community Plan area and has a SF Single Family designation (**See:** No. 5, "West Maui Community Plan"). The West Maui Community Plan was adopted by ordinance No. 2476 on February 27, 1996.

The following West Maui Community Plan goals, objectives, and policies are applicable to the proposed action:

Goal: Land Use. *An attractive, well-planned community with a mixture of compatible land uses in appropriate areas to accommodate the future needs of residents and visitors in a manner that provides for the stable social and economic well-being of residents and the preservation and enhancement of the region's open space.*

Analysis. The project site is community planned for single family residential use. The Applicant does not intend to introduce new uses on the property. Infrastructure in the area is adequate and the existing use is consistent with land use objectives.

Goal: Environment. *A clean and attractive physical, natural and marine environment in which man-made developments on or alterations to the natural and marine environment are based on sound environmental and ecological practices, and important scenic and open space resources are preserved and protected for public use and enjoyment.*



Objectives and Policies:

1. *Protect the quality of nearshore and offshore waters. Monitor outfall systems, streams and drainage ways and maintain water quality standards. Continue to investigate, and implement appropriate measures to mitigate, excessive growth and proliferation of algae in nearshore and offshore waters.*

11. *Prohibit the construction of vertical seawalls and revetments except as may be permitted by rules adopted by the Maui Planning Commission governing the issuance of Shoreline Area Management (SMA) emergency permits, and encourage beach nourishment by building dunes and adding sand as a sustainable alternative.*

Planning Standards:

6. Environmental Aspects

- c. *Prohibit the construction of vertical seawalls, except as approved by the Planning Commission of the County of Maui*

Analysis: In consideration of the alternatives, the proposed action (allowing the seawall and stairs to remain) was judged to be the most practical alternative. As described in Sections II and III of this report, the seawall and stair structure is a long-term solution to address a potential public safety hazard as well as a physical hazard to adjacent properties. The existing structure also helps protect the quality of nearshore waters as recommended by the West Maui Community Plan by aiding in the prevention of earthen soils from being eroded and transported to the coastal waters via wave action and runoff from *mauka* portions of the site.

E. MAUI COUNTY ZONING

The subject property is situated within the County of Maui's R-3 Residential District (See: Figure No. 6, "County Zoning Map"). The existing seawall and stairs lie within the State Conservation District, which is the jurisdiction of the State of Hawaii.



F. MAUI COUNTY SHORELINE RULES

Chapter 205A, Hawaii Revised Statutes (HRS), and Title MC-12, Subtitle 02, Chapter 203, *Shoreline Rules for the Maui Planning Commission*, sets forth the requirements for structures and activities taking place within the Shoreline Setback Area (SSA). The Shoreline Setback Area is defined in Subchapter 1, §12-203-4, thusly:

... means "shoreline area" as defined in HRS chapter 205A, as amended, which includes all of the land area between the shoreline and the shoreline setback line, ...

Since most of the existing seawall and stairs are *makai* of the "shoreline", it is not within the "shoreline area" and, therefore, not within the jurisdiction of Maui County.

The Applicant entered into a Resolution Agreement with the County of Maui that was approved on August 13, 2013 by the Maui Planning Commission with an anticipated signing by the Mayor of Maui County (See: Appendix "F"). This agreement contains the options for the top two (2) steps of the stairway that lie in the shoreline area. The steps will either be removed or applications for an SMA authorization and Shoreline Setback Variance will be submitted to allow the steps to remain. A fine of \$5,000.00 (five thousand dollars) will be paid to the County of Maui in connection with the two steps within the shoreline area.



V. SPECIAL MANAGEMENT AREA OBJECTIVES AND POLICIES

The Special Management Area (SMA) is defined in Section 22 of Chapter 205A, HRS as:

... the land extending inland from the shoreline as delineated on the maps filed with the authority as of June 8, 1977, or as amended pursuant to section 205A-23.

The existing seawall and stair structure is located *makai* of the shoreline as certified on February 4, 1980; therefore, it lies outside of SMA. However, in compliance with the Conservation District Permit Application (CDUA) criteria requirements, the existing structure is evaluated with respect to SMA objectives, policies, and guidelines. This section addresses the project's relationship to applicable coastal zone management considerations, as set forth in Chapter 205A and the Rules and Regulations of the Planning Commission.

A. RECREATIONAL RESOURCES

Objective: Provide coastal recreational resources accessible to the public.

Policies:

- (A) *Improve coordination and funding of coastal recreation planning and management; and*
- (B) *Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:*
 - (i) *Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;*
 - (ii) *Requiring placement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or require reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable;*
 - (iii) *Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;*



- (iv) *Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;*
- (v) *Ensuring public recreational use of county, state, and federally owned or controlled shoreline lands and waters having standards and conservation of natural resources;*
- (vi) *Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;*
- (vii) *Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing;*
- (viii) *Encourage reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of Section 46-6, HRS.*

Analysis. The project site abuts the shoreline; however, the existing seawall and stair structure will not have a direct impact on the public's use or access to the shoreline area.

The subject parcel abuts Keonenui Bay, a small bay located between two rocky headlands. The entire length of the shoreline along the bay is armored with vertical seawalls or similar protection. The structure enhances safety in the shoreline area immediately beneath the subject property and aids in protection of nearshore waters from erosion-borne sediment. Therefore, the structure does not narrow the usable section of the beach nor does it inhibit lateral access along the shoreline.

B. HISTORICAL/CULTURAL RESOURCES

Objective: Protect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

- (a) *Identify and analyze significant archeological resources;*
- (b) *Maximize information retention through preservation of remains and artifacts or salvage operations; and*
- (c) *Support state goals for protection, restoration, interpretation, and display of historic structures.*



Analysis. As discussed in Section III.A.9 above, there are no construction activities proposed; therefore, there are no impacts on historical or cultural resources.

C. SCENIC AND OPEN SPACE RESOURCES

Objective: Protect, preserve and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- (a) Identify valued scenic resources in the coastal zone management area;
- (b) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
- (c) Preserve, maintain, and where desirable, improve and restore shoreline open space and scenic resources; and
- (c) Encourage those developments that are not coastal dependent to locate in inland areas.

Analysis. As discussed in Section III.A.10 of this report, there are no public views through the subject property. Since the existing seawall and stair structure will not be altered, no public views toward the ocean are impacted.

D. COASTAL ECOSYSTEMS

Objective: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- (a) Improve the technical basis for natural resource management;
- (b) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
- (c) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
- (d) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

Analysis. The existing seawall and stair structure protects the quality of the nearshore marine environment by preventing siltation from erosion of earthen soils.



Based upon existing development within the project area, the existing seawall and stair structure does not uniquely impact coastal ecosystems.

E. ECONOMIC USES

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

- (a) Concentrate coastal dependent development in appropriate areas;*
- (b) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area;*
- (c) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such development and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Use of presently designated locations is not feasible;*
 - (ii) Adverse environmental impacts are minimized; and*
 - (iii) The development is important to the State's economy.**

Analysis. The existing seawall and stair structure stabilizes the erosion prone shoreline at the subject property, leading to both public benefits and private benefits to the applicant and neighboring landowners. Public benefits will include the removal of a safety hazard, and prevention of soils entering coastal waters. Private benefits include greater site safety and the prevention of loss of property and structures.

F. COASTAL HAZARDS

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.

Policies:

- (a) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and non-point source pollution hazards;*
- (b) Control development in areas subject to storm wave, tsunami, flood, erosion, subsidence, and point and non-point pollution hazards;*



- (c) *Ensure that developments comply with requirements of the Federal Flood Insurance Program;*
- (d) *Prevent coastal flooding from inland projects; and*
- (e) *Develop a coastal point and nonpoint source pollution control program.*

Analysis. The proposed action will protect the landward portion of the property and associated structures from erosion due to storm waves. Stabilization of the shoreline will provide greater site safety to other residents living along the shoreline and will also protect the beach and nearshore waters from impacts related to eroded soils transported by wave action or inland runoff.

G. MANAGING DEVELOPMENT

Objective: Improve the development review process, communication, and public participation in the management of coastal resources hazards.

Policies:

- (a) *Use, implement, and enforce existing laws effectively to the maximum extent possible in managing present and future coastal zone development;*
- (b) *Facilitate timely processing of applications for development permits and resolve overlapping of conflicting permit requirements; and*
- (c) *Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the public to facilitate public participation in the planning process and review process.*

Analysis. Acquiring an after-the-fact permit is being conducted in accordance with applicable State and County requirements. Opportunity for review of the proposed action is provided through the State's Environmental Assessment (EA) review process.

H. PUBLIC PARTICIPATION

Objective: Stimulate public awareness, education, and participation in coastal management.

Policies:

- (a) *Maintain a public advisory body to identify coastal management problems and to provide policy advise and assistance to the coastal zone management program.*
- (b) *Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and*



organizations concerned with coastal-related issues, developments, and government activities; and

- (c) Organize workshops, policy dialogues, and site-specific medications to respond to coastal issues and conflicts.*

Analysis. Early Consultation was conducted with applicable government agencies, as part of the preparation of this Draft EA. Copies of this Draft EA will be circulated to various agencies and the HRS Chapter 343 Environmental Review process also provides an opportunity for public comment.

I. BEACH PROTECTION

Objective: Protect beaches for public use and recreation.

Policies:

- (a) Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;*
- (b) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and*
- (c) Minimize the construction of public erosion-protection structures seaward of the shoreline.*

Analysis. The existing seawall and stair structure is an aesthetic and engineered solution which improves public safety and does not interfere with the public's use of the beach.

J. MARINE RESOURCES

Objective: Implement the State's ocean resources management plan.

Policies:

- (a) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;*
- (b) Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;*
- (c) Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;*



- (d) *Assert and articulate the interest of the state as a partner with federal agencies in the sound management of the ocean resources within the United States exclusive economic zone;*
- (e) *Promote research, study, and understanding of ocean processes, marine life, and other ocean development activities relate to and impact upon the ocean and coastal resources; and*
- (f) *Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.*

Analysis. The proposed action does not involve the direct use or development of marine resources. In addition, since no construction activities are involved, there will be no significant adverse impacts to coastal or marine resources.



VI. ENVIRONMENTAL ASSESSMENT SIGNIFICANCE CRITERIA

Since the proposed project involves an action within the State Conservation District, an Environmental Assessment is required by Chapter 343, Hawaii Revised Statutes (HRS). A finding of no significant impact (FONSI) is anticipated and therefore an Environmental Impact Statement (EIS) will not be required for the proposed action. In accordance with Title 11, Department of Health, Chapter 200 and Subchapter 6, §11-200-12, Environmental Impact Statement Rules, and based on the detailed analysis contained within this document, the following conclusions are supported:

1. **The proposed action will *not* result in an irrevocable commitment to loss or destruction of natural or cultural resources.**

Analysis. As documented in this report, the existing seawall and stair structure does not contribute to the loss or destruction of any natural or cultural resource (See: Section III).

2. **The proposed action will *not* curtail the range of beneficial uses of the environment.**

Analysis. The existing seawall and stair structure lies within the State Conservation District where the beneficial uses of the shoreline environment are recreational in nature. The structure does not hinder any recreational uses and there are no plans to expand the structure; therefore, there are no significant impacts to environmental or natural resources on the property.

3. **The proposed action will *not* conflict with State or County long-term environmental policies and goals as expressed in Chapter 344, HRS, and those which are more specifically outlined in the Conservation District Rules.**

Analysis. The existing seawall and stair structure complies with the State's long-term environmental goals. As documented in this report, there are minimal chances for the potential for negative impacts to the environment, including near and off-shore coastal waters. The project will not have any impact on flora and fauna, and is not expected to have a negative impact on archaeological or cultural resources.



- 4. The proposed action will *not* substantially affect the economic or social welfare and activities of the community, county or state.**

Analysis. Because of the limited scope of this action and that it is an existing seawall and stair structure, there are no impacts on the socio-economic environment.

- 5. The proposed action will *not* substantially affect public health.**

Analysis. There are no special or unique aspects of the project that will have a direct impact on public health.

- 6. The proposed action will *not* result in substantial secondary impacts.**

Analysis. The action is not a population generator, it does not trigger any housing requirements, it does not cause an increase in traffic, it does not increase energy or water demand, nor does it generate waste water or solid waste. Based on existing development in the project vicinity, the action does not cause any secondary effects that would significantly impact the coastal area.

- 7. The proposed action will *not* involve substantial degradation of environmental quality.**

Analysis. Allowing the existing seawall and stair structure to remain does not impact nearshore water quality since no additional runoff is generated. The existing structure prevents the erosion of earthen, silty soils and associated degradation of coastal waters. Other environmental resources such as endangered species of flora and fauna, air and water quality, and archeological resources will not be impacted by the subject action.

- 8. The proposed action will not produce cumulative impacts and does *not* have considerable effect upon the environment or involve a commitment for larger actions.**

Analysis. The action does not involve a commitment for larger action on behalf of the applicant or any public agency. As described in this report, the action will not impact public infrastructure and services including roadways, drainage facilities, water systems, sewers and educational facilities. In addition, the action is not anticipated to induce an overall significant increase in population growth and will therefore not produce considerable effect on the environment nor require a commitment for larger actions by governmental agencies.



Armoring of a shoreline area is known to lead to successive armoring of adjacent shoreline areas, which creates a larger (cumulative) structure that can have greater impacts. As discussed above, all of the shoreline at Keonenui Bay is either naturally hardened or artificially armored with vertical reinforced seawalls. The natural wave action in the area is magnified, however given that total shoreline armoring exists, the existing seawall and stairs do not encourage additional development or require a commitment for larger actions.

9. The proposed action will *not* affect a rare, threatened, or endangered species, or its habitat.

Analysis. As described in Section III.A.6 of this report, there are no rare, threatened, or endangered species of flora and fauna at the project site.

10. The proposed action will *not* substantially or adversely affect air and water quality or ambient noise levels.

Analysis. As described in Section III of this report, there is no potential for negative impacts to air or water quality and ambient noise levels.

11. The proposed action will *not* substantially affect or be subject to damage by being located in an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone areas, estuary, fresh waters, geologically hazardous land or coastal waters.

Analysis. According to Panel No. 15003-0264E of the Flood Insurance Rate Map, September 25, 2009, prepared by the United States Federal Emergency Management Agency (FEMA), the project site is situated primarily in flood zone X, with portions of the subject property along the shoreline lying within Zone AE. Zone AE represents areas of 100-year flood, with base flood elevations and flood hazard factors determined. The existing seawall and stair structure is sited in Flood Zone AE and does not substantially affect an environmentally sensitive area.

12. The proposed action will *not* substantially affect scenic vistas or view planes identified in county or state plans or studies.

Analysis. As described in Section III.A.10 of this report, there will be no significant change in the action's overall effect on *mauka* or *makai* views from what exists currently, therefore the existing seawall and stairs structure does not have any adverse effects on visual resources.



13. The proposed action will not require substantial energy consumption

Analysis. The existing seawall and stair structure does not require any energy consumption.



VII. FINDINGS AND CONCLUSIONS

This ~~Draft~~ Final Environmental Assessment (EA) examines the environmental and socio-economic impacts associated with the applicant's proposal to allow the existing seawall and stair structure, that spans approximately 59 feet across the subject property's shoreline frontage, to remain in order to continue to stabilize the shoreline, prevent eroded underlying earthen soils from entering the ocean, and, in the long term, protect existing habitable structures. The project site has an area of 15,756 square feet and is located in Alaeloa, Maui, Hawaii.

As analyzed in this EA and in the Coastal Engineering Memorandum (J. Barry, December 2012), allowing the existing seawall and stair structure to remain is not anticipated to result in significant environmental impacts to surrounding properties, nearshore waters, natural resources, and/or archaeological and historic resources on the site or in the immediate area. Public infrastructure and services, including roadways, sewer and water systems, medical facilities, police and fire protection, parks, and schools are not needed by the action and are therefore not impacted. Public view corridors are not impacted and no adverse impacts upon the visual character of the site and its immediate environs are produced.

The subject property is situated within the State's Urban District and is County R-3 Residential and Community planned for Single-Family Residential. The existing seawall and stair structure lies *makai* of the shoreline, within the State Conservation District, Resource Sub-Zone.

Based on the foregoing analysis and conclusion, the proposed project will not result in significant impacts to the environment, is consistent with the requirements of HRS Chapter 343, and a Finding of No Significant Impact (FONSI) is ~~anticipated~~ warranted.



VIII. REFERENCES

- County of Maui, Department of Planning. 2010. *The Countywide Policy Plan, County of Maui 2030 General Plan*. Wailuku, Hawaii.
- County of Maui, Department of Planning. 2012. *Maui Island Plan, County of Maui 2030 General Plan*. Wailuku, Hawaii.
- County of Maui, Department of Planning. 1996. *West Maui Community Plan*. Wailuku, Hawaii.
- County of Maui, Office of Economic Development. 2009. *Maui County Data Book*. Wailuku, Hawaii.
- Environmental Planning Associates. August 31, 1990. *Maui Coastal Scenic Resources Study*. Lahaina, Hawaii.
- Federal Emergency Management Agency. Revised September 25, 2009. *Flood Insurance Rate Map*. Community Panel Map Number 1500030264E.
- U.S. Department of Agriculture, Soil Conservation Service in Cooperation with the University of Hawaii, Agricultural Experiment Station. 1972. *Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii*. Washington, D.C.



