

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

July 22, 2022

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

PSF No.:21MD-085

MAUI

Grant of Term, Non-Exclusive Easement to the County of Maui, for Concrete Wave Deflector, Concrete Stairs, Revetment (Stacked Rocks), and Storm Drainage Purposes; Issuance of Right-of-Entry for Construction Purposes; and Issuance of Revocable Permit; Lahaina, Maui; Tax Map Keys: (2) 4-5-002: seaward, and (2) 4-6-009: seaward

APPLICANT:

County of Maui.

LEGAL REFERENCE:

Sections 171-6, 53(c), 55, and 95(a)(3) Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located seaward of Lahaina, Maui, identified by Tax Map Keys: (2) 4-5-002:seaward, and (2) 4-6-009:seaward, as shown on the attached map labeled **Exhibits A-1 and A-6.**

AREA:

Area 1:	7,455 square feet, more or less,
Area 2:	<u>4,716 square feet, more or less.</u>
Total:	12,171 square feet, more or less.

Subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Conservation
County of Maui CZO:	R-2 and HD-2 (abutting area)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing concrete wave deflector, concrete stairs, revetment (stack rocks), and storm drainage area over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION and RENT:

Gratis.

EASEMENT TERM:

Twenty-five (25) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment and Finding of No Significant Impact was published in The Environmental Notice on April 23, 2021; Front Street Sidewalk, Railings, and Seawall Repair FEA (FONSI).

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and,
2. Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

BACKGROUND:

According to the above-described FONSI, the seawall along Area 1 in the subject request has existed since the early 1900s. Photos from the 1930s show Front Street paved and having a solid concrete wall adjacent to the shoreline (see **Exhibit B**).¹ Over the years there have been many improvements, additions, and repairs for commercial, safety, and aesthetics. However, element exposure has deteriorated the existing streetscape due to its proximity to the ocean. Years of salt penetration, exposure to moisture, and chloride intrusion have caused unsafe conditions for the public along stretches of Front Street. Due to concerns of public safety, the County of Maui (“Applicant”), who manages and maintains the abutting Front Street, is planning to repair portions of Front Street that have fallen into disrepair.

Some of the improvement work will be done on State submerged lands located makai of the shoreline. Therefore, the Applicant is requesting an easement from the Board over the above-described Areas 1 and 2. Staff reached out to the Applicant inquiring if it could explain why an easement was not requested earlier. The Applicant was unable to provide an explanation except to state that the seawalls in Area 1 and Area 2 were originally constructed over 50 years ago. There were more recent modifications on and adjacent to the seawalls. For example, the concrete stairs, which are included in the current repair project, were constructed by the Applicant in 1979.

In any case, the County now submits its request for an easement for the existing structure and proposed improvements that are located makai of the shoreline, i.e., State submerged lands.

The proposed improvements near Area 1 (**Exhibit C-1**) will include the following:

- removal and reconstruction of deteriorated portions of the concrete wave deflector;
- replace wooden railing with new wood and powder coated stainless steel railing system;
- replace upper portion of the deteriorated sidewalk surface with broom-form finish;
- replace raised rubble masonry planters with at-grade planters;
- replace overgrown trees;
- remove wooden bollards and patch with concrete;
- replace existing light fixtures;
- repair existing concrete stairs that provide public access to the beach area; and
- replace street amenities such as trash receptacles and bicycle racks.

However, most of the above-mentioned proposed work will actually occur mauka of the shoreline, which is on County land, while a smaller portion of the work will be conducted makai of the shoreline on State land.

Improvements to Area 2 (**Exhibit C-2**) will be the replacement of dislodged rocks in the existing revetment protection (stacked rocks) fronting the CRM seawall that have been dislodged by wave action over time. All improvement work in Area 2 will be makai of the

¹. As shown on page 566 of the FONSI.

shoreline.

Although the existing, deteriorated wave deflector will be removed and replaced, the Applicant claims the wave deflector is a part of the existing seawall, which will not be disturbed, and therefore the replacement of the deflector ought not be considered new construction but a repair. The wave deflector will be identical in size, shape, and material used as the original. The Office of Conservation and Coastal Lands (OCCL) had no objection to the proposed improvements by its letter at **Exhibit D**. In addition, OCCL has no objections to the requested 25-year term easement. Area 2 also has a storm drainage component that will be included in the requested easement area.