FIGURES

PROJECT
LOCATION

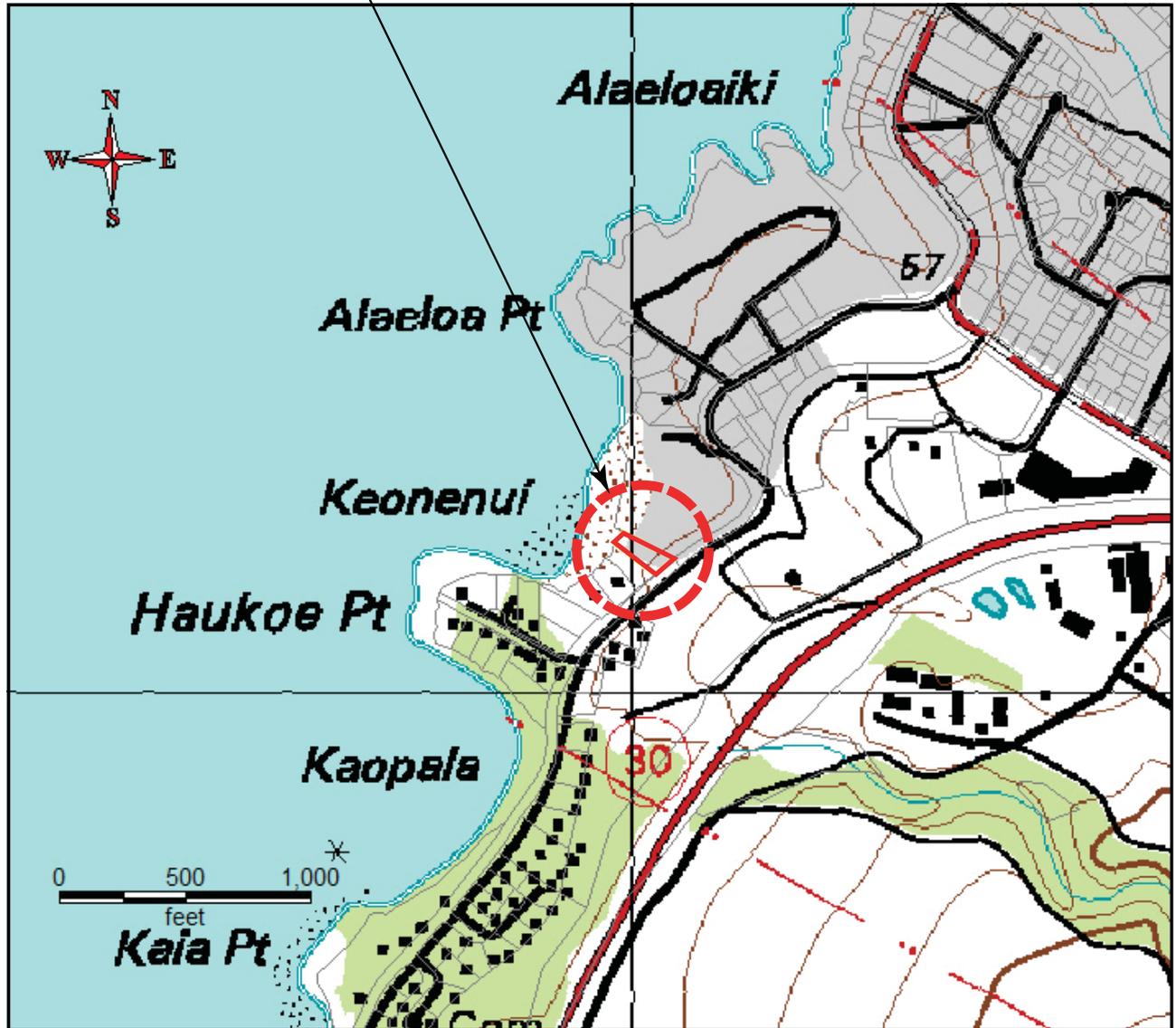


FIGURE 1

Not to Scale

JANUARY
2013

REGIONAL LOCATION
SCHWEITZER SHORELINE
EROSION CONTROL





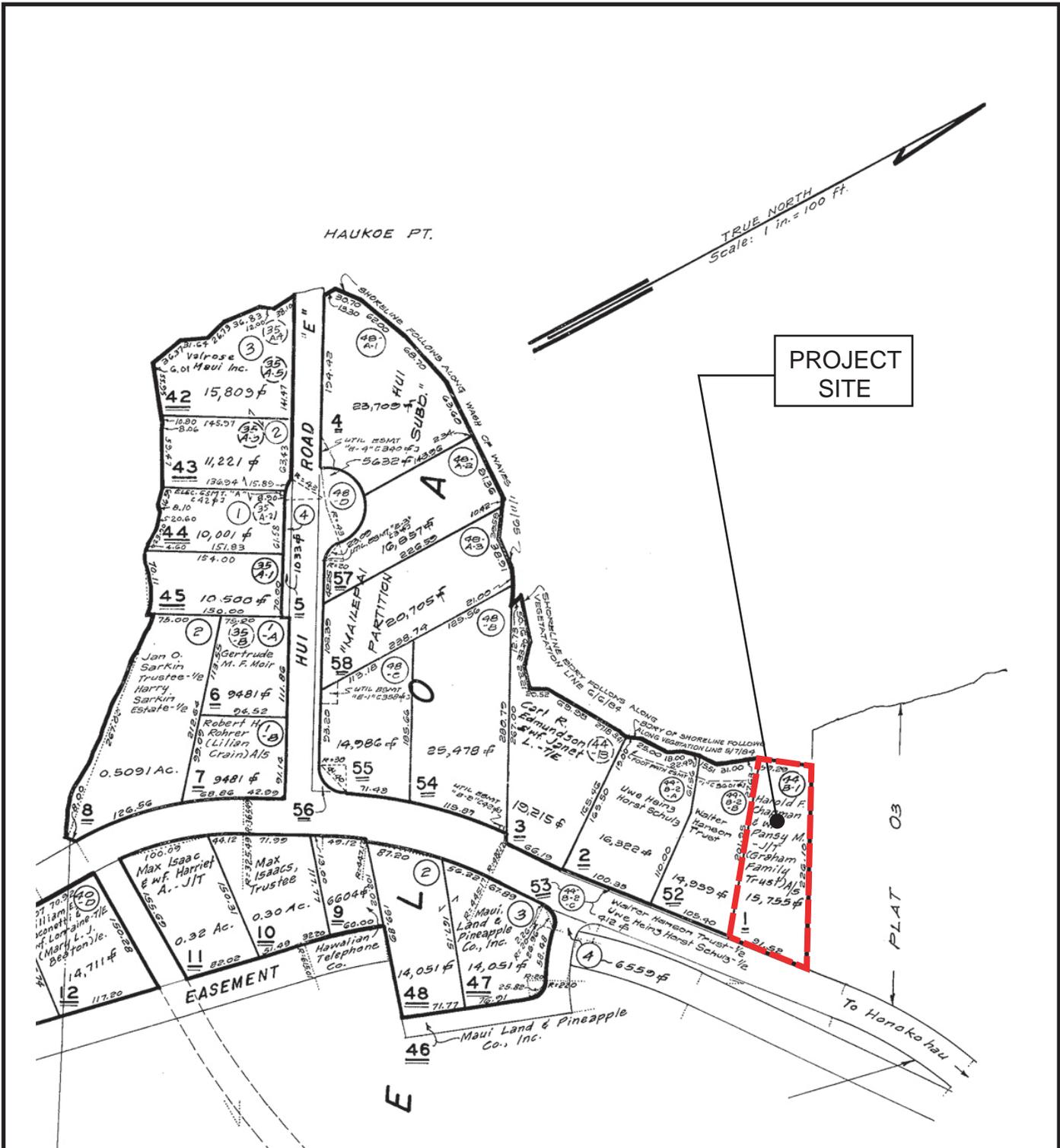
FIGURE 2

JANUARY
2013

AERIAL MAP
SCHWEITZER SHORELINE
EROSION CONTROL



Source: Google Earth, December 2012



DEPARTMENT OF TAXATION
PROPERTY TECHNICAL OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

| 2ND TAXATION DISTRICT | | |
|-----------------------|------|------|
| ZONE | SEC. | PLAT |
| 4 | 3 | 15 |

FIGURE 3

Parcel 1
Not to Scale

JANUARY
2013

TAX MAP
SCHWEITZER SHORELINE
EROSION CONTROL



STATE LAND USE DISTRICTS

-  Agricultural
-  Conservation
-  Rural
-  Urban

PROJECT SITE

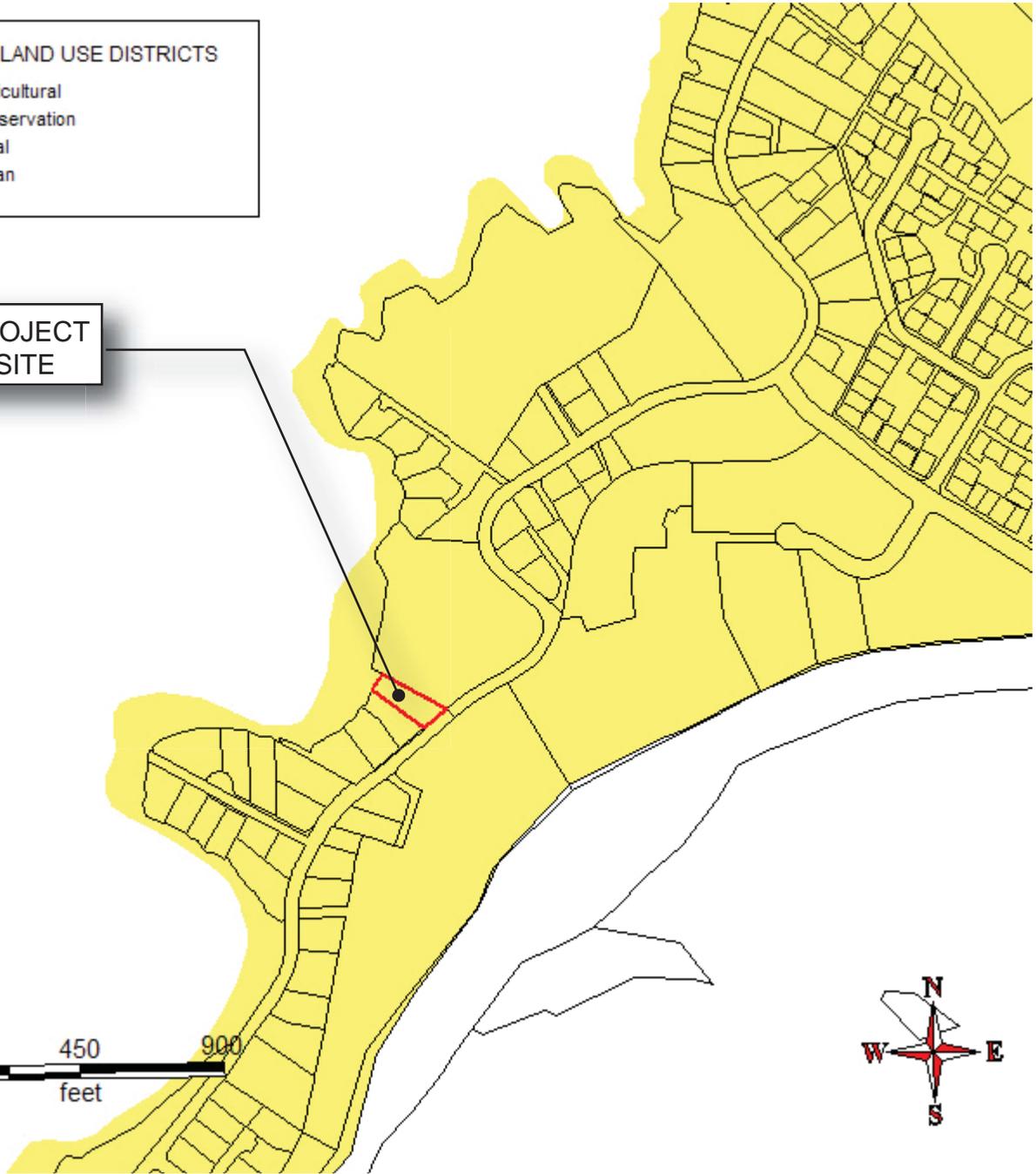
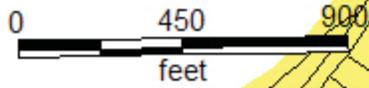


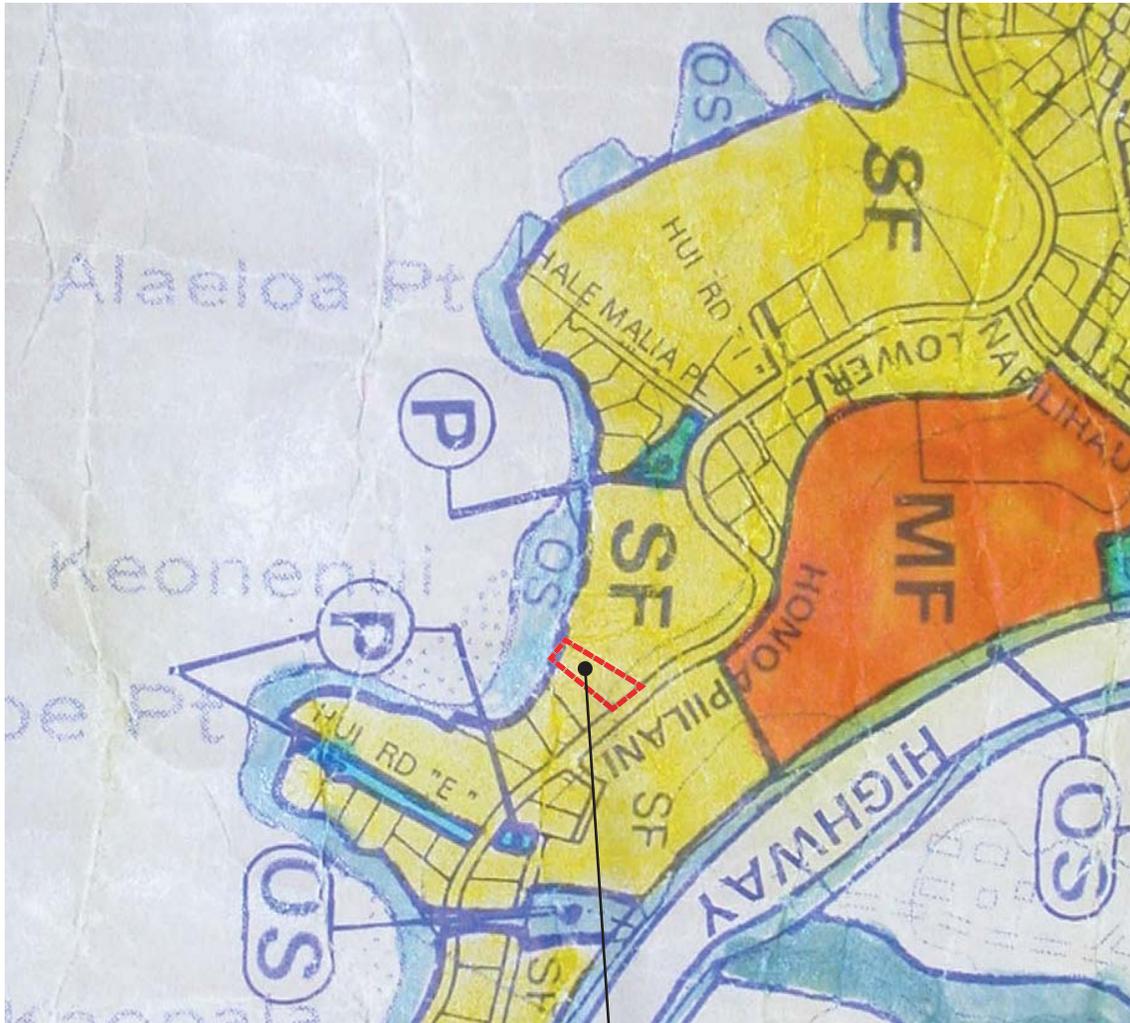
FIGURE 4

Not to Scale

JANUARY
2013

STATE LAND USE
BOUNDARY MAP
SCHWEITZER SHORELINE
EROSION CONTROL





PROJECT SITE

| LEGEND | |
|--------|----------------------------------|
| [SF] | Single Family Residential |
| [MF] | Multi-Family Residential |
| [B] | Business/Commercial |
| [SBR] | Service Business/Residential |
| [BMF] | Business/Multi-Family |
| [HI] | Heavy Industrial |
| [LI] | Light Industrial |
| [H] | Hotel |
| [P] | Public/Quasi-Public |
| [PK] | Park (GC) Golf Course |
| [OS] | Open Space |
| [PD] | Project District |
| [AP] | Airport |
| [AG] | Agricultural |
| [R] | Rural |
| [C] | Conservation |
| —60— | Airport Special Control District |

NOTE: Rural minimum lot size - see site for parcels. 4.3.4 11.17.19.20.21.27.16 per Ordinance 2476 of 2/27/95

FIGURE 5

| | |
|--|-----------------|
| Not to Scale | JANUARY 2013 |
| WEST MAUI COMMUNITY PLAN SCHWEITZER SHORELINE EROSION CONTROL | |





FIGURE 6

Not to Scale
 JANUARY
 2013

COUNTY ZONING MAP
 SCHWEITZER SHORELINE
 EROSION CONTROL





State of Hawaii FLOOD HAZARD ASSESSMENT REPORT



PROJECT SITE

NATIONAL FLOOD INSURANCE PROGRAM

FLOOD ZONE DEFINITIONS

SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD – The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zone A, AE, AH, AO, V, and VE. The Base Flood Elevation (BFE) is the water-surface elevation of the 1% annual chance flood. Mandatory flood insurance purchase applies in these zones:

- **Zone A:** No BFE determined.
- **Zone AE:** BFE determined.
- **Zone AH:** Flood depths of 1 to 3 feet (usually areas of ponding); BFE determined.
- **Zone AO:** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.
- **Zone V:** Coastal flood zone with velocity hazard (wave action); no BFE determined.
- **Zone VE:** Coastal flood zone with velocity hazard (wave action); BFE determined.
- **Zone AEF:** Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE.

NON-SPECIAL FLOOD HAZARD AREA – An area in a low-to-moderate risk flood zone. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

- **Zone XS (X shaded):** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- **Zone X:** Areas determined to be outside the 0.2% annual chance floodplain.

OTHER FLOOD AREAS

- **Zone D:** Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

PROPERTY INFORMATION

COUNTY: MAUI
TMK NO: (2) 4-3-015-001
PARCEL ADDRESS: 4885 LOWER HONOAPILANI RD LAHAINA, HI 96761
FIRM INDEX DATE: SEPTEMBER 19, 2012
LETTER OF MAP CHANGE(S): NONE
FEMA FIRM PANEL(S): 1500030264F
PANEL EFFECTIVE DATE: SEPTEMBER 19, 2012

PARCEL DATA FROM: MAY 2012
IMAGERY DATA FROM: MAY 2005

IMPORTANT PHONE NUMBERS

County NFIP Coordinator
 County of Maui
 Francis Cerizo, CFM (808) 270-7771
State NFIP Coordinator
 Carol Tyau-Beam, P.E., CFM (808) 587-0267

Disclaimer: The Department of Land and Natural Resources (DLNR) assumes no responsibility arising from the use of the information contained in this report. Viewers/Users are responsible for verifying the accuracy of the information and agree to indemnify the DLNR from any liability, which may arise from its use.

If this map has been identified as 'PRELIMINARY' or 'UNOFFICIAL', please note that it is being provided for informational purposes and is not to be used for official/legal decisions, regulatory compliance, or flood insurance rating. Contact your county NFIP coordinator for flood zone determinations to be used for compliance with local floodplain management regulations.

FIGURE 7

Not to Scale JANUARY
 FEMA Flood Insurance Map 2013

**FLOOD INSURANCE
 RATE MAP
 SCHWEITZER SHORELINE
 EROSION CONTROL**





Photo 1: Looking west from top of existing concrete stairs towards Haukoe Point.



Photo 2 Looking southwest along front of existing CRM seawall with cemented rock facing. South section of Keonenui Bay beyond.

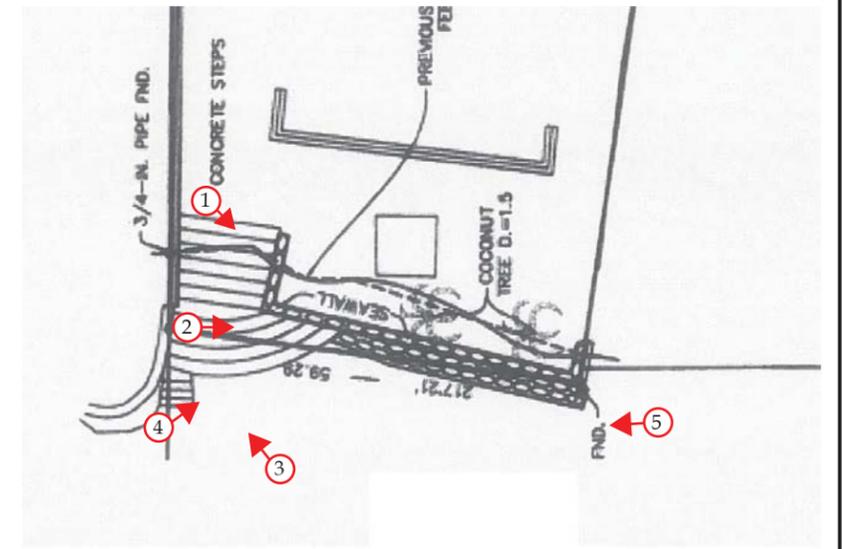


PHOTO KEY



Photo 3: Looking east at stairs where it meets the Kahana Sunset seawall fronting condominium-apartment building.



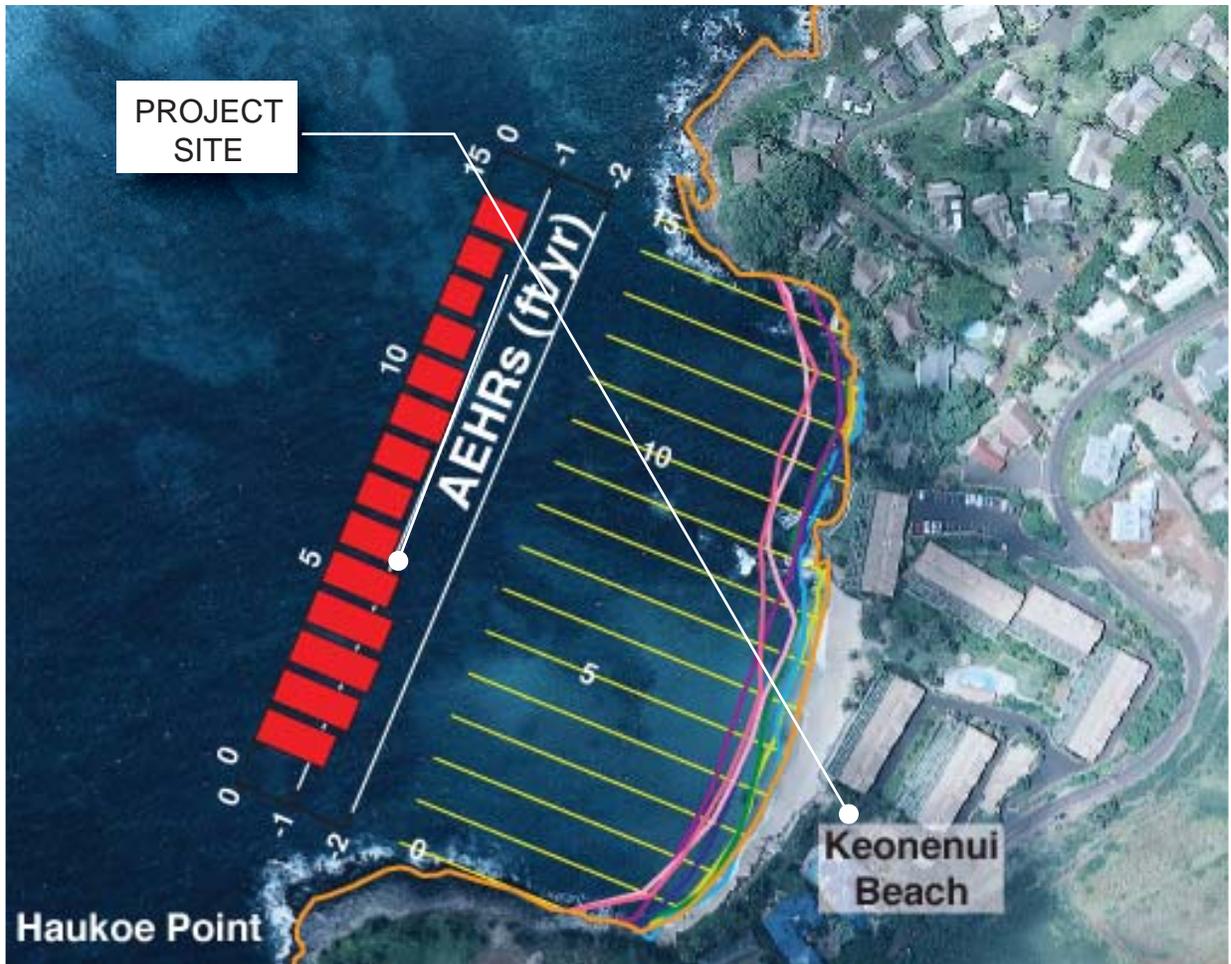
Photo 4: Looking south along base of stairs and seawall.



Photo 5: Looking northeast from south end of existing seawall. Sandy beach and Kahana Sunset seawall visible in the distance.

FIGURE 8

| | | |
|--|-----------------|--|
| Photos taken on December 12, 2012 | JANUARY 2013 |  CHRIS HART & PARTNERS, INC. |
| SITE PHOTOGRAPHS SCHWEITZER SHORELINE EROSION CONTROL | | |



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.

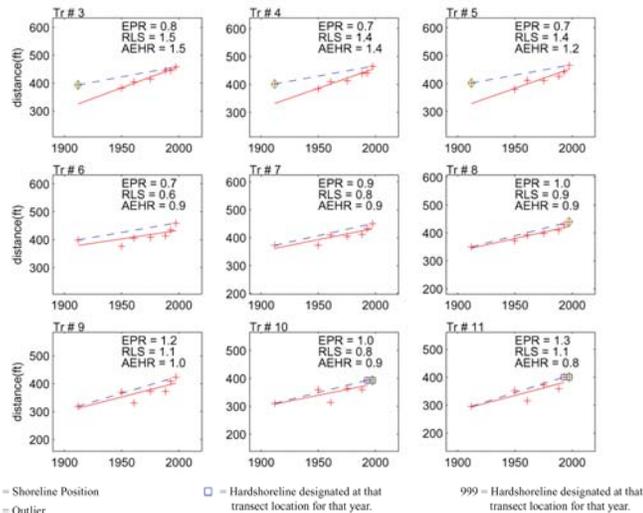


FIGURE 9

Not to Scale

JANUARY
2013

**ANNUAL EROSION
HAZARD RATE MAP
SCHWEITZER SHORELINE
EROSION CONTROL**



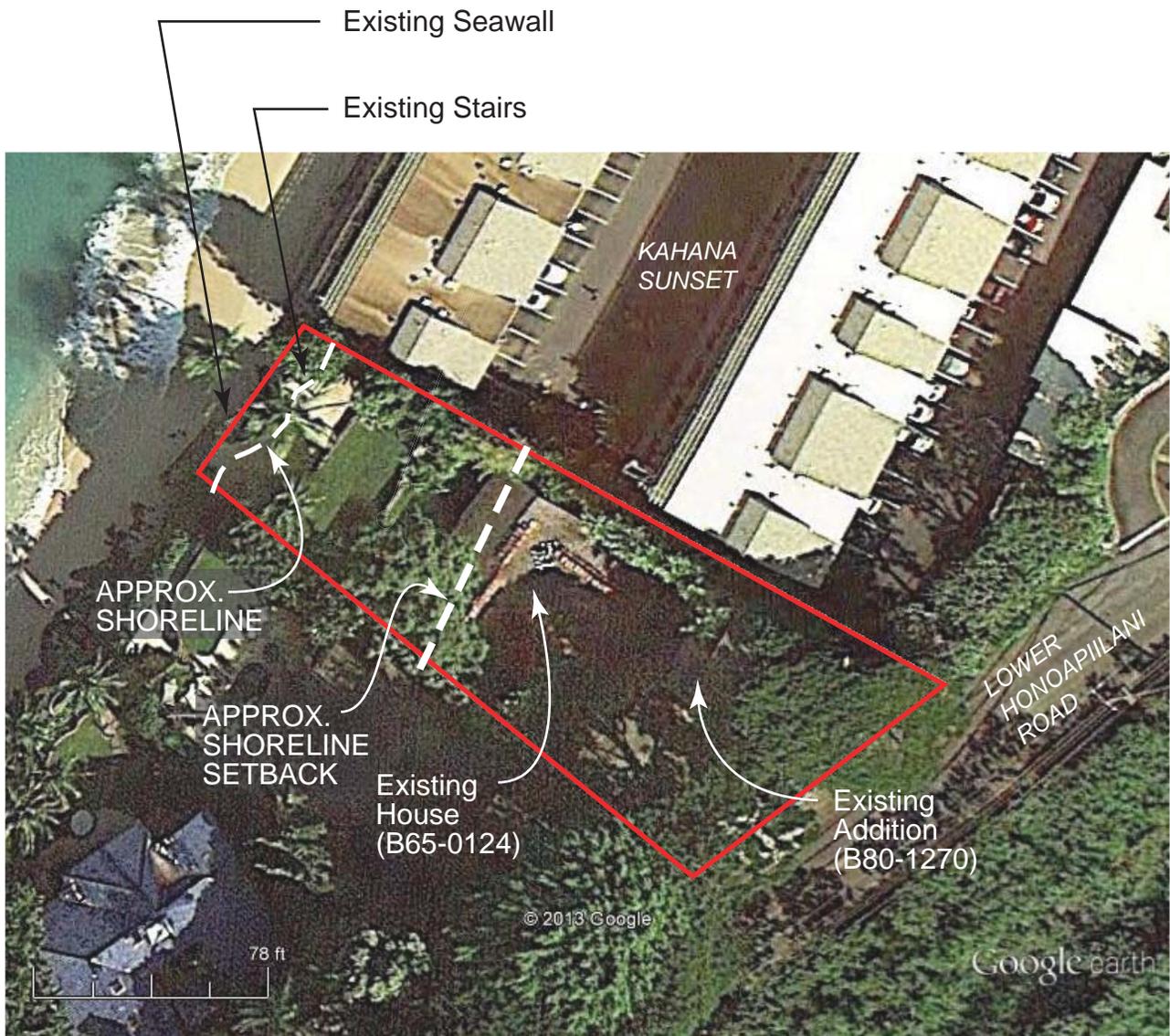


FIGURE 10

| | | |
|---|----------------|--|
| Not to Scale | AUGUST 2013 |  CHRIS HART & PARTNERS, INC. |
| SITE PLAN SCHWEITZER SHORELINE EROSION CONTROL | | |

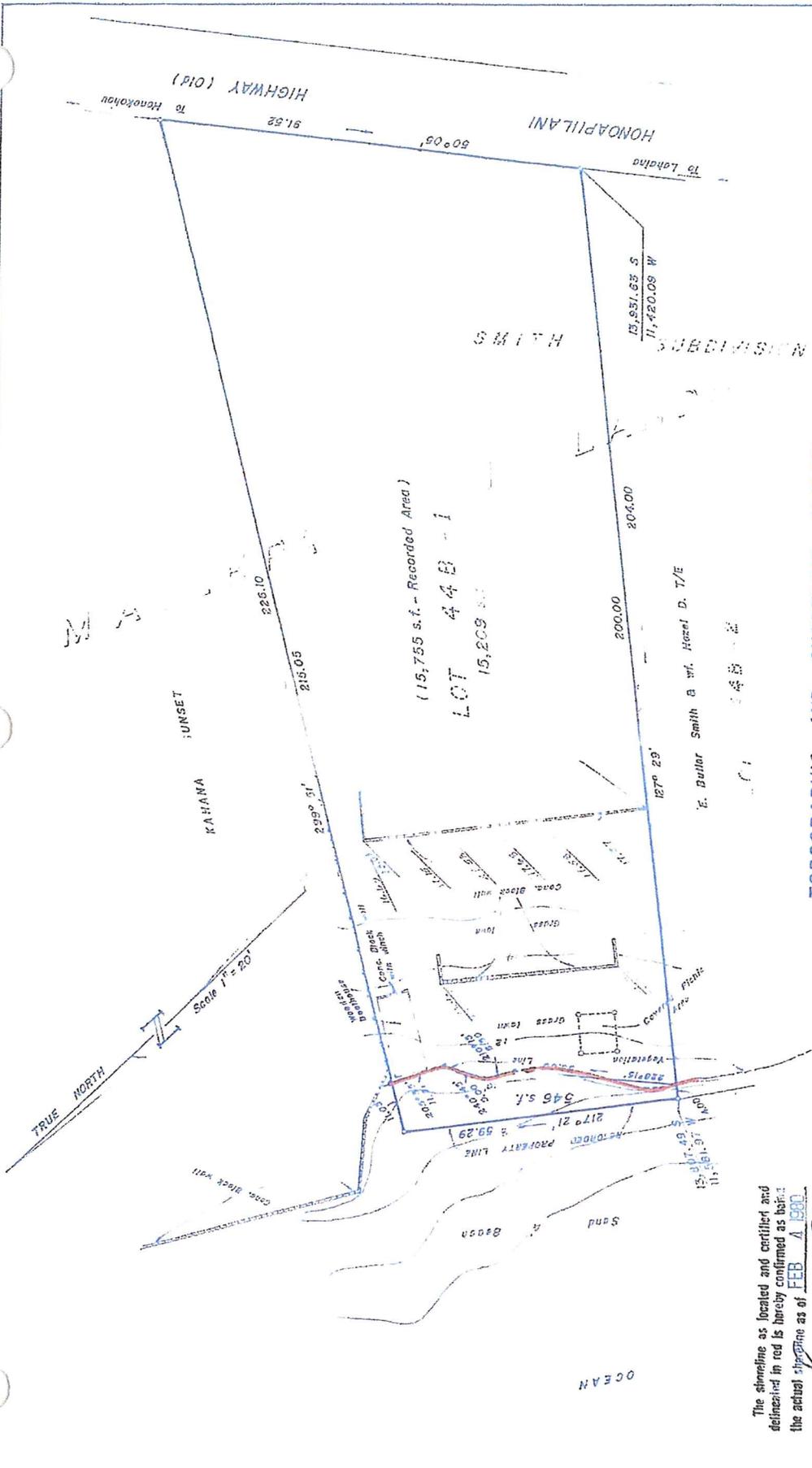


APPENDICES



APPENDIX A
Certified Shoreline Map (February 4, 1980)

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

William Taylor
 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.R. 1663, L. C. AW. 5524 TO L. KONIA AT ALAELOA, KANAPALI, MAUI, HAWAII

SCALE 1-inch = 20 feet
 PREPARED AT REQUESTED OF:
 William Taylor
 1853 Anapa Place
 Kula, Maui, Hawaii 96753

FEBRUARY 11, 1979
 1978 - MARCH 8, 1979
 Resubmitted - JANUARY 23, 1980

NOTES

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

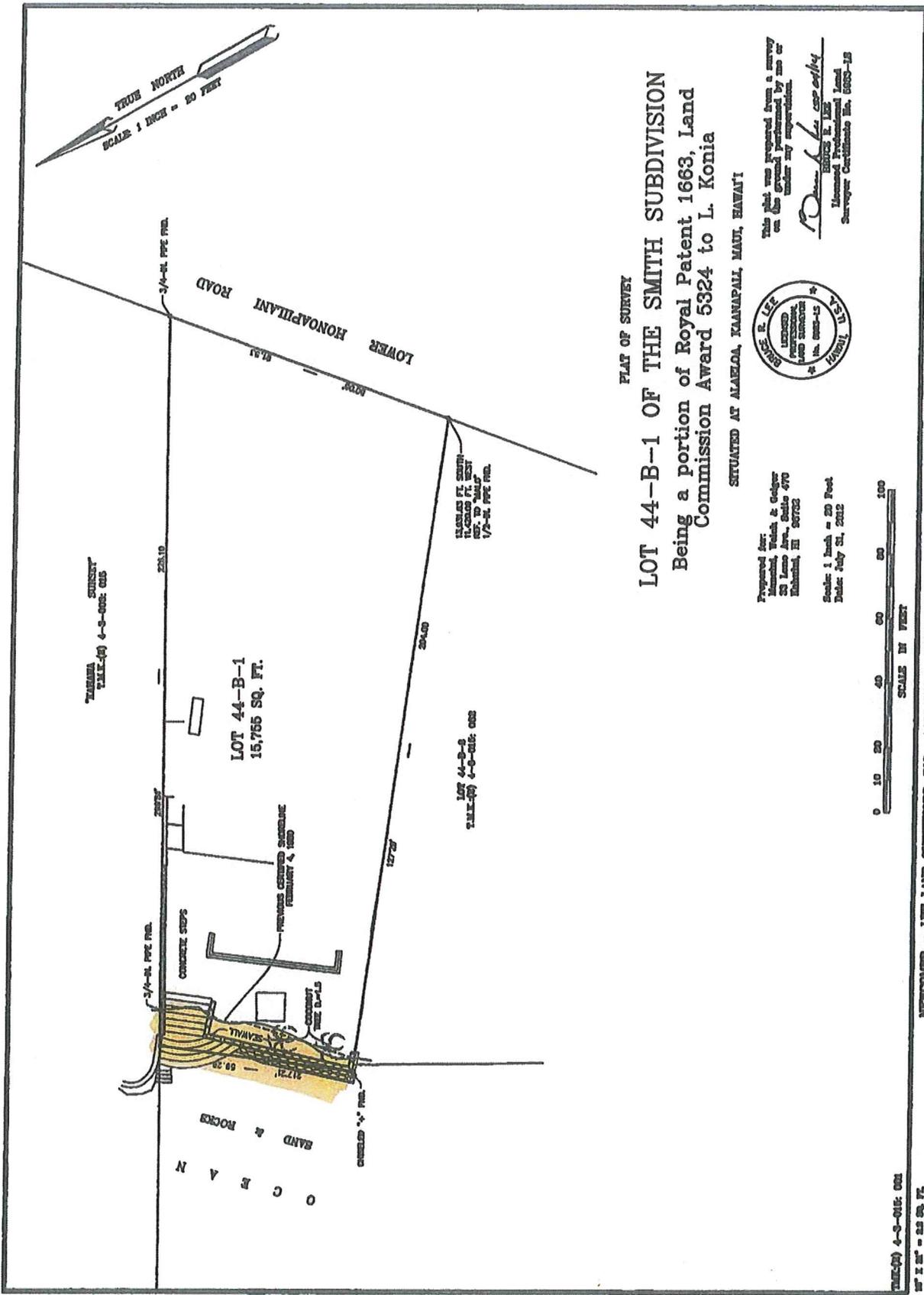
Previously approved 3/19/79
 See Folder 597-9(4)
 TAX MAP KEY. 4-3-15.1

PREPARED BY
 GEORGE F. NEWCOMER
 LAND SURVEYOR
 Kahala Building, Suite 330
 Kahala, Maui, Hawaii

This work done by me or under my direction.
George F. Newcomer
 REGISTERED PROFESSIONAL LAND SURVEYOR
 CERTIFICATE No. 2715 - 5



APPENDIX B
Survey of Lot 44-B-1 (July 31, 2012)



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 ALAEOLA, KAANAPALI, MAUI, HAWAII

Prepared for:
 Newcomer, Welch & Geiger
 33 Leino Ave., Suite 470
 Honolulu, HI 96702

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



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

Bruce E. Lee
 BRUCE E. LEE
 Licensed Professional Engineer
 License No. 6883-15
 State of Hawaii
 Survey Certificate No. 6883-15



TABLED 4-3-01E: 001
 1" = 20' - 20 SQ. FT.



APPENDIX C
BLNR Report (September 17, 2012)

SEP 13 2012

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
PAUL J. CONRY
INTERIM DEPUTY
WILLIAM M. TAM
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

SEP 17 2012

File No.: ENF MA-09-54

Paul Mancini
Mancini, Welch & Geiger, LLP
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732-1681

Dear Mr. Mancini:

SUBJECT: NOTICE OF BOARD HEARING

This is to inform you that the Board of Land and Natural Resources (Board) will be asked to consider an alleged violation within the conservation district in regards to an erosion protection structure at Keonenui Beach, West Maui, TMK (2) 4-3-015:001

This item will be placed on the Land Board's agenda as Item K-1, at the September 28, 2012 meeting in Room 132 of the Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i 96813. You are invited to appear and testify.

A copy of the Board Report is attached. You can contact Sam Lemmo at 587-0377 should you have any questions on this matter.

Sincerely,

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

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.

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 has eroded 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 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 1984¹, 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 considered².

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 trends³.

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 District. 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.