Upon approval of today's request, the Applicant will be reminded of the requirement for a concurrent resolution from the legislature under Sect.171-53(c), HRS, prior to issuance of the requested easement. Staff will work with the Applicant to obtain concurrent resolution and Governor's approval.

Applicant is also requesting a right-of-entry permit to begin work prior to the issuance of the easement, citing the length of time to obtain the easement and to avoid delays in the construction. Staff is also requesting the authorization for the issuance of a Revocable Permit (RP) for tracking purposes. The rent for the RP will be gratis and will terminate upon the issuance of the easement.

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

There are no other pertinent issues or concerns, and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the County of Maui, covering the concrete wave deflector, concrete stairs, storm drainage, and revetment (stacked rocks) purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. Approval by the Governor and concurrence from the Legislature pursuant to 171-53(c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

- 2. Authorize the issuance of a right-of-entry permit to the County of Maui to begin the improvement work prior to the issuance of the easement, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

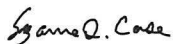
- 3. Authorize the issuance of a revocable permit to the County of Maui, covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

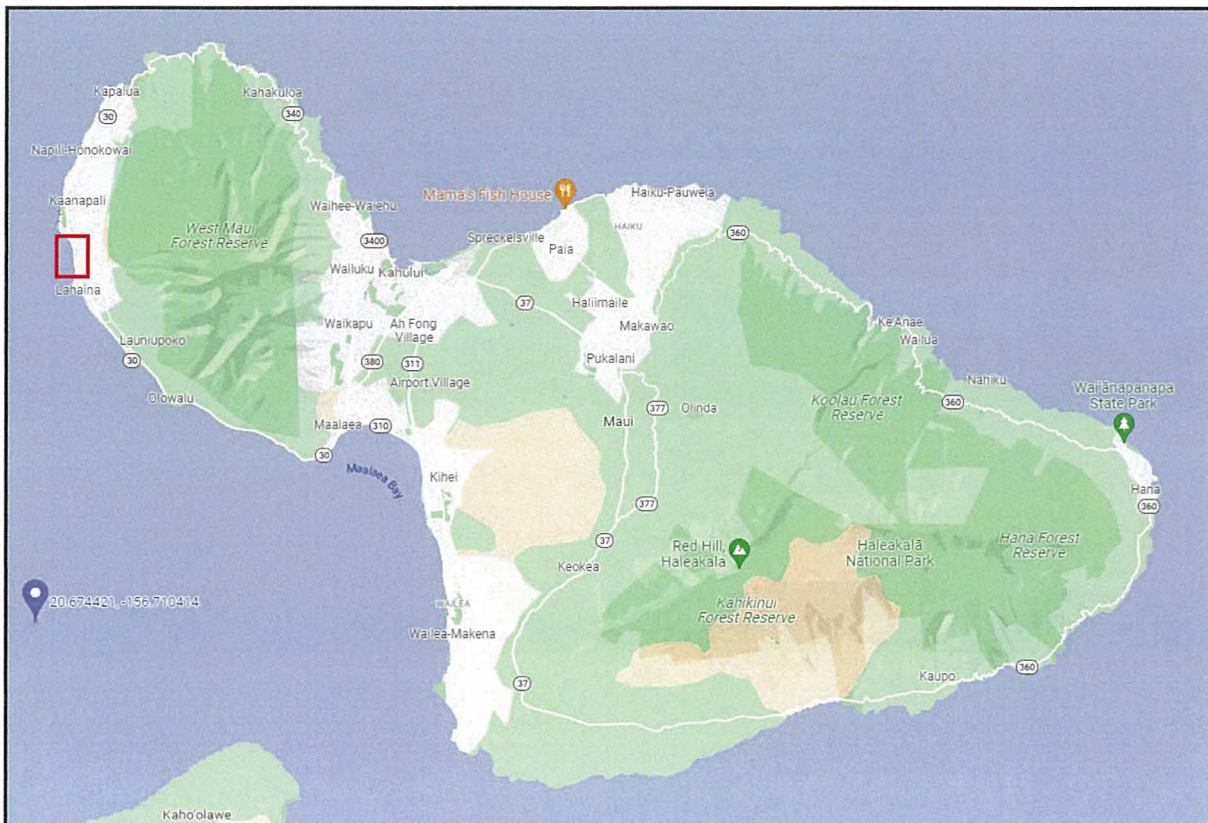


Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL

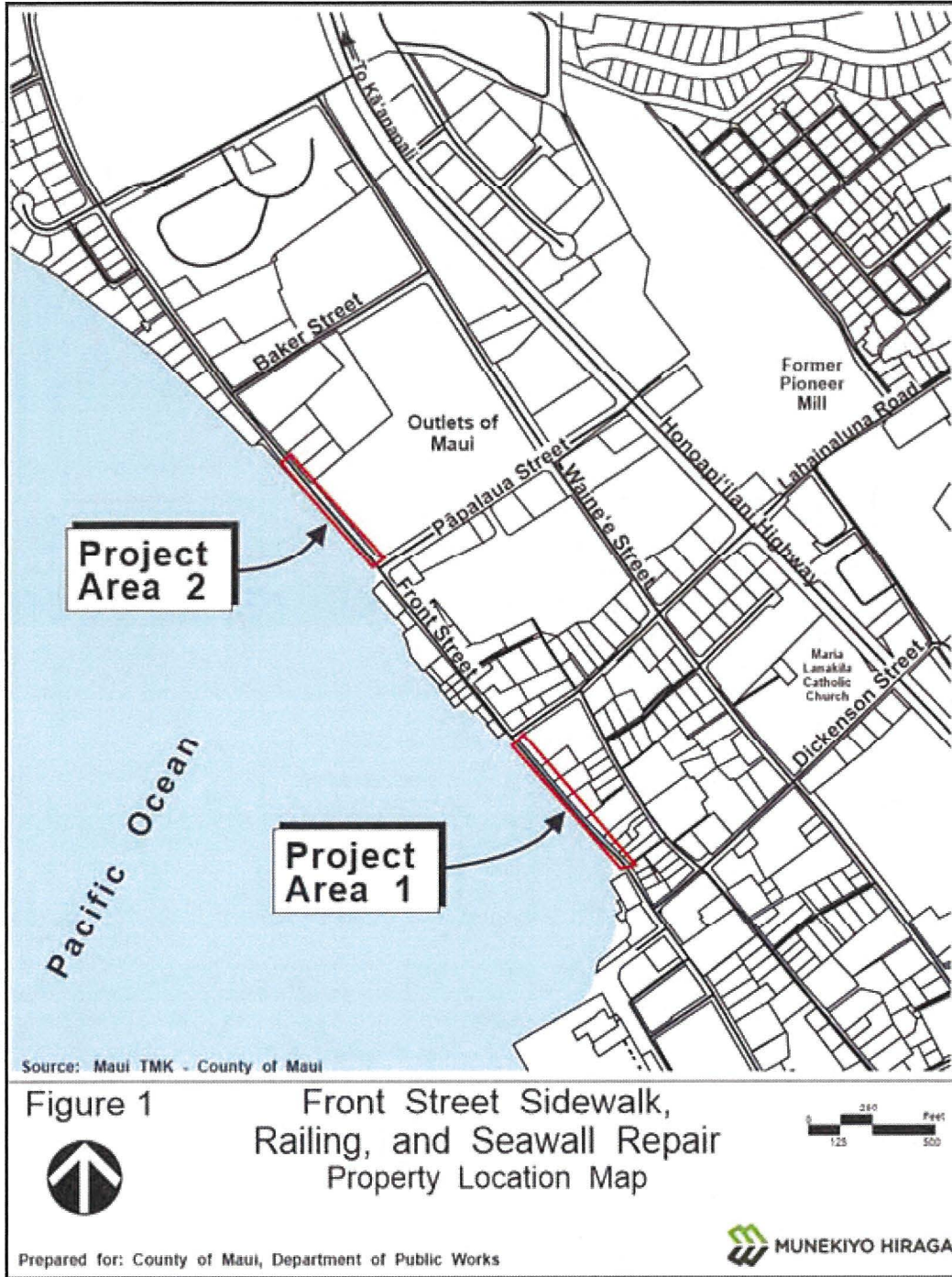


Suzanne D. Case, Chairperson *RT*



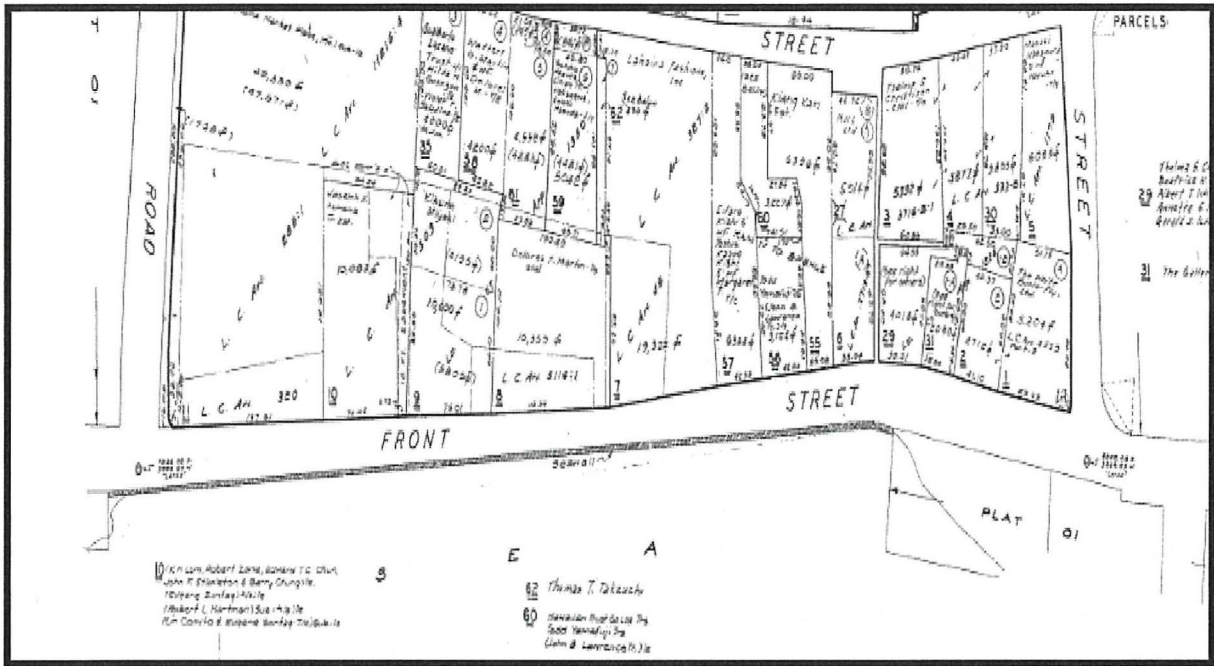
Note: The project area is located in Lahaina area.

Exhibit A-1



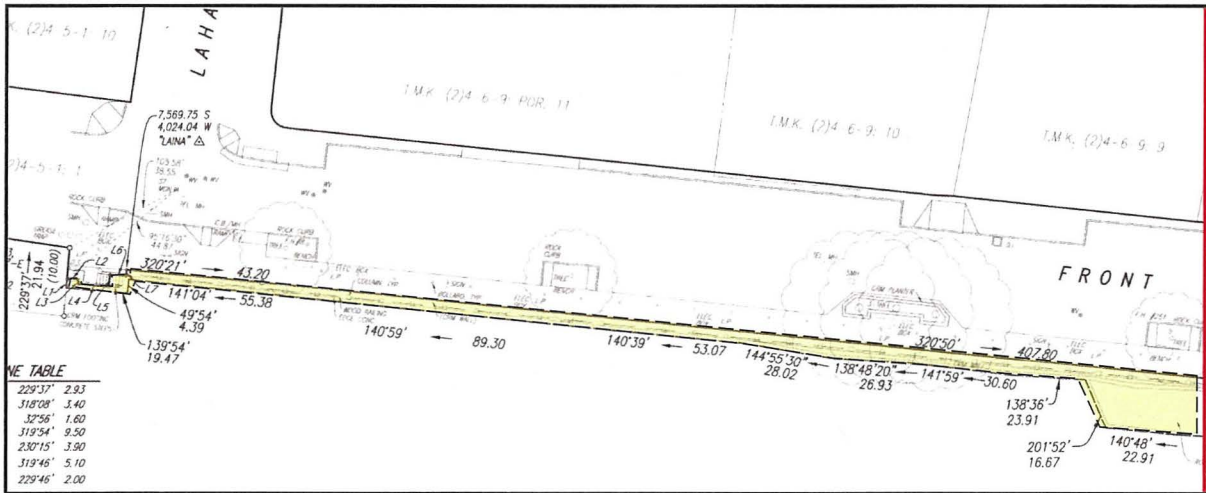
Note: Proposed project Areas 1 & 2 along Front Street.