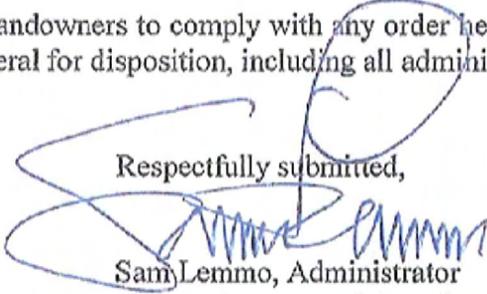
AS SUCH, STAFF RECOMMENDS:

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

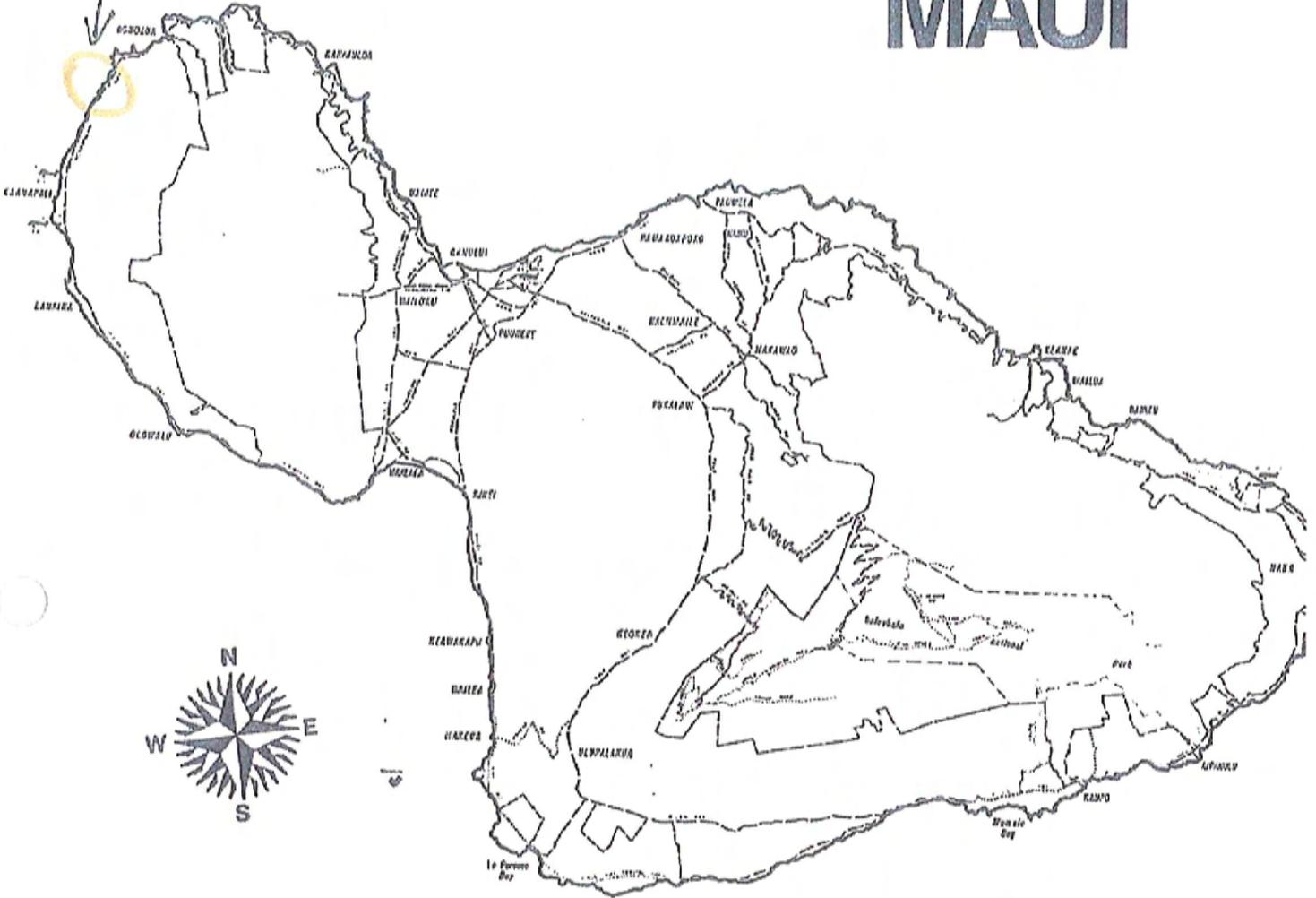
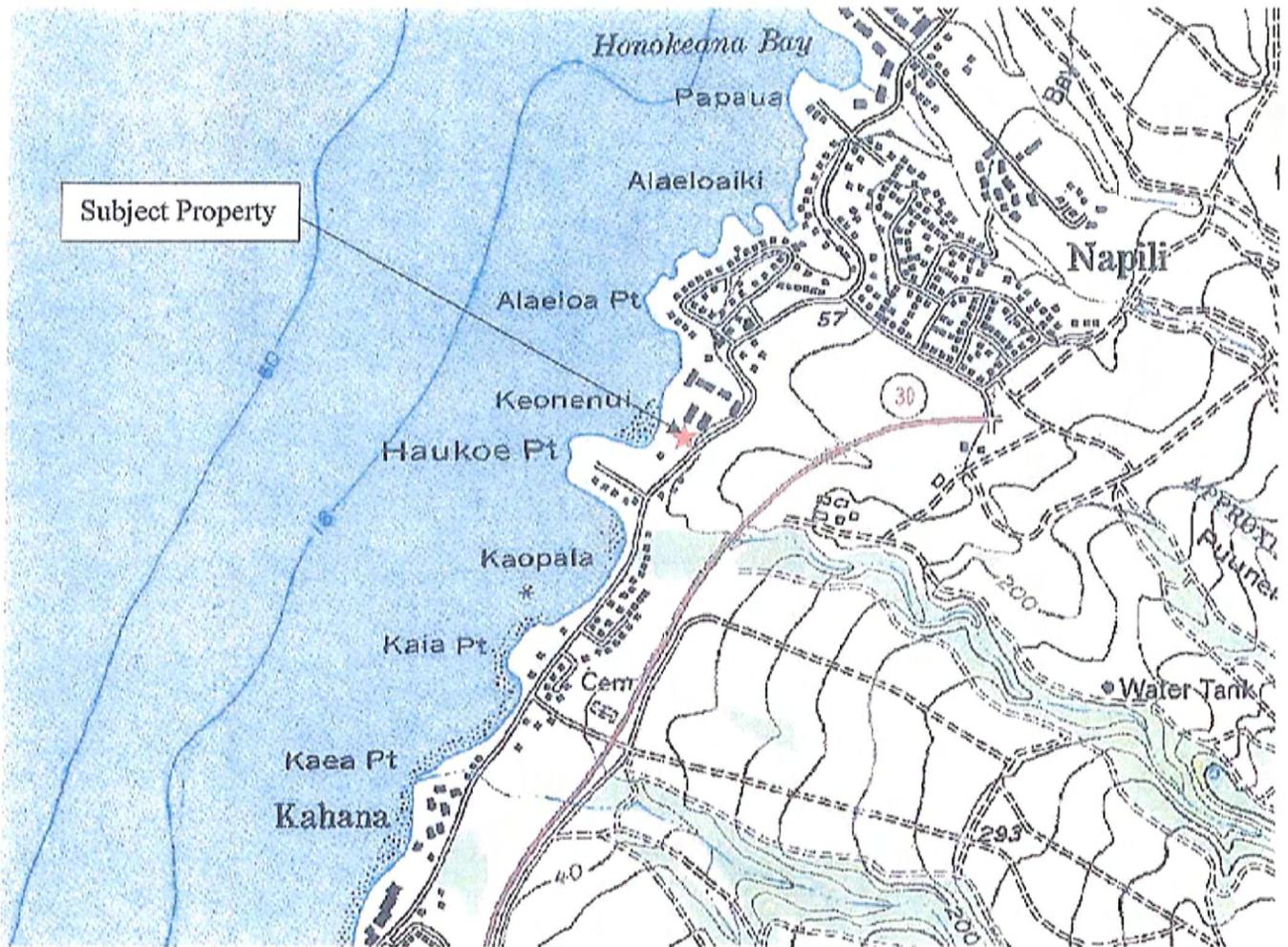


EXHIBIT 1

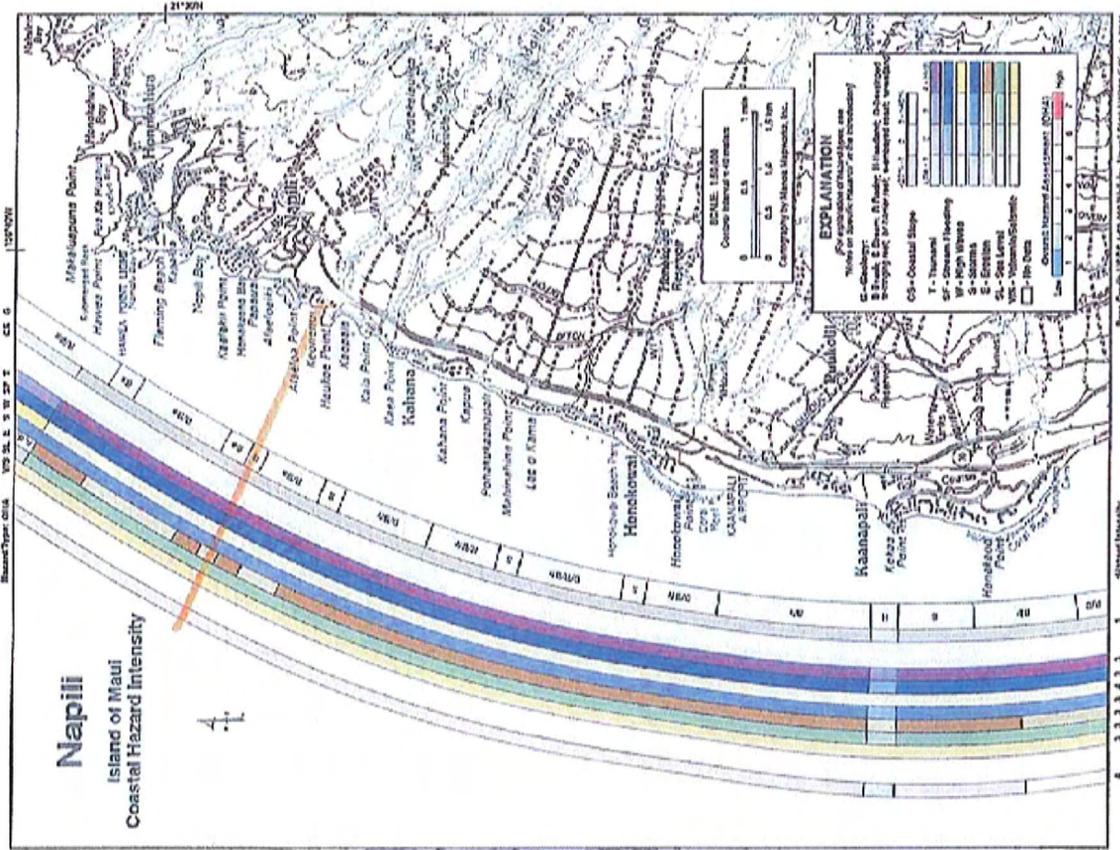
LOCATION MAP



Source: USGS

EXHIBIT 2

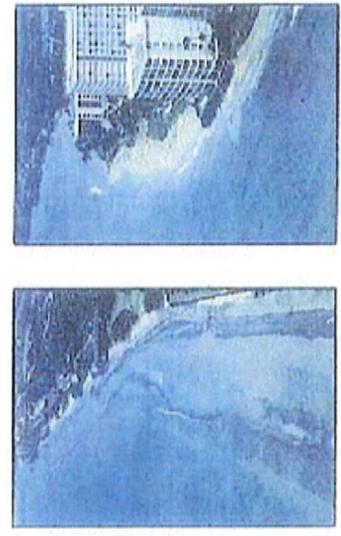
EXHIBIT 4



Napili

The highly developed coast of Napili is famous for its luxurious resorts, beaches, and golf courses that are built directly atop one of Hawaii's most scenic shorelines. The relatively low coastal plain rises only slightly near Napili and Honokahua, whose 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 Easnapali 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 (3) 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 Napili. 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. High floods and heavy rains, such as in March of 1988, 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 northeasterly swell by the island of Molekai. 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 seawalls and seawalls 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, Hauloa, Alaloa, and Kaelobii 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 Hamaoao Point it is increased to moderate (4), reflecting the greater hazards associated with the lower coastal slope there.

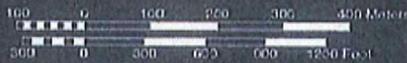


Extensive development has occurred along the small and narrow beaches of the Napili coast, while fossil beachrock ridges near Honokohau marking the position of the former shoreline, lie submerged offshore as evidence of rapid sea-level rise and erosion.

Alaeloa, Maui, Hawaii

Smoothed Erosion Rates

Scale 1:3000



Alaeloa

Maui

The Alaeloa study area extends from Lousee Point in the south to Naniulu Bay in the north. This area is a series of bays and coves with small white sand and cobble pebble 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 m/yr. Keonani Beach (transsects 1-14) is partially backed by a reefment constructed prior to 1960 to protect private property. This beach has experienced moderate erosion over time with an average AEHR of -1.0 m/yr. To the north, Alaolua Beach (transsects 17 and 18) occupies a small cove and has experienced moderate erosion with an average AEHR of -1.0 m/yr. Hoookoana Bay (transsects 25-26) is occupied primarily of cobble beach. It has experienced moderate erosion with an average AEHR of -0.8 m/yr. Napili Bay (transsects 32-47) has experienced moderate erosion over time with an average AEHR of -0.9 m/yr. Kapaolu Bay (transsects 53-63) has experienced moderate erosion since 1912 with an average AEHR of -1.2 m/yr.

Trends identified in this study generally agree with those found by Sea Engineering, 1991*. At Kapaolu 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 35% between 1945 and 1997. At Keonani Beach, average beach width has decreased 43% between 1949 and 1997. The average beach widths at Alaolua Beach has decreased 42% for the same time period. Average beach widths at both Hoookoana and Napili Bays has decreased 33% between 1949 and 1997. Average beach width at Kapaolu Bay has decreased 44% between 1949 and 1997.

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

HISTORICAL SHORELINES

- 1912
- Nov 1949
- 1956
- Mar 1975
- Aug 1987
- Mar 1992
- Nov 1997
- Erosion rate measurement locations (where normal transects)

Historical beach positions, color coded by year, are delineated using ortho-rectified and georeferenced aerial photographs as a Harbor and Coast Survey (HCS) topographic survey charts. The low water marks used as the historical shoreline, or at or near change reference feature (CCRF).

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

Movement of the SCRF is used to calculate erosion rates along a normal transect 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 general seasonal anomaly.

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 (AEHR) is a spatially smoothed, center-weighted average of calculated erosion rates. Five contiguous transects are incorporated in the smoothing process. The transects are weighted 1-3-6-3-1 with the middle one assigned to the center transect. The AEHRs are shown on the shore-parallel topographic 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 every 5 meters. Where complete beach loss has occurred, non-linear 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 earlier, shore lines between 1912 and 1949 show a reasonably consistent trend and are used to calculate AEHRs for this area.



Published under Contract No. CD05

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
1600 East-West Road
Honolulu, Hawaii 96822

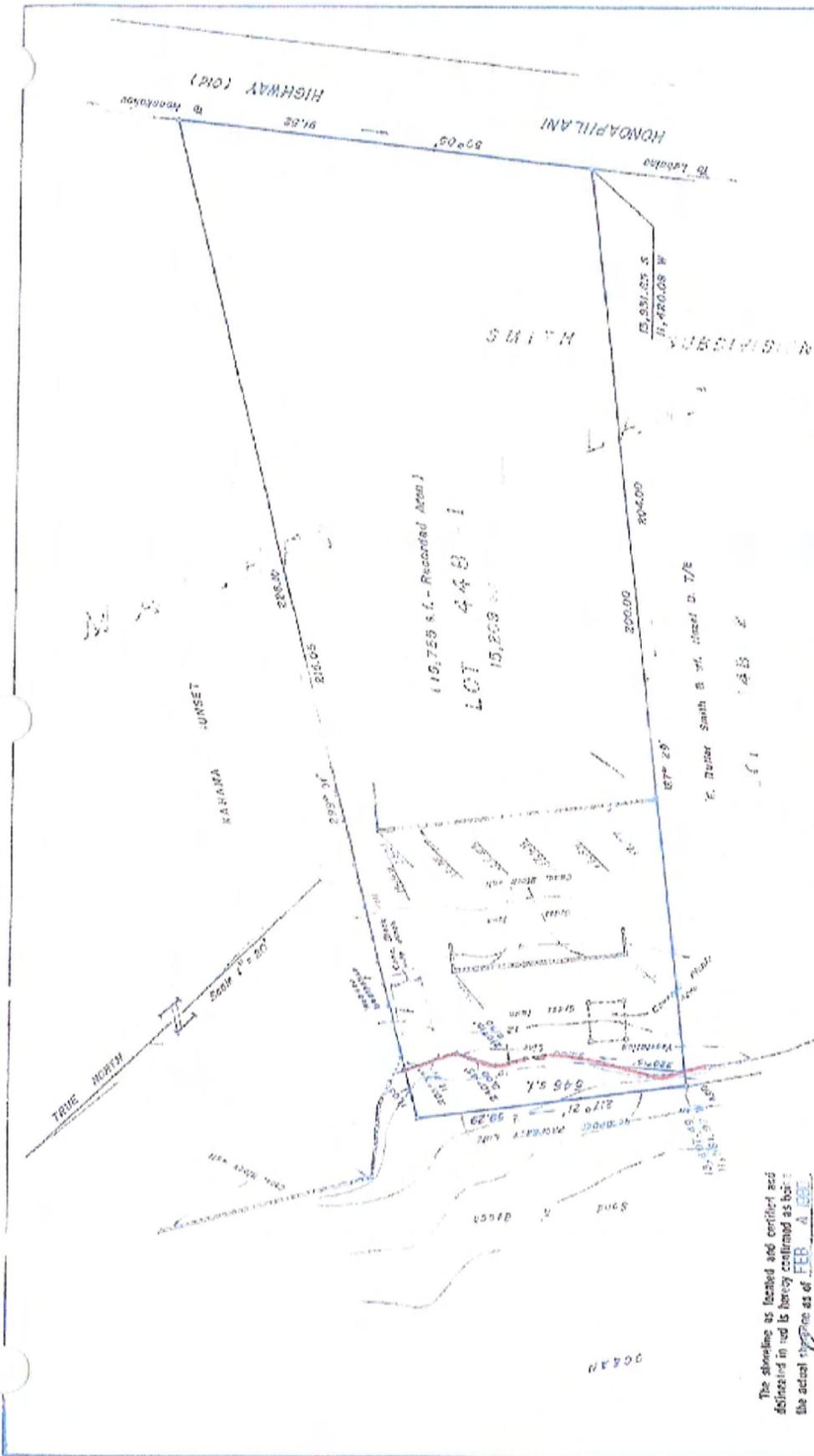
741300m E UTM coordinates
1564040 W false-natural scale coordinates



2003 Oblique Photo

11-29-03

EXHIBIT 6



TOPOGRAPHIC AND SHORELINE SURVEY
 OF
LOT 44B-1 OF THE SMITH SUBDIVISION; MAILEPAI HUI LANDS
PORTION OF R.R. 1663, L.C. AK. 5524 TO L. KONIA
AT ALAELOA, KAMAPALI, MAUI, HAWAII

SCALE 1 inch = 20 feet
 PREPARED AT REQUESTED OF:
 William Taylor
 1833 Anapa Road
 Kaneohe, Maui, Hawaii 96723

PREPARED BY:
 GEORGE F. NEWCOMER
 LAND SURVEYOR
 Honolulu Building, Suite 500
 Honolulu, Maui, Hawaii
 This work done by me or under my supervision

NOTES

1. All other maps from the map sheets.
2. Coordinates referred to "NAD 83".
3. General boundary data January 4, 1975.
4. Right set of all corners.
5. Shoreline data obtained January 2, 1975.

The shoreline as located and certified and defined in red is hereby confirmed as being the actual shoreline as of **FEB. 4, 1975**.

William Taylor
 Chairman, Board of Land and Natural Resources

Authority signed 2/10/79
 See Folder 597-9(6)
 T.M. MAP KEY 4-3-12.1

SURVEY OFFICE COPY

1979



SW Corner

Notes on edge wall - Kohala S...



SW Corner

Notes on edge wall - Kohala S...



SW Corner

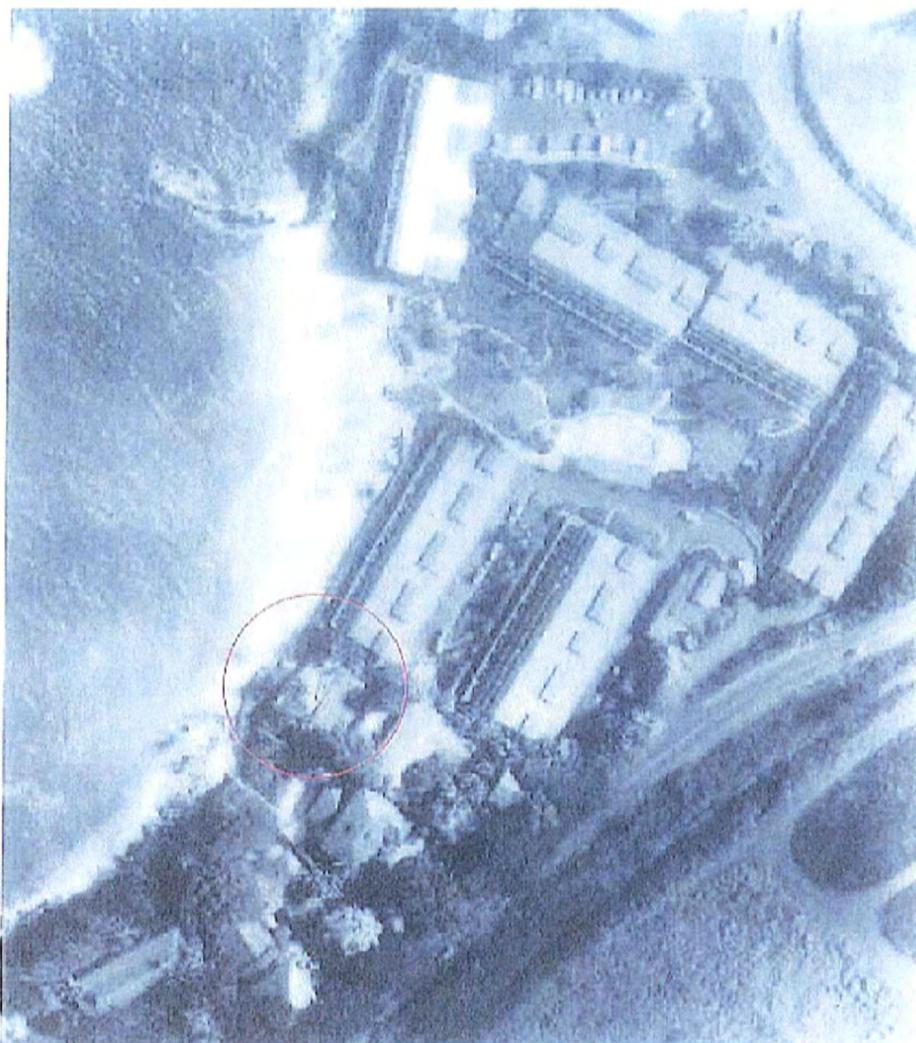
Notes on edge wall - Kohala S...



SW Corner

Notes on edge wall - Kohala S...

AERIAL PHOTOGRAPH: 1987



Source: Coastal Geology Group

Photos taken: 3/2/09

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



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

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 CHAIRPERSON
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 COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
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KEN C. KAWAHARA
 DEPUTY DIRECTOR - WATER

ACQUATIC RESOURCES
 BOATING AND OCEAN RECREATION
 BUREAU OF CONSERVANCIES
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 CONSERVATION AND COASTAL LANDS
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STATE OF HAWAII
OFFICE OF LAND AND NATURAL RESOURCES
 OBSERVATION AND COASTAL LAND
 POST OFFICE BOX 621
 HONOLULU, HAWAII 96809

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

ENF: MA 09-25
APR 14 2009

7008 1140 0001 0730 7403
 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

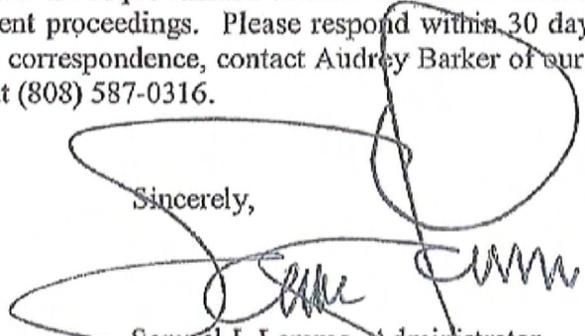
Dear Mr. Schweitzer:

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,

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

Laura H. Thiele
 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

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 2005 See Reverse for Instructions
 7008 1140 0001 0730 7564

Complaint: MA 09-25
 MAY 26 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) received a complaint regarding a concrete and rock stairway extending from your property down into the ocean waters (see attachment). 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.

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 10₂

Attachment

c: Chairperson
MDLO
County of Maui, Department of Planning

Photos taken: 3/2/09

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



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

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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



TATE OF HAWAII
OF LAND AND NATURAL RESOURCES
Conservation and Coastal Lands
 POST OFFICE BOX 621
 ONOLULU, 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
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 BUREAU OF CONVEYANCES
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 CONSERVATION AND COASTAL LANDS
 CONSERVATION AND RESOURCES ENFORCEMENT
 ENGINEERING
 FORESTRY AND WILDLIFE
 HISTORIC PRESERVATION
 KAHOO LAWE ISLAND RESERVE COMMISSION
 LAND
 STATE PARKS

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

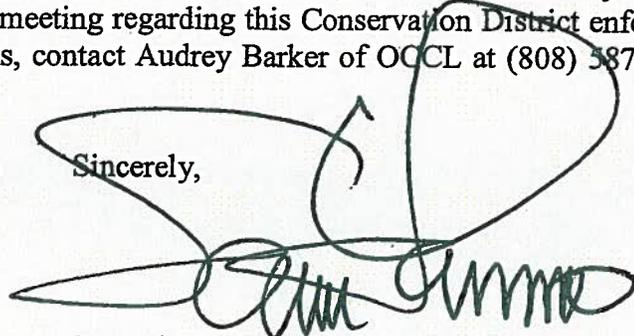
Henry Schweitzer
Page 2 of 2

ENF: MA-09-54

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,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo". The signature is written in a cursive, somewhat stylized font with a large loop at the end.

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

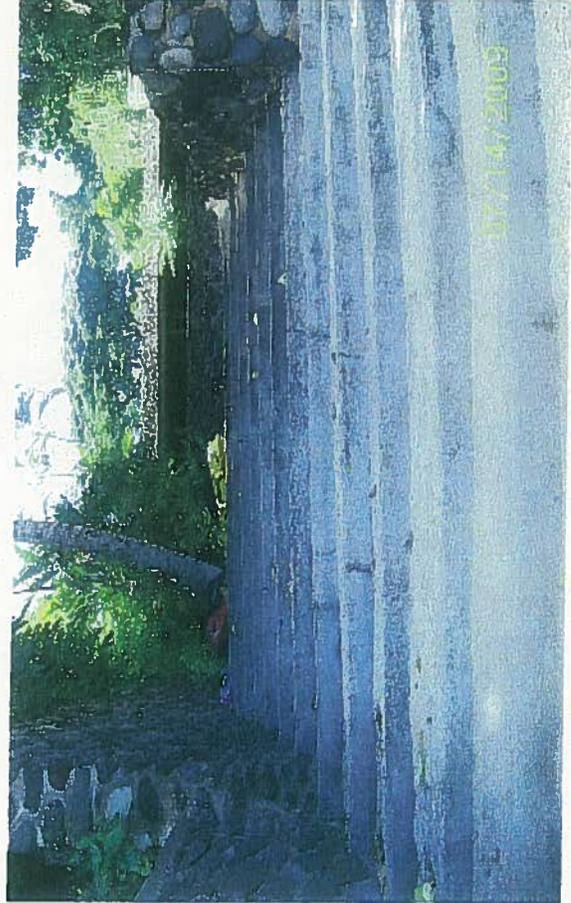
c: Chairperson
MDLO
DOCARE
Thorne Abbott, Maui Planning Department

Photos taken: 7/14/09

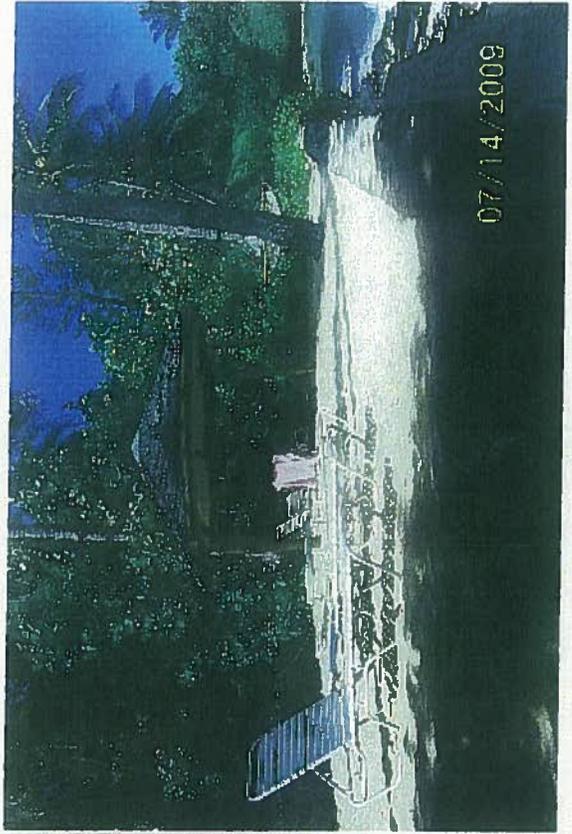
Henry Schweitzer, TMK: (2) 4-3-015:001



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.

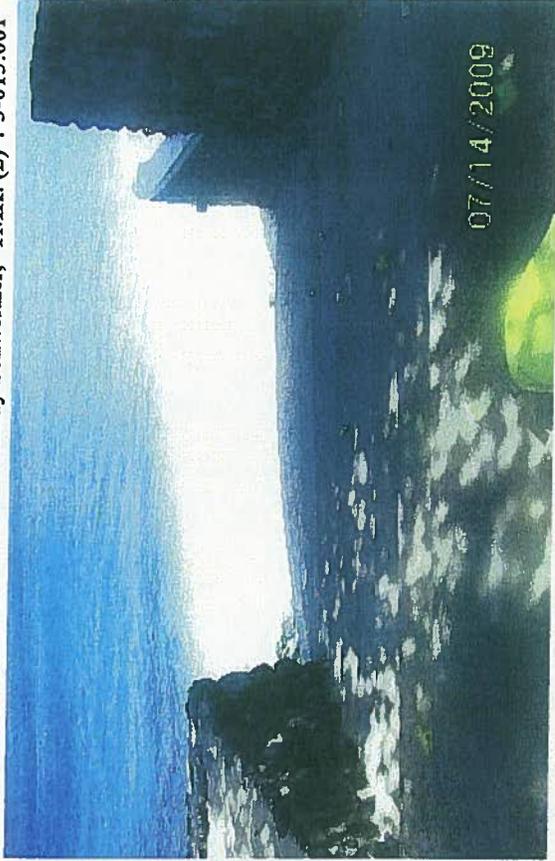


Terraced area filled with sand with a wood gazebo.

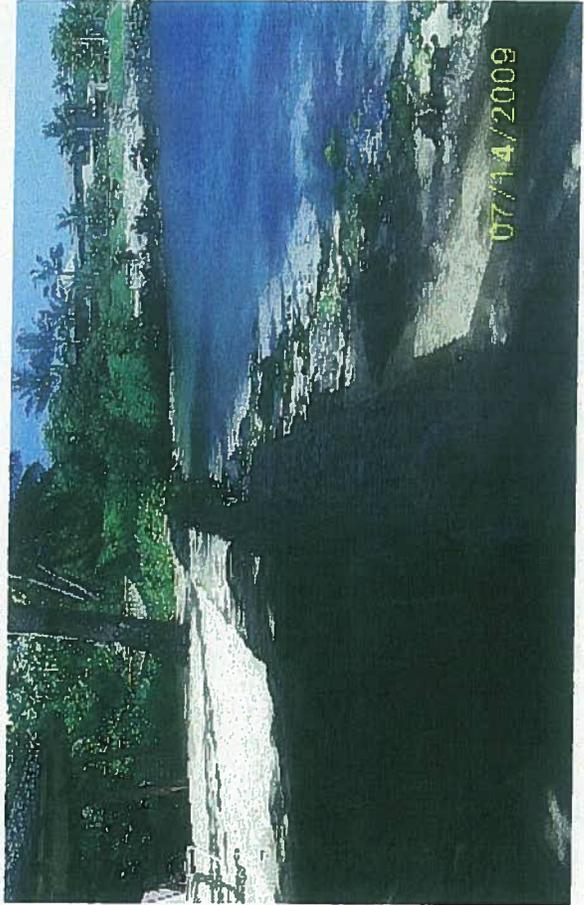
Photos taken: 7/14/09



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,

A handwritten signature in black ink, appearing to read "Sonny Huh".

Sonny Huh
Zoning Inspector

xc: Thome 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:cck
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,

A handwritten signature in black ink, appearing to read "Sonny Huh".

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 12₂

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

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2012 APR 17 A 10:10

DEPT. OF LAND & NATURAL RESOURCES
TELEPHONE: (808) 871-8351
STATE OF HAWAII

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

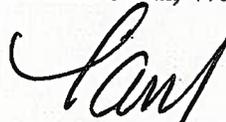
Dear Sam:

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**

| <u>Date</u> | <u>Narrative on Documentation</u> |
|-------------------|---|
| 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 transmitting 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 Kahana | Land Area 15,755 | Roofed Area Main 1962 Other* 460 | Age 13 | FS LH | Reg sdorxx |
| Schools Kamehameha III Lahaina Intermed Lahainaluna | | Div 2 | Zone 4 | Sect 3 | Parcel 15 1 |
| Bdrms Two | Stories One | Lot 91 | X226irr. | | |
| Baths Two | Enc Lndy Yes | Sewer No | Conn No | Yes | |
| Md. Qtrs | Roof Shake | Ass. Bal. S | None | | |
| Gar.* 460 sq. ft. | Floor Quarry, Asph | Paid By | --- | | |
| Patio* | Constr DW WF | Ass. Val 19 | 79/80 | | |
| Lanai 36'x12' | Cond Excellent | Land S120,667 | | | |
| Fam Rm | Easemnts None | Impr. S | 34,406 | | |
| Din Rm Area | Set-back 20 ft. | 1978 Taxes S1160/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. | S | S | Mo | | |
| Now @ | % P&I or all incl | Exist 2nd | AVS 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. 80482 | Ph. 661-3607 |
| L. Jewel Wieck | No. | Ph. 661-0924 |

 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, Kaaanapali, Maui - TMK: 4-3-15:1

Dear Mr. Haake:

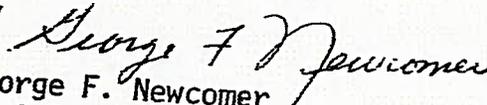
We are transmitting herewith six prints of the above for your processing.

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,

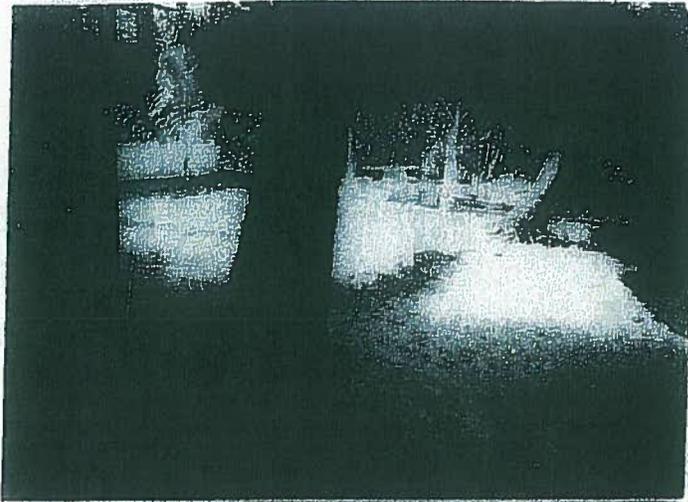
NORMAN SAITO ENGINEERING
CONSULTANTS, INC.

BY 
George F. Newcomer
Registered Professional
Land Surveyor

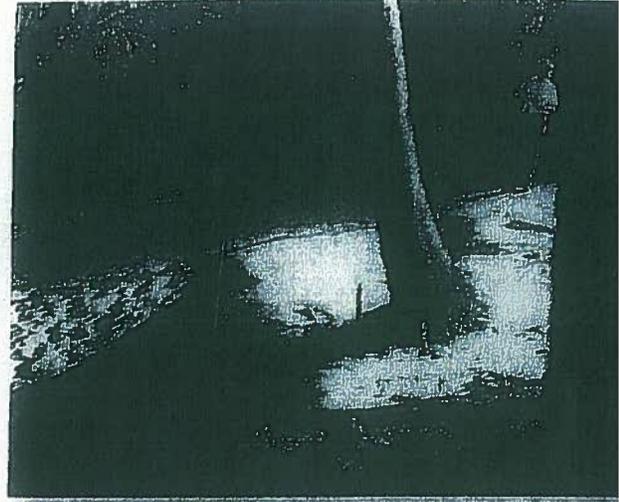
ahh

Enclosures

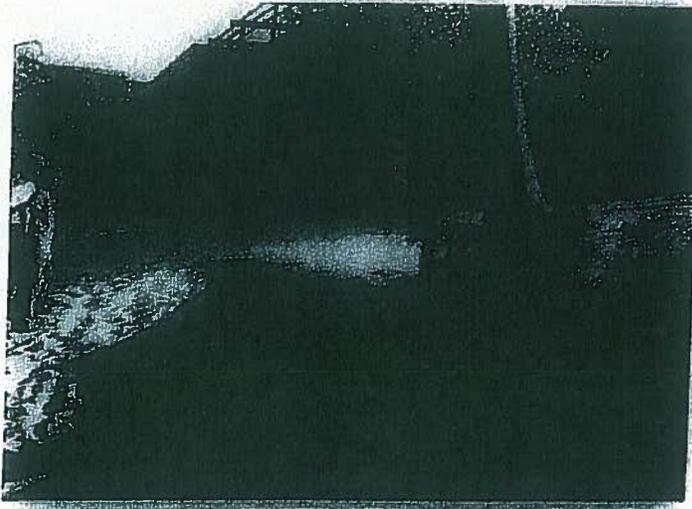
✓xc: W. Taylor w/1 prt.



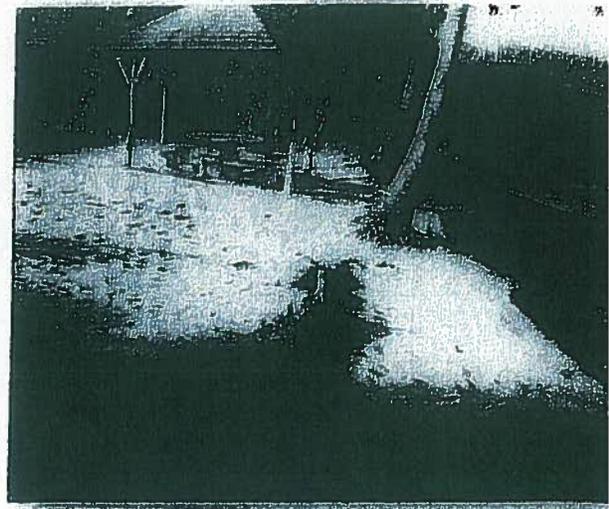
10 Cr
no



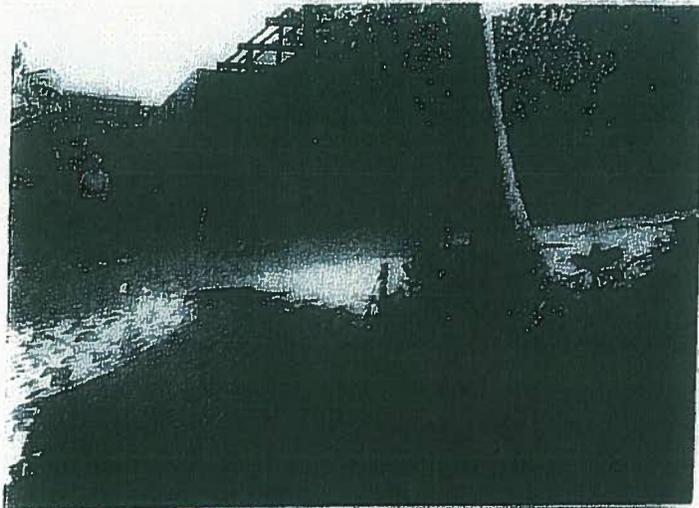
5 Cr
Ta



Pr ue 1



Cr



k



11.01.2008 - looking S.W. at
see a wall (to Sur

TAYLOR CONSTRUCTION CO.