Exhibit A-2



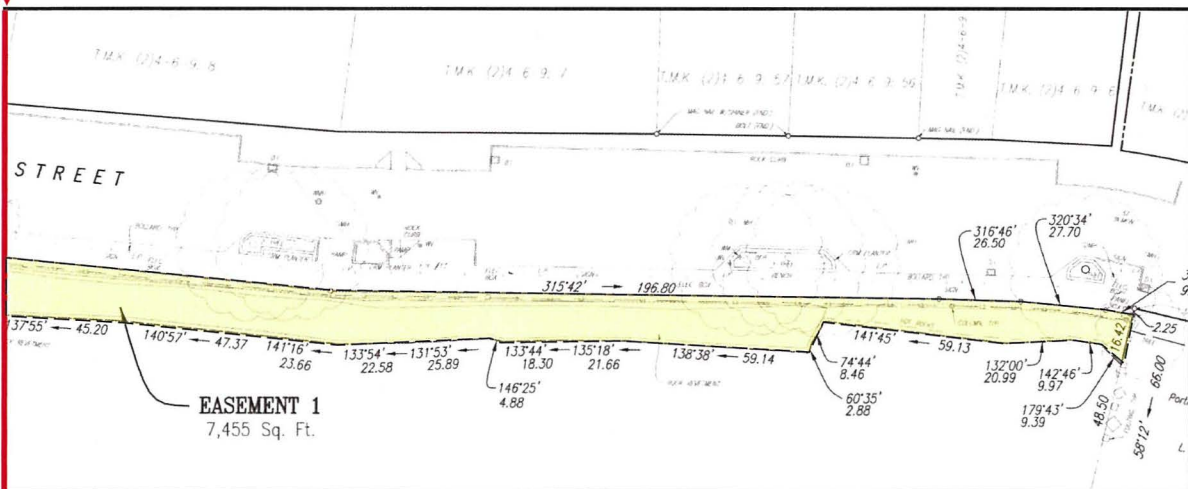
Note: Area 1, Front Street (between Dickenson Street and Lahainaluna Road).