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

Mr. Haybe Schwitzer
Miss Princeton Gaine
Merrina DeKey
Cabin Formica - 602, 61

DATE

1-22-80

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 my outside change we can show you line & right class without a new survey - That could save on cost this up.

Sincerely,
Taylor Construction Co.

DATE

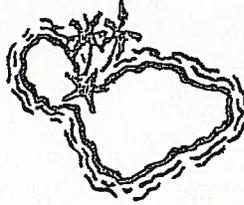
JAN 25 1980

still need from
plans
for re wall

SIGNED

i maui

TAYLOR



CONSTRUCTION CO.

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 letter which explains the urgency and necessity of construction of a sea wall 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 surveyed the land and obtained a shoreline verification. We have also acquired the services of Stephen Pitt, a structural engineer, who has designed the wall according to the scope of the problem. We are under contract to Taylor Construction Company to build the wall when everything has been approved.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Hoyle Schweitzer".

Hoyle Schweitzer

HS/bt
Encl.

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.

*Bill
5-29-80*

BY

Bill

SIGNATURE

9

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2 St. id

Pi. cc es

con.

es. 1 W reply 2. De

999 91. W . re S



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 | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |
| COLLECTED FINE | NONE |
| ESTIMATED FINE | 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:

| | | |
|-------------------------------------|---|---|
| <input checked="" type="checkbox"/> | Cease and desist all activity immediately. | |
| <input checked="" type="checkbox"/> | Remove the violation(s) at the Planning Director's direction or submit an application for and obtain a shoreline setback variance from the Maui Planning Commission, by September 28, 2012 | |
| <input checked="" type="checkbox"/> | Pay an initial civil fine in the amount of: | \$50,000 To the Department of Planning ("Planning") by September 28, 2012 |
| <input checked="" type="checkbox"/> | Pay a daily civil fine in the amount of: | \$5,000 Per day to Planning if the corrective action described above 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 final. Should you wish to contest any provision of this Notice of Violation and Order, submit written confirmation that you wish to proceed 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 you 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 recurring 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 | | |

cc: 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_2012\0020_SsaSeawall.wpd (R)

EXHIBIT 14



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 | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |
| FORFEITED FINE | NONE |
| DEFERRED 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 and 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:

| | | | |
|-------------------------------------|---|----------------|--|
| <input checked="" type="checkbox"/> | Cease and desist all activity immediately. | | |
| <input checked="" type="checkbox"/> | Remove the violation(s) at the Planning Director's direction or submit a SMA Assessment Application for SMA determination, by September 28, 2012 | | |
| <input checked="" type="checkbox"/> | Pay an initial civil fine in the amount of: | \$5,000 | To the Department of Planning ("Planning") by September 28, 2012 |
| <input checked="" type="checkbox"/> | 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 Notice of Violation and Order, submit written confirmation that you wish to proceed with said hearing within thirty (30) days from the date of the certified mailing of this notice, or this order shall become final. Pursuant to §91-9, HRS, a notice of hearing date and time will be forwarded to you under separate cover. Please be advised that you may appear on your own behalf or retain counsel to represent you.

Pursuant to §12-202-25, SMA Rules, the submittal of an SMA permit application subsequent to the issuance of this Notice of 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 | William Spence | Director's Signature | |
| Attached Document(s) | None | | |

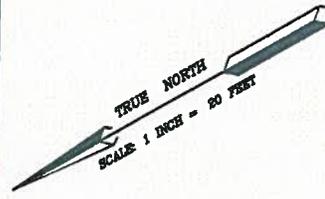
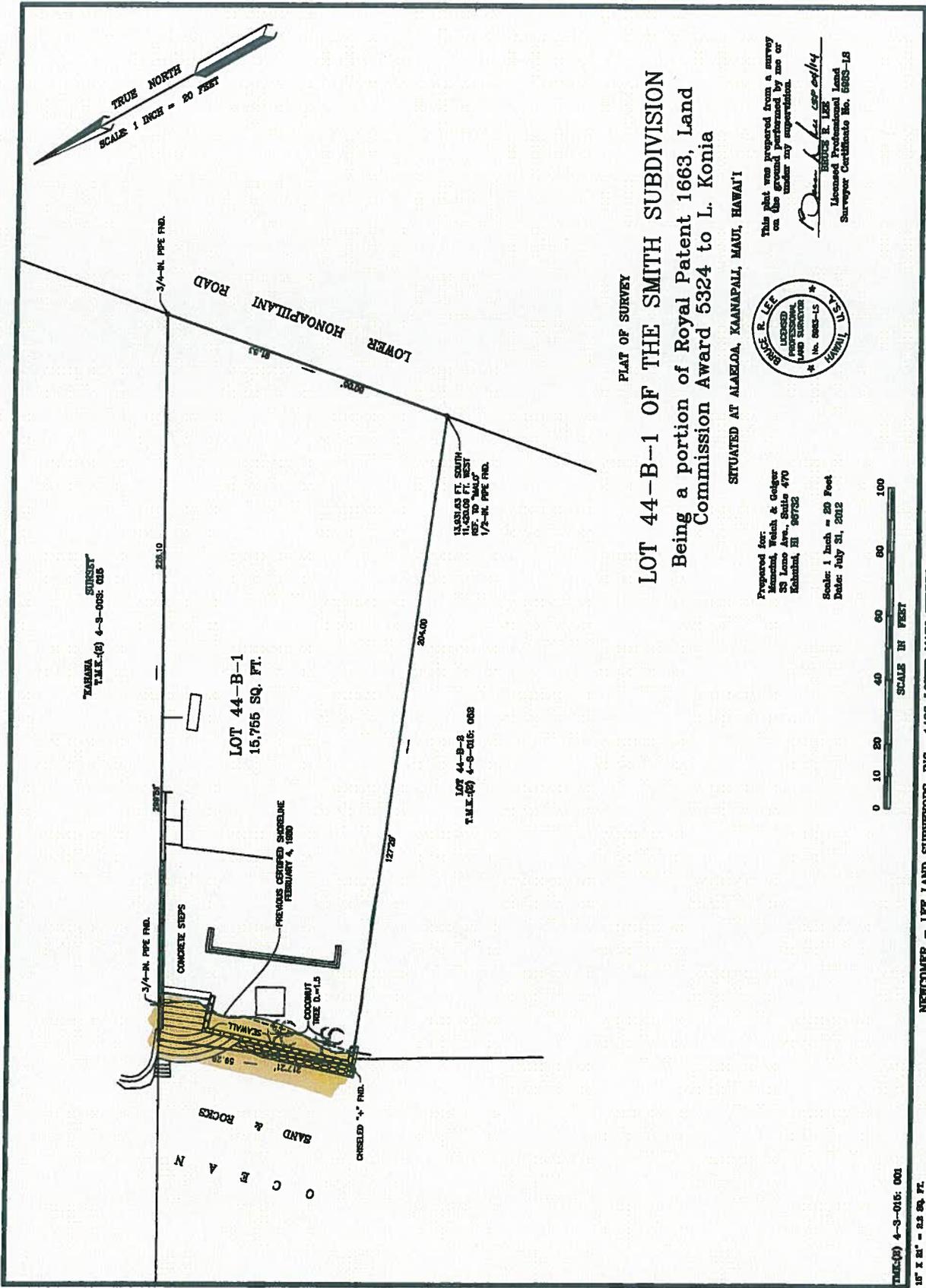
xc: RFS 09-0002157 & NOV 2012/0019 (Project File & KIVA Related Documents)

12/General File

WRS:AHS:JAA:CW;ckk

S:\ZONING\RFS\2009\2157_Schweitzer_seawal\NOV\NOV_20120019_SmaStairs.wpd (Rev. 03.06)

EXHIBIT 14



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 ALAELOA, KAANAPALI, MAUI, HAWAII

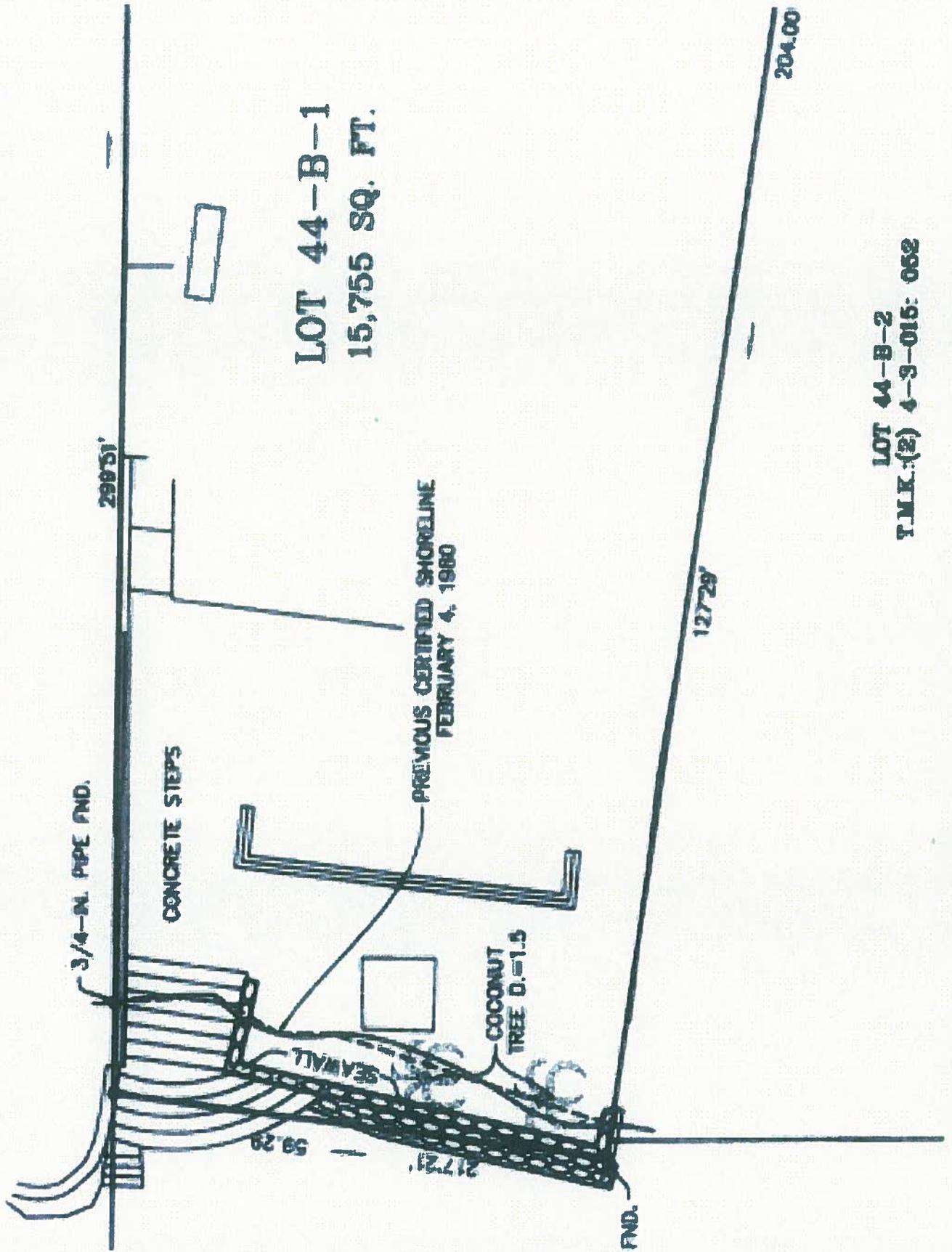
This plat was prepared from a survey on the ground by me or under my supervision.
R. Lee
 RICHARD E. LEE
 Licensed Professional Land Surveyor Certificate No. 5685-18



Prepared for:
 Newcomer, Welch & Gagner
 33 Lono Ave., Suite 470
 Kahanui, HI 96733
 Scale: 1 inch = 20 Feet
 Date: July 31, 2012



T.M.C. (8) 4-3-016: 001
 1" x 21" = 8.3 SQ. FT.



LOT 44-B-2
T.M.K.:(2) 4-3-015: 052

**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

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APPENDIX A: GUIDELINE FRAMEWORK TABLES

APPENDIX B: DEFINITIONS

APPENDIX C: REFERENCES

APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET

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 pertaining 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

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.

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

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,

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

recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

- (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.

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/m² 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 (SCREEN) 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/m²), of the coral reefs in Kihei to be \$28.09 million (\$65/m²) and the coral reefs on the Kona coast to be \$17.68 million (\$19/m²).

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 m² of coral reef damage. This calculation

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: _____



APPENDIX D
Coastal Engineering Site Visit Memorandum (December 21, 2012)



Sea Engineering, Inc.

Makai Research Pier 41-305 Kalanianaʻole Hwy.

Waimanalo, Hawaii 96795-1820

Ph: (808) 259-7966 Fax: (808) 259-8143

Email: sei@seaengineering.com

Website: www.seaengineering.com

Memorandum

DATE: December 26, 2012

TO: Mr. Hoyle and Dianne Schweitzer

FROM: Jim Barry

SUBJECT: Coastal engineering site visit at Keonenui Bay

1. INTRODUCTION

Sea Engineering (SEI) was contacted and asked to evaluate shoreline conditions at the Schweitzer Property at 4885 Lower Honoapiilani Road, a property in the middle of Keonenui Bay in the Napili area of Maui (Figure 1). A site visit was conducted on December 12, 2012. The property is fronted by a seawall and stairway that were originally built in 1980. The legal status of the structures is the subject of dispute between the property owners and both County and State agencies.

The purpose of the SEI visit was to determine the potential effects of removing the disputed structures versus leaving them in place.

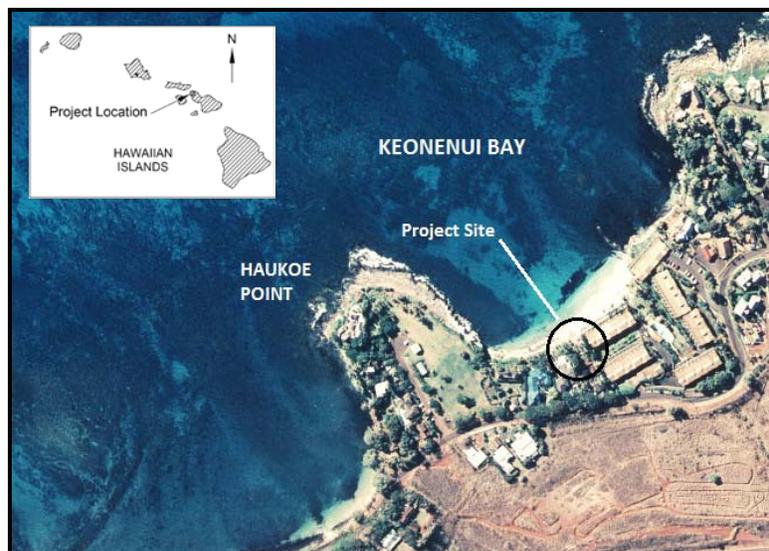


Figure 1. Project site location at Keonenui Bay

2. SITE CONDITIONS

Site Description and Coastal Morphology

The project site is on the northwest coast of the island at the foot of the West Maui Mountains. The site is protected from prevailing tradewinds by the mountains, and is somewhat sheltered from waves by the surrounding islands of Molokai, Lanai, and Kahoolawe. Keonenui Bay lies between Haukoe Point and Alaeloa Point on the northwest coast of Maui (see Figure 1). The beach is a pocket beach typical of this stretch of coastline. It trends northeast – southwest, is about 500 feet long and contained between the headlands, which protrude about 400 to 500 feet seaward.

The shorelines within the study area are protected by a central location in the Maui Nui island complex formed by the islands of Maui, Molokai, Lanai, and Kahoolawe, but are exposed to deepwater waves from the south through southwest, and also from the north and northeast and approximately due west. The study area is protected from the northeast tradewind waves by the island of Maui itself.

The shoreline along the Kahana-Napili coast is tied to the underlying volcanic rock formations. The coastal processes along the shoreline within the study area are complicated by the bay and headland morphology, the presence of offshore fringing reefs, and a seasonal wave climate with two opposing wave approach directions.

A soft mudstone formation underlies much of the sand at Keonenui Bay, and forms the foundation substrate for the coastal structures (Figure 2). The mudstone appears to be the product of *in-situ* weathering and alteration of a brecciated volcanic ash flow tuff. Differential hardness within the formation causes irregular weathering and produces a generally uneven surface. The color of the substrate material varies from grey to red, with red material predominate at the southwest corner of the bay. The softer areas of the mudstone will slowly erode due to wave uprush and attack, and can result in highly turbid conditions (Figure 3).

Shoreline Erosion Studies

Keonenui Beach is dynamic in nature, with periods of both beach erosion and accretion. It is a pocket beach protected by prominent headlands, and beach sand is essentially trapped between these headlands during periods with moderate wave conditions. However, extreme conditions may result in sand moving farther offshore.

The University of Hawaii Coastal Geology Group (HCGG) conducted an island-wide study of coastal erosion as determined from aerial photographs. The study used the beach toe as a reference line. The beach toe is the change in slope at the transition between the nearshore and foreshore regions of the beach, and is a good indicator of shoreline erosion or accretion

because it marks the seaward edge of beach face. It appears as a change in color or tone in aerial photographs. However, the beach toe can also vary with seasonal or short term erosion or accretion, or changes in beach slope and width, and thus may also indicate the dynamic nature of a beach, rather than long term erosion or accretion trends.

The HCGG results for Keonenui Beach show approximately 1 ft average yearly erosion between 1912 and 1997, and an average decrease in beach width of 42% between 1949 and 1997.

An analysis by SEI in 2000 indicated that the beach is dynamic, with large seasonal shifts in the beach toe position. The seasonal shifts dominated the data, and an average rate of erosion or accretion was not determined. Figure 4 shows the digitized beach toe position on five aerial photographs between 1949 and 1997. Although the 1987 data indicated 78 ft of landward movement of the beach toe in Transect 29A, the 1988 data show 68 ft of accretion, or seaward movement.

Despite the shoreline erosion problems at many properties in Keonenui Bay, photographs taken in 2001 (Figure 5) and 2012 (Figure 6) show qualitatively similar beach morphology, with similar sand resources.