Exhibit A-3



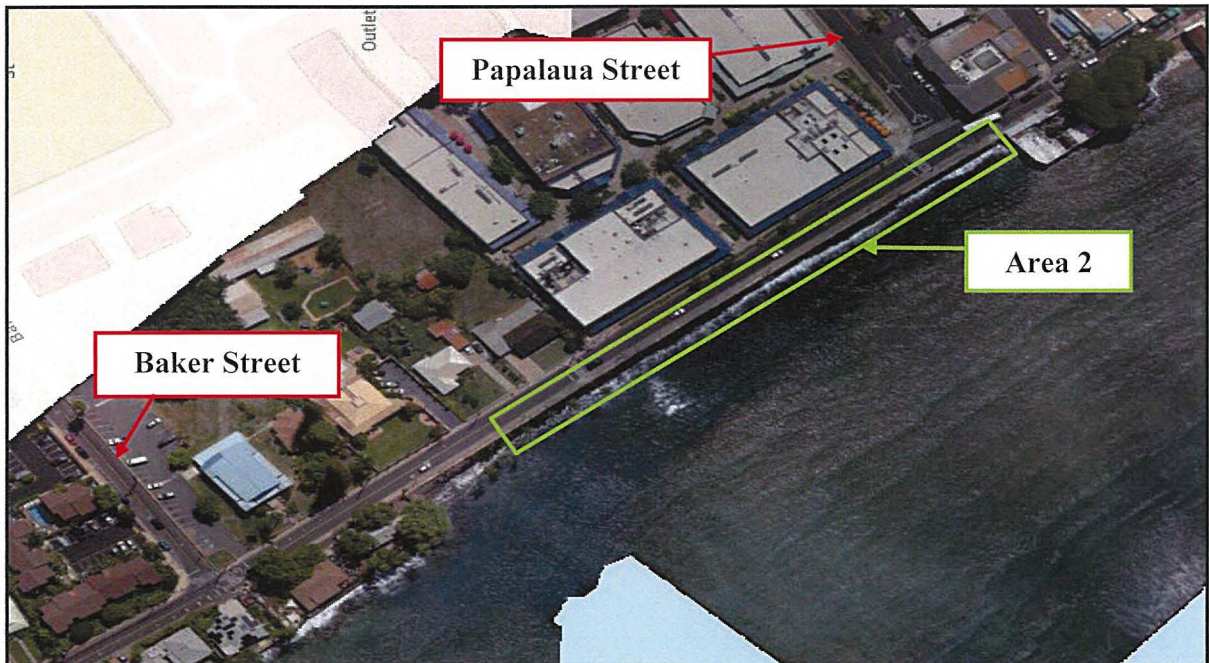
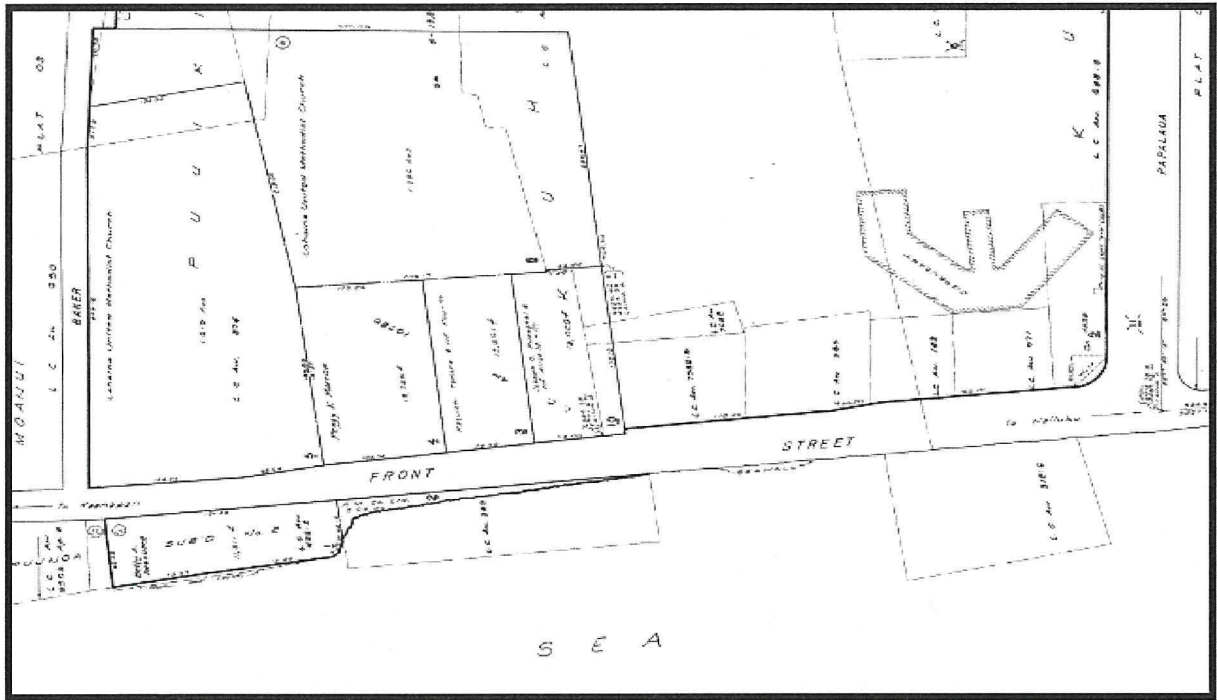
Match Line