Figure 2. Weathered and altered mudstone conglomerate substrate



Figure 3. Erosion of the soft red mudstone substrate at Keonenui Bay

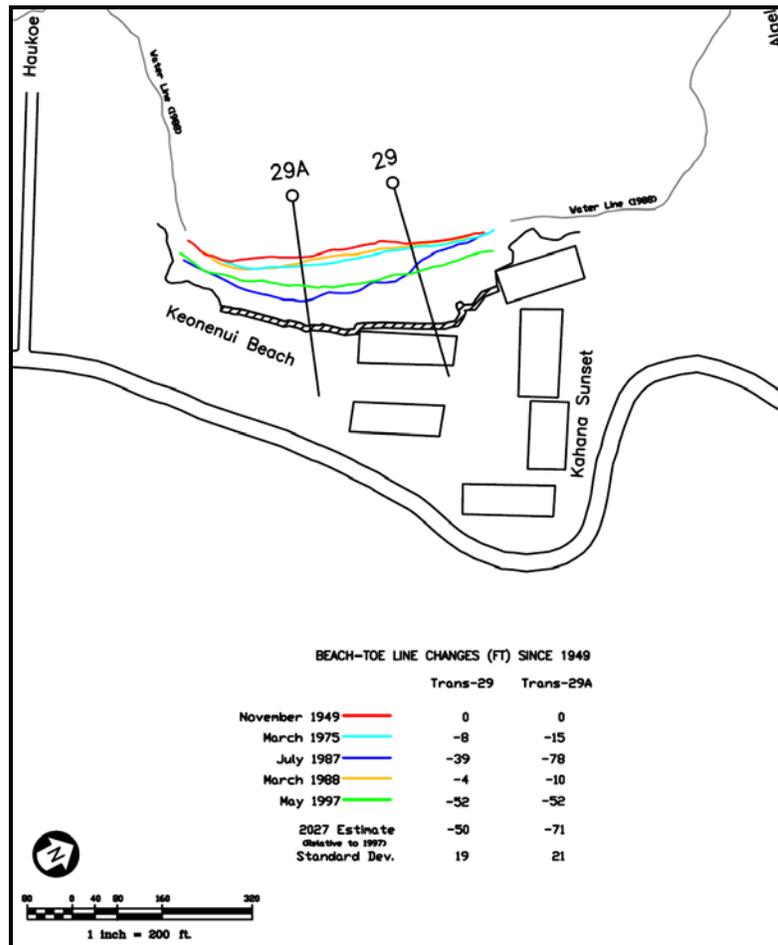


Figure 4. SEI beach change study (2000) at Keonenui Bay



Figure 5. Northeast section of Keonenui Bay (11/6/2001)



Figure 6. Northeast Keonenui Bay (12/11/2012) showing morphology similar to 2001

3. SEAWALL CONFIGURATION

Wall Layout

A layout of the wall and other features on the Schweitzer property is shown in Figure 7. The property is bordered by the Kahana Sunset condominiums to the northeast, and the Lusardi property, a single family home, to the southwest. The wall extends across approximately 75% of the property, starting at the Lusardi property and ending at a set of concrete steps that abut the Kahana Sunset property. A 90-degree bend at each end, known as a “return”, is used to end the wall. The return at the northeast end abuts the stairway (Figure 8), and the return at the southwest end is butted into by the adjacent Lusardi seawall (Figure 9). A series of two landscape walls form a double terrace behind the seawall (Figure 7), with the single family

dwelling perched on the higher terrace.

Wall Section

The seawall at the Schweitzer property is a Cemented Masonry Unit (CMU) wall with a cemented rock facing. It was constructed on a concrete footing embedded 30" (min) into the substrate (see Figure 10). It is in generally good condition, with most of the rock facing intact. However, erosion of the substrate in front of the wall caused undermining of the footing, and reinforcement was placed for additional protection of the footing (Figure 8). Additional substrate erosion has also undermined this reinforcement. Much of the combined wall and stairs structure exhibits some undermining, with the maximum undermining of approximately 3 ft occurring at the mid-section of the wall (Figure 11).

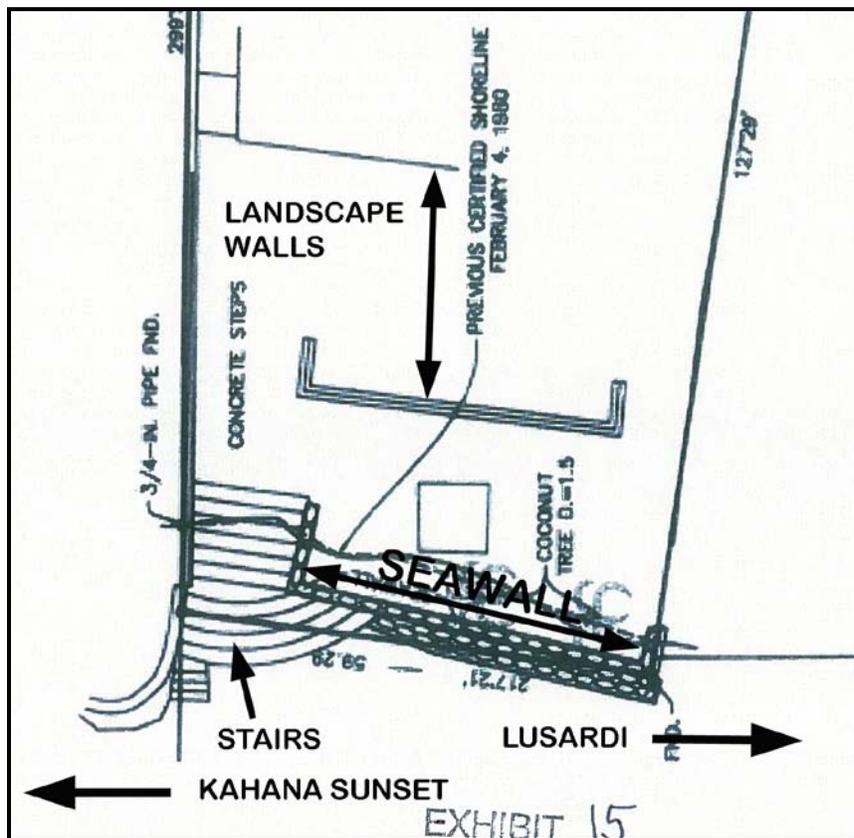


Figure 7. Layout of structures on the Schweitzer property

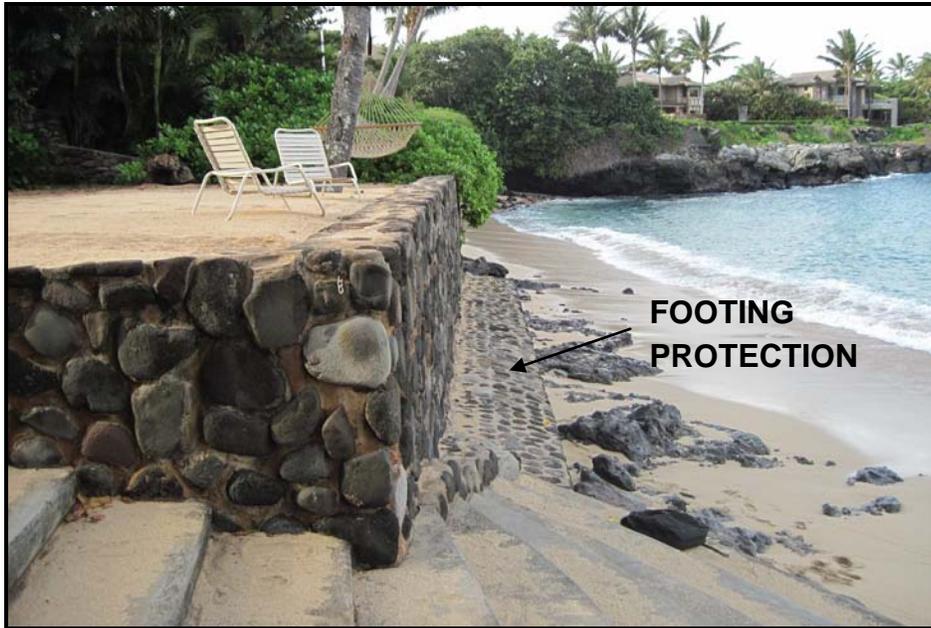


Figure 8. Steps and seawall structures showing footing protection and return



Figure 9. Southwest end of seawall, abutting the Lusardi wall

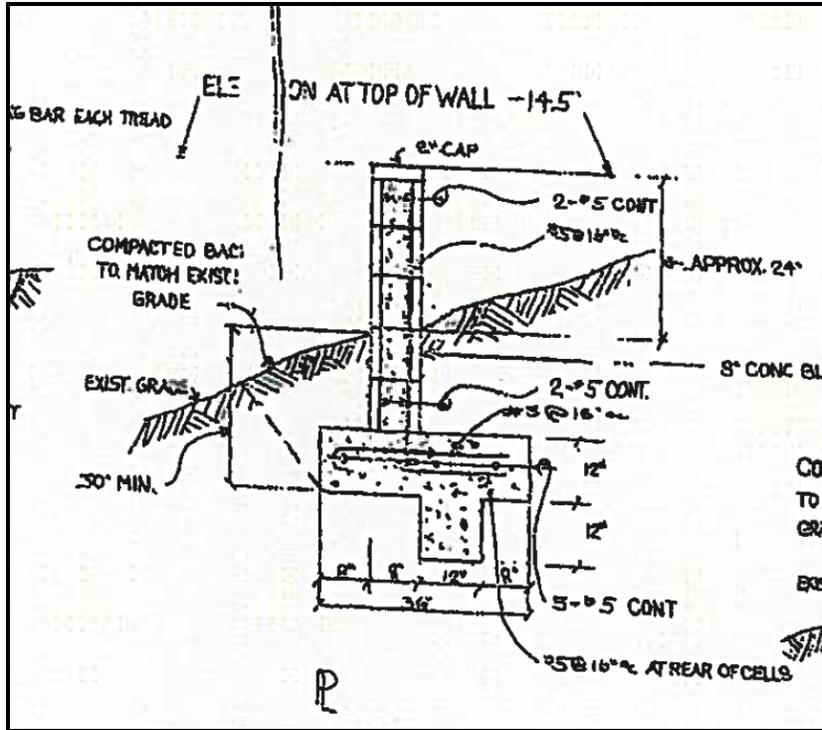


Figure 10. Wall section from original plans (note buried footing)



Figure 11. Undermining of footing protection

Northeast Property Boundary

Structural elements of the northeast property boundary with the Kahana Sunset condominiums consist of the stair section abutting the Kahana Sunset condominium, and a boundary wall that divides the properties and is nearly continuous with the Kahana Sunset seawall return (Figure 12). There is a slight separation between the boundary wall and the Kahana Sunset seawall (Figure 13). The owners have photographs showing a much larger gap between these two structures due to undermining and rotation of the Kahana Sunset seawall. Apparently some major repairs have taken place since that time to restore the Kahana Sunset seawall near to its original position. The corner of the Kahana Sunset seawall is still significantly under-mined, although the extent could not be determined due to sand build-up.



Figure 12. Northeast boundary with the Kahana Sunset



Figure 13. Contact between Kahana Sunset seawall and Schweitzer boundary wall and stairs

Southwest Property Boundary

The southwest property boundary abuts the Lusardi property. The Lusardi seawall is butted into the Schweitzer wall approximately in the middle of the return (see Figure 9). Both the Lusardi and Schweitzer properties have Cemented Rock Masonry (CRM) boundary walls behind the seawalls, perpendicular to the shoreline and separated by a distance of approximately 3 ft. Figure 14 shows the contact between the Schweitzer seawall return and the CRM wall.



Figure 14. Contact between Schweitzer seawall and CRM boundary wall at southwest property line

4. CONSEQUENCES OF NO/ACTION AND SEAWALL REMOVAL

Of the five properties fronting the Keonenui Bay shoreline, four are fronted by seawalls. The single remaining property without a seawall is at the southwest corner of the bay (the Hester property), where the shoreline consists of a vertical mudstone escarpment. The Hester property is currently processing an Environmental Assessment for the construction of a new seawall. In effect, a network of seawalls seals off most of the Keonenui Bay shoreline.

It is difficult to say with absolute certainty what the effects of keeping or removing the Schweitzer seawall will be. However, the following are best estimates of these consequences.

No Action

The No Action alternative is leave the wall and stairs in place. Coastal processes and beach morphology will continue as at present. Slow erosion of the mudstone substrate is inevitable and will continue to undermine the structures. Some remedial action will likely need to be taken to maintain the integrity of the seawall and stairs. The critical need for this repair is some years away, and it would likely take the form of replacing the existing footing protection with a deeper excavation and cut-off wall.

During high wave events, the seawall and stairs present a reflecting surface to incoming waves that is likely detrimental to beach sand deposition. However, this is a temporary effect that is relieved during milder conditions, and it is not clear that the native shoreline would be a substantial improvement due to its high relief and propensity to form steep escarpments. The Kahana Sunset/Schweitzer/Lusardi sequence of seawalls presents an integrated shoreline defense against coastal erosion, and is helpful in the prevention of turbidity caused by erosion of the mudstone substrate.

Keonenui Bay is also a pathway for upland drainage areas. There are retainage and settling basins associate with the drainage, but apparently the design conditions are sometimes exceeded. Photographs held by the property owners and taken during flood events show that a floodway exists along the northeast property line, with egress onto the beach via the stairs. The concrete pathways and stairs serve to protect this area from erosion and entrenchment during these events.

Removal of Seawall and Stairs

Removal of the Schweitzer structures – the seawall and stairs – would have consequences that include exposure of existing native material underneath the structures, and exposure of the flanks of the seawalls and adjacent properties. It is unclear if there would be beneficial effects such as an improvement in the retention of sand on the beach.

The native material under the Schweitzer structures would be composed of the same mudstone existing elsewhere in the bay. However, it would have been excavated in order to place the seawall (see Figure 10), and probably exists as a more or less vertical escarpment that is presently buried behind the wall. Some of the material behind the wall is probably fill, and would also need to be removed if it is not composed of beach compatible sand. It is likely that at least the most seaward landscape wall (see Figure 7) would also need to be removed, or would soon be lost to erosion and undermining as a consequence of seawall removal. Long-term erosion effects may potentially threaten the Schweitzer residence.

The Kahana Sunset wall has a return element that will help prevent flanking of the structure upon removal of the Schweitzer stairs. Its extent is limited, however, and the integrity of the footing is not known, although the front of the structure is visibly undermined. The boundary wall that it abuts likely does not have an extensive footing and will probably be undermined if exposed. Flanking and damage to the Kahana Sunset seawall is likely to occur if the Schweitzer stairs and wall are removed.

On the southwest side, the Lusardi wall butts into the return of the Schweitzer wall. Removal of the Schweitzer wall would leave the end of the Lusardi wall exposed, and allow it to eventually be flanked and eroded.

Removal of the structures will eliminate the footprint of the structures on the beach, adding some width to the exposed mudstone substrate or the sand beach. Based on measurements of the footing protection and the section showing the footing in Figure 10, the footprint is likely to be on the order of a few feet at the wall. The added width will likely not cause substantial changes to coastal processes elsewhere in the bay. If substantial erosion were to occur as a result of removal of the structures such that a minor incursion were formed into the Schweitzer property, this formation may fill with sand. However, these morphological changes are conjectural as it is not possible to determine precisely what would be exposed upon removal of the structures, and what the consequential shoreline response would be.

5. ACTION SUMMARY

Following are summary points for the No Action and Removal actions:

No Action

No Action would result in:

- No change in existing morphology, except for slow erosion of the mudstone substrate similar to that occurring at present and along the remainder of the beach;
- Continuity and mutual protection of the Kahana Sunset/Schweitzer/Lusardi seawalls;

- Hardened floodway during extreme flood conditions;
- No change in shoreline position.

Seawall and Stair Removal

Removal of the Schweitzer structures would result in:

- Exposure and potential damage due to flanking of the Kahana Sunset and Lusardi seawalls;
- Likely exposure of a mudstone escarpment buried behind the existing wall, however there is great uncertainty as to the buried terrain;
- Increased substrate erosion and consequent turbidity of nearshore waters;
- Erosion of a floodway during extreme floods;
- Potential loss of at least one Schweitzer landscape wall;
- Minor increase in beach width;
- Uncertain change in beach morphology dependant upon the presently buried substrate.

Changes in overall beach morphology due to structure removal are likely to be minor, however the potential flanking of structures on the neighboring properties is a major concern.

From: jbarry@lava.net [mailto:jbarry@lava.net] **On Behalf Of** Jim Barry
Sent: Saturday, June 29, 2013 4:19 AM
To: Raymond Cabebe
Subject: Re: Schweitzer Report

Hi Ray,

I'm fine with deleting the sentence.

Jim

On Fri, Jun 28, 2013 at 2:07 PM, Raymond Cabebe <RCabebe@chpmaui.com> wrote:

Jim,

We are preparing the Final EA for the Schweitzer project and Planning requested a correction to your December 26, 2012 memorandum/report (see attachment, No. 10 on page 3). On page 11 of your report, the 3rd sentence in the first paragraph states, "The Hester property is currently processing an Environmental Assessment for the construction of a new seawall." Can you send me an email stating that you are deleting that sentence from your report?

R. Raymond Cabebe, LEED[®] AP BD+C

Land Planner



115 N. Market Street

Wailuku, Maui, Hawaii 96793

voice: [808.242.1955](tel:808.242.1955) x556

facsimile: [808.242.1956](tel:808.242.1956)

direct: [808.270.1556](tel:808.270.1556)

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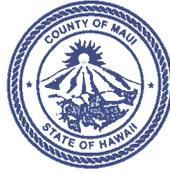


APPENDIX E
Agency Comments & Responses

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

COUNTY OF MAUI
DEPARTMENT OF PLANNING

2013 APR -2 A 8: 27

March 25, 2013

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Mr. Samuel J. Lemmo, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, Hawaii 96809

Dear Mr. Lemmo:

SUBJECT: COMMENTS FROM THE COUNTY OF MAUI REGARDING REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE (CDU) APPLICATION MA-3647 FOR AN AFTER-THE FACT (ATF) SEAWALL AND STAIRS, LOCATED AT ALAELOA, LAHAINA, ISLAND OF MAUI, HAWAII; TMK: (2) 4-3-015:001 (RFC 2013/0028)

The Department of Planning (Department) has reviewed the transmitted CDU Application and associated Draft Environmental Assessment (EA) received on February 22, 2013. The Department understands that the Applicant is applying for an easement for the subject structures at the shoreline. The Department is familiar with this shoreline parcel and has completed a site visit to the property within the past year. The Department notes that the seawall and stairs do not protect any structures at the shoreline. The residential structure is substantially set back and is located at a safe elevation out of the coastal hazard zone. The Department also notes that the construction of the seawall and stairs at the shoreline, on the beach, do not have any permits and were thus, constructed illegally in the 1980's.

According to the *Shoreline Setback Rules for the Maui Planning Commission* (Shoreline Rules), Title MC-12, Chapter 203, structures located in the Shoreline Setback Area are limited to minor structures and activities only and other structures and activities as defined in Section 12-203-12, Permitted structures and activities within the shoreline setback area. Any illegal structures that are not allowed in the Shoreline Setback Area that are present will require an ATF Shoreline Setback Variance (SSV) from the Maui Planning Commission and a Special Management Area (SMA) Assessment.

The Department provides the following comments for inclusion in the Final EA associated with the CDU Application:

1. For the Final EA, please clearly delineate on project site maps all structures in the shoreline setback area for the parcel and submit permits for each of these structures. According to County of Maui records, the seawall and stairs structures, and associated other concrete and footings at the shoreline, do not have the required County of Maui permits, nor is evidence of such permits included in the Draft EA. Please include all County of Maui permits for all structures located in the shoreline in the Final EA;

2. On page 20 of the Draft EA, the Applicant has determined that the existing seawall and stairs are makai of the shoreline, as "shoreline" is defined in the Hawaii Revised Statutes (HRS) Chapter 205, as amended. From the Department's understanding, the shoreline has been determined to be halfway up the stairs at approximately the fifth stair inland, behind the seawall. Thus, parts of the staircase are in the county jurisdiction and is located in the Shoreline Setback Area and thus, are subject to the *Shoreline Setback Rules for the Maui Planning Commission*, Title MC-12, Ch. 203;
3. The Applicant will require the following County of Maui additional permits for the structures in the Shoreline Setback Area: a) ATF SMA Assessment and b) SSV for these structures located in the shoreline setback area;
4. The Department notes that the Applicant has not responded to repeated County of Maui Notices of Warning since 2003, nearly a ten (10) year time period. Four (4) Notices of Violation for SMA and Shoreline Setback violation, NOV 2012: 0017, 0018, 0019, and 0020, were issued by the County of Maui on August 29, 2012. The property owner is subjected to paying these fines owed under the Notice of Violation to the County of Maui. As of this date, no fines have been paid to the County of Maui. Notices of Warning were issued on November 21, 2003 and again on July 23, 2009. From the Department's review of the documents, exhibits of these documents are referenced but are apparently missing in the EA and CDU application – please include these four (4) notices in the Final EA. Please explain in the Final EA why the Applicant did not respond to the County Notices of Warning in 2003 and 2009;
5. The Department notes that the seawall and stairs do not protect any structures at the shoreline. The residential structure is substantially set back and is located at a safe elevation out of the coastal hazard zone. Since no structures are being protected by the seawall and stairs, please explore additional engineering and landscaping alternatives to stabilize the land in the shoreline setback area. Include the alternative solutions in the Final EA;
6. The engineering report in Appendix D discusses undermining of the seawall and stairs by wave action. The undermining extent is unknown. Please note that the seawall and lanai directly to the north at Kanaha Sunset AOO were undermined and collapsed. As a mitigation alternative, to decrease the footprint onto State Conservation lands, the County of Maui asks that the Applicant consider a design that removes the existing concrete staircase onto the sand and conservation land and replace the stairs with a wooden structure or a landscaped footpath with pavers that are common on many other beaches, more mauka of the stairs current location. Please explore this alternative in the Final EA;
7. In Appendix D, Sea Engineering Inc. Memorandum, the authors suggest that the structures are being undermined. If the seawall or concrete staircase are undermined or damaged in the future, the County of Maui recommends that the Applicant be required to employ an alternative of strategic retreat which would move mauka of the current seawall location, and out of conservation land and on to private property. Prior to any repair or alternatives, the Applicant must obtain proper permits prior to any work;

Mr. Samuel J. Lemmo, Administrator
March 25, 2013
Page 3

8. Contrary to the Statement on page 22 of the EA, Special Management Area Objectives and Policies, A. Recreational Areas, Analysis, there does NOT exist a public access to the beach fronting this parcel nor is there any public access to the entire Keonenui Bay. Please correct this statement in the Final EA;
9. The letter dated September 17, 2012 from the State Department of Land and Natural Resources (DLNR) to Paul Mancini Esq. only contains 10 of the 14 exhibits and is thus incomplete. Please include all referenced exhibits in the Final EA;
10. On page 11 of the Appendix D, Sea Engineering Inc. Memorandum, Coastal Engineering Site Visit at Keonenui Bay, December 26, 2012, the Department understands that the Hester property most likely will not be building a seawall at the shoreline, but rather a retaining wall at the properties boundary, clearly above the shoreline area. Please note this correction in the Final EA.

Thank you for the opportunity to review and comment on the EA and CDU Application. If additional clarification is required, please contact Coastal Resources Planner James Buika at james.buika@mauicounty.gov or at (808) 270-6271.

Sincerely,



WILLIAM SPENCE
Planning Director

Attachment

xc: Michele Chouteau McLean, Deputy Planning Director (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Joseph W. Alueta, Acting Planning Program Administrator (PDF)
James A. Buika, Coastal Resources Planner (PDF)
Tara Miller Owens, University of Hawaii Sea Grant Extension Program (PDF)
Conklin Kai Wright, ZAED (PDF)
Daniel L. Ornellas, Department of Land and Natural Resources - Land Division – Maui (PDF)
Thomas Kolbe, Esq. Corporation Counsel
Department of Public Works
Project File
CZM file
General File

WRS:CIY:JAB:cr
K:\WP_DOCS\PLANNING\RFC\2013\0028_SchweitzerResidence\Comments, Planning Dept, Schweitzer Residence, RFC 20130028.doc

13/10/95

RF C 13/28

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



DEPT. OF PLANNING
COUNTY OF MAUI

FEB 22 2012

RECEIVED

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

ESTHER KIAAINA
INTERIM FIRST DEPUTY

WILLIAM M. TAM
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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CDUA: MA-3657

180 Day Expiration Date: August 7, 2013

FEB 20 2013

MEMORANDUM:

TO:

- SHPD
- MDLO
- USACE

← County of Maui

- Office of Hawaiian Affairs
- City and County DP&P
- State Department of Health

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

SUBJECT: REQUEST FOR COMMENTS – CONSERVATION DISTRICT USE APPLICATION
MA-3657 for an After-the-Fact Seawall and Stairs, located at Alaeloa, Lahaina, Island of
Maui – TMK: (2) 4-3-015:001

LOCATION: Lahaina, Maui

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

Please find the Conservation District Use Application and Draft Environmental Assessment (DEA) for an After-the-Fact Seawall and Stairs, located at Alaeloa, Lahaina, Island of Maui. We would appreciate any comments your agency or office has on the DEA and application.

If no response is received by the suspense date of **March 25, 2013**, we will assume there are no comments. Please contact our office at (808) 587-0377 should you have any questions on this matter.

Comments Attached

No Comments

Samuel J. Lemmo
Signature

Attachments: Cover Letter; (1) CD-R with CDUA OA-3657, DEA



**CHRIS
HART**
& PARTNERS, INC.

Landscape Architecture
City & Regional Planning

August 28, 2013

Mr. William Spence, Director
Planning Department
250 South High Street
Wailuku, Hawaii 96793

Attention: Mr. James Buika

Dear Mr. Spence:

RE: Draft Environmental Assessment in support of a Conservation District Use Application (CDUA) for the Schweitzer Shoreline Erosion Control Project located at TMK: (2) 4-3-015:001 Alaeloa, Lahaina, Maui, Hawaii.

Thank you for your March 25, 2013 letter on the Draft Environmental Assessment (EA) for subject project (See Attached: March 25, 2013 letter from Planning).

With regard to the issues raised in your letter of March 25th, we are attaching the Resolution Agreement that was reviewed and approved by the Maui Planning Commission (MPC) on August 13, 2013 and is expected to be executed by the Mayor of the County of Maui (See Attached: Resolution Agreement approved by the MPC on August 13, 2013).

We offer the following as responses to the items as enumerated in your March 25th letter:

1. Attached is a site map that identifies structures within the shoreline setback (SSB) area and the same will be submitted as part of the Final Environmental Assessment (EA) (See Attached: Site map identifying structures within the SSB).
2. The Schweitzers have prepared and filed a Conservation District Use Permit Application and Environmental Assessment with the Department of Land and Natural Resources (DLNR) to apply for and obtain an easement over the State of Hawaii Conservation District Property to retain

the stairs and the wall on the State of Hawaii Conservation District property.

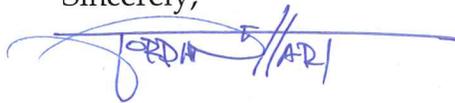
3. Consistent with the Resolution Agreement reached with the County, the Schweitzers will either remove the two stairs located within the shoreline setback area or apply for a Special Management Area (SMA) authorization and a shoreline setback variance to allow the two steps to remain in their current location of the Schweitzer property. If the State of Hawaii Board of Land & Natural Resources declines to grant the easement allowing the steps and wall to remain in the current location, the Schweitzers will remove the two steps within the shoreline setback area together with the removal of the steps and walls on the State of Hawaii Conservation District property. The Schweitzers have agreed to provide notice to the County of Maui of its decision to remove the two steps or to apply for the shoreline setback variance and the SMA authorization no later than five (5) calendar days after the Board of Land & Natural Resources has made its final determination in granting or denying the easements for the Schweitzers to retain the wall and steps on the State of Hawaii Conservation District property.
4. The Schweitzers have entered into a Resolution Agreement with the County of Maui to resolve these issues. The Resolution Agreement was approved on August 13, 2013 by the Maui Planning Commission with an anticipated signing by the Mayor.
5. With regard to the protection of structures, please note that the property has Annual Erosion Hazard Rates (AEHR) of 1.4 feet (transect no. 4). This results in shoreline setback of 95 feet. A portion of the existing residence appears to lie within the shoreline setback which indicates that without protection, the structure eventually is expected to be threatened by shoreline erosion.
6. The Applicants will explore alternative engineering and/or landscaping alternatives to stabilize the shoreline. However, as noted above, the AEHR setback is 95 feet. So although the residential structure appears to be "located at a safe elevation", it is approximately 70 feet from the last certified shoreline and lies within the shoreline setback area as it is currently defined. Without any protection, in fifty years, at the erosion rate determined by the Coastal Geology Group (School of Ocean and Earth Science Technology, University of Hawaii), the existing residence is expected to be threatened by coastal hazards.
7. The alternative described in the draft environmental assessment (Section II.E) proposes to remove all encroachments into State Conservation land, which constitutes a retreat from the shoreline. The Schweitzers understand that permits would be required to accomplish this.

The Schweitzers will explore the alternatives to the existing stairs and will consult with the State for the optimum solution. If necessary, the Schweitzers may replace the stair treads that are removed with a wooden structure or a landscaped footpath. If this is pursued, the appropriate County permits will be obtained.

8. There is public beach access at Hui Road E to the rocky shoreline at Haukoe Point which is approximately 500 feet to the south of the subject site. The Schweitzers are also aware that additional access is being proposed by its neighboring and adjacent property owners.
9. Exhibits 11 through 14 in Appendix "C" will be included with the Final EA.
10. An addendum to Appendix "D" will be included with the Final EA.

Thank you for your consideration. For further clarification, please contact Raymond Cabebe or me at 242-1955.

Sincerely,



Jordan E. Hart, President
Land Planner

Enclosures:(3)

- March 25, 2013 letter from Planning
- Resolution Agreement approved by the MPC on August 13, 2013
- Site map identifying structures within the SSB

Cc: Mr. Hoyle Schweitzer
Ms. Diane Schweitzer
Mr. Paul Mancini
Mr. Sam Lemmo

RESOLUTION AGREEMENT

WHEREAS, this Agreement, (hereinafter the "Agreement"), between the County of Maui, (hereinafter the "County") and Henry Schweitzer and Diane Schweitzer (hereinafter "Owners or the "Schweitzers").

RECITALS

1. Owners are the owners of Property located at 4885 Lower Honoapiilani Highway, Lahaina, Maui, 96761 (identified for real property tax purposes as TMK: (2) 4-3-015:001-0000, hereinafter the "Property").

2. The Property is located in the Special Management Area (hereinafter "SMA"), as defined by Section 205A-22, Hawaii Revised Statutes.

3. A portion of the Property is located in the "shoreline area" as defined by 205A-41, Hawaii Revised Statutes.

4. On August 28, 2012, the Department of Planning and Zoning Administration and Enforcement Division of the County of Maui (the "Planning") issued four (4) Notices of Violation, concerning the construction of a seawall and steps on the Property, which Notices were served on the Owners by certified mail, as follows:

(a) NOV 2012-0017, Failure to obtain shoreline setback approval for developments within the shoreline setback area and violation of shoreline setback rules for the Planning Commission of the County of Maui.

(b) NOV 2012-0018, Failure to obtain SMA permits within the SMA area approvals in violation of the Special Management Area Rules for the County of Maui.

(c) NOV 2012-0019, Failure to obtain SMA permits within the SMA area without approvals in violation of the Special Management Area Rules for the Planning Commission of the County of Maui.

(d) NOV 2012-0020, Failure to obtain shoreline setback approval for developments within the shoreline setback area in violation of Shoreline Setback Rules for the Planning Commission of the County of Maui.

5. On September 24, 2012, the Owners through their attorneys, Mancini, Welch & Geiger, filed Notices of Appeal to the Planning Director and the Planning Commission.

6. In April 2012, the Department of Land and Natural Resources (the DLNR), Office of Conservation and Coastal Lands (OCCL) of the State of Hawaii filed a Complaint alleging violation of the Conservation District Rules for construction of a seawall and steps within the Conservation District. The DLNR maintained that the Owners had violated statutory sections

including HRS, Section 183C-7 and Section 13-5-6, HAR, with the construction of a seawall and steps within a Conservation District Research Subzone.

7. On May 25, 2012, the Board of Land & Natural Resources (the Board) entertained the alleged violation for the Conservation District Rules presented by the Department.

8. At the May 25, 2012 Board Meeting, the Owners suggested the Board defer action on OCCL's recommendations in order for the Owners to conduct a survey to determine whether the construction of the wall and steps by Taylor Construction in 1980 under the design provided by Steve Pitt Engineering intruded to an area makai of the 1980 certified shoreline. The Board agreed to defer the action to determine whether the wall and steps were consistent with the 1980 certified shoreline pursuant to the survey to be prepared by Bruce Lee and Associates.

9. Pursuant to the decision of the Board on May 25, 2012, the Owner's surveyor, Bruce Lee, surveyed the boundary lines of the area properties to make a determination of any intrusions onto an area makai of the 1980 shoreline survey of the Property.

10. The Board convened on September 28, 2012 and took up the issue of the alleged unauthorized use of the Conservation District Resource Zone. At the September 28, 2012 meeting, the Owners presented the survey prepared by Bruce Lee which reflected that walls and steps were constructed makai of the 1980 certified shoreline.

11. At the September 28, 2012 meeting, the Board found the Owners in violation of Chapter 183C-7, Hawaii Revised Statutes and HAR, Section 13-5-6 with regard to the construction of the wall and steps. The Board fined the Owners \$5,000 for the conservation district violation and \$1,000 for administrative costs. The Board provided authorization to the Owners to remove the wall and steps within 120 days of the date of the Board's action or alternatively to file for an after the fact permit for the seawall and steps.

12. Pursuant to the Board's decision on September 28, 2012, the Owners have paid the fine and administrative costs required by the Board and have prepared and filed a Conservation District Use Permit Application and an Environmental Assessment with the Department of Land & Natural Resources.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties jointly agree as follows:

Schweitzer Covenants.

1. Processing Conservation District Use Permit/E.A. for Stairways and Steps with Department of Land and Natural Resources. The Schweitzers agree to prepare, file and process a Conservation District Use Permit and an Environmental Assessment with the Department of Land and Natural Resources in order for the Schweitzers to apply for and obtain an easement over the State of Hawaii Conservation District property to retain the stairs and wall on State of Hawaii Conservation District property. The filings by the Schweitzers have occurred

prior to January 28, 2013.

2. Two Stairs Within Shoreline Setback Area. The Schweitzers will either remove two stairs located within the shoreline setback area or apply for an SMA authorization and a Shoreline Setback Variance to allow the two steps to remain in their current location on the Schweitzer property.

3. Failure to Obtain Easement. If the State of Hawaii Board of Land and Natural Resources declines to grant the Schweitzers an easement allowing the steps and wall to remain in their current location, the Schweitzers will remove the two steps within the shoreline setback area concurrent with the removal of the steps and walls on the State of Hawaii Conservation District property.

4. Decision to Proceed for Shoreline Setback Variance or Removal of the Two Steps within the Setback Area. The Schweitzers will provide notice to the County of Maui of its decision to remove the two steps or to apply for the Shoreline Setback Variance and SMA authorization no later than five (5) calendar days after the Board of Land and Natural Resources has made its final determination in granting or denying an easement to the Schweitzers to retain the wall and steps on the State of Hawaii Conservation District property.

5. Withdrawal of Appeals. With the execution of the Settlement Agreement and approval of the same from the Planning Commission of the County of Maui, the Schweitzers will withdraw its Notices of Appeal filed with the Planning Commission of the County of Maui.

County of Maui Covenant.

6. Withdrawal of Notices of Violations on Conservation District Property. The County of Maui agrees to ~~and~~ hereby withdraws its Notices of Violation on the walls and steps that are located on the State of Hawaii Conservation District property.

Mutual Covenants Fines.

7. As previously acknowledged from the County of Maui, the Schweitzers have provided notice to remove the two steps within the setback area and the County of Maui has agreed to abate any of its action concerning the two steps in the shoreline setback area from such time.

The County of Maui will not pursue the fines on the two steps within the setback area abating the same.

Upon approval of this Settlement Agreement by the Planning Commission of the County of Maui, the Schweitzers will pay to the County of Maui a fine concerning the two steps within the setback area in an amount of \$5,000.00. It is agreed that the \$5,000 fine does not include any after-the-fact processing fees should the Schweitzers apply for a shoreline setback variance and SMA authorization, as provided under Section 4 above.

Planning Commission Approval. The Owners understand that this Agreement and the negotiated fine amounts for the Special Management Area violations must be approved by the Maui Planning Commission pursuant to the Special Management Area Rules for the Maui Planning Commission §12-202-23(3).

Compromise and Settlement. The parties agree that neither covenants in this Agreement, nor the payments under this Agreement, are to be construed as an admission of any violation of statute, violation of administrative rules, liability, of any kind whatsoever by any of the undersigned parties, but are to be construed strictly and solely as a compromise and settlement of disputed matters resolving all claims between the undersigned parties for the purposes of avoiding controversy, litigation, and expense.

Attorneys' Fees and Costs. Each party in this matter shall bear its own attorneys' fees and costs.

Breach of Agreement. The parties agree that if any party shall breach this Agreement, the non-breaching party may pursue legal proceedings in the Second Circuit Court to enforce the terms of this Agreement. In this event, the prevailing party shall be awarded its reasonable expenses sustained on account of such action, including reasonable attorneys' fees and costs.

Instruments of Further Assurance. The parties agree to execute and deliver any and all further instruments and documents, if necessary, and to take such action as may be reasonably required to.

No Party Deemed Drafter. The parties and their attorneys have had an opportunity to review this Agreement and request modification of its terms. Accordingly, this Agreement shall be deemed to have been jointly drafted and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted for or against any party.

Waiver. The failure of any party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of any right of such party thereafter to enforce such provisions and each and every other provision hereof.

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The parties agree to execute whatever other documents and take any actions that are necessary to effectuate and carry out the intent of this Agreement.

Governing Law and Venue. The validity of this Agreement and of any and all terms and provisions thereof, as well as the rights and duties of the parties to this Agreement, shall be interpreted and construed pursuant to and in accordance with the laws of the State of Hawai'i and any action brought to enforce any provision of this Agreement or under this Agreement shall be brought in the Second Circuit Court, State of Hawaii.

Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and there are no understandings or agreements other than those incorporated in this Agreement. This Agreement shall not be altered, amended or modified or otherwise changed in any respect or particular whatsoever except by a writing duly executed by all parties hereto.

Severability. If any provision of this Agreement or the application thereto to any person or circumstances shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to the other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Construction and Paragraph Headings. The use of any pronoun herein shall include any and all pronouns and the singular shall include the plural and vice versa, as the context may require. As used in this Agreement, the masculine, feminine, or neuter gender and the singular or plural number, shall each include the other whenever the text so indicates. Paragraph headings are inserted only for convenience in reference.

Counterpart Execution. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument. This Agreement may also be executed by way of facsimile or electronic signature and such signature shall be sufficient to bind the party so executing this Agreement. Such party shall thereafter promptly forward a confirming copy of such facsimile or electronic signature to the other party.

Advice of Counsel. The parties acknowledge that they have been represented and advised by legal counsel of their choice in the negotiation and legal effects of this Agreement. The terms and language of this Agreement have been negotiated in depth by the parties and their counsel and shall therefore not be construed either for or against either party. No negotiations concerning, or modifications made to prior drafts of this Agreement or memoranda thereof shall be construed in any manner to limit, reduce or impair the rights, remedies, duties and obligations of the parties under this Agreement or restrict the meaning of any of the provisions of this Agreement or to construe any of the provisions of this agreement in either party's favor.

Date of Agreement. The date upon which this Agreement will be deemed to be fully executed, is the date upon which the Agreement is executed by the Mayor of the County of Maui.

COUNTY OF MAUI

By: Alan Arakawa
Its: Mayor

“The County”

APPROVAL RECOMMENDED:



WILLIAM SPENCE
Planning Director

APPROVED AS TO FORM AND LEGALITY:



THOMAS KOLBE
Deputy Corporation Counsel
County of Maui

DATED: Lahaina, Maui, Hawaii, this 15th day of May, 2013.


HENRY SCHWEITZER


DIANE SCHWEITZER

“Owners”