Match line

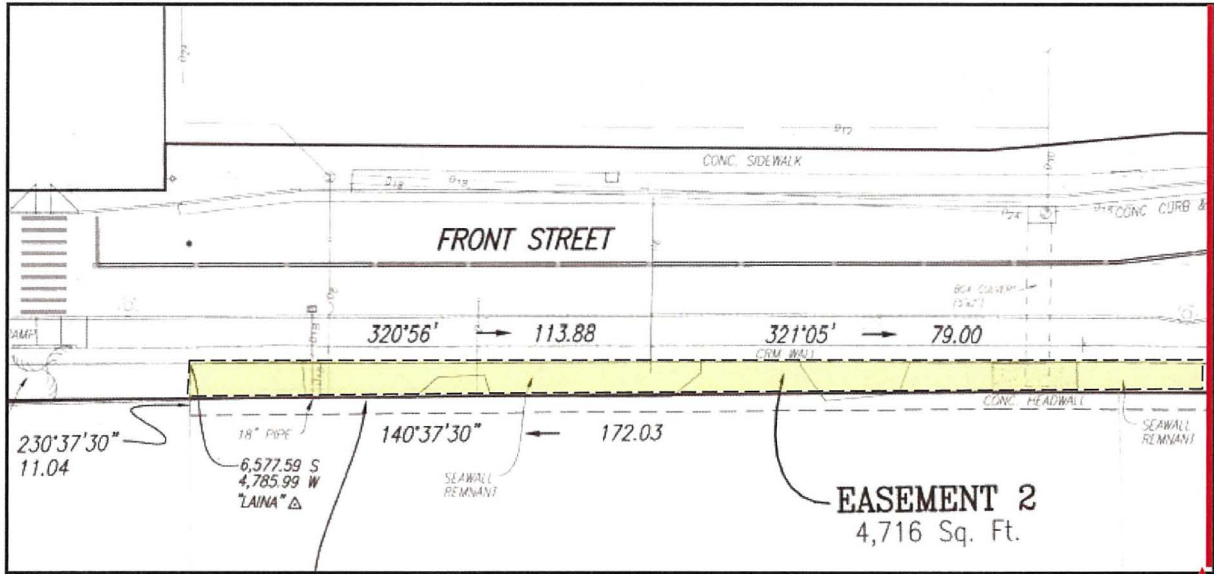


Note: Survey map of Area 1 requested easement area.

Exhibit A-4

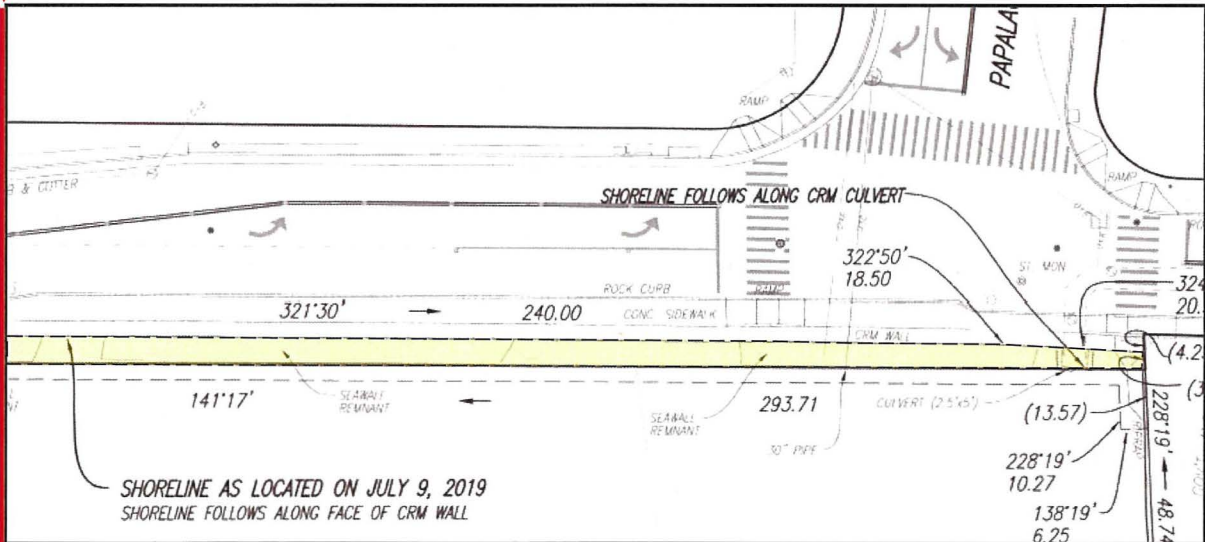


Note: Area 2, Front Street (between Baker Street and Papalaua Street)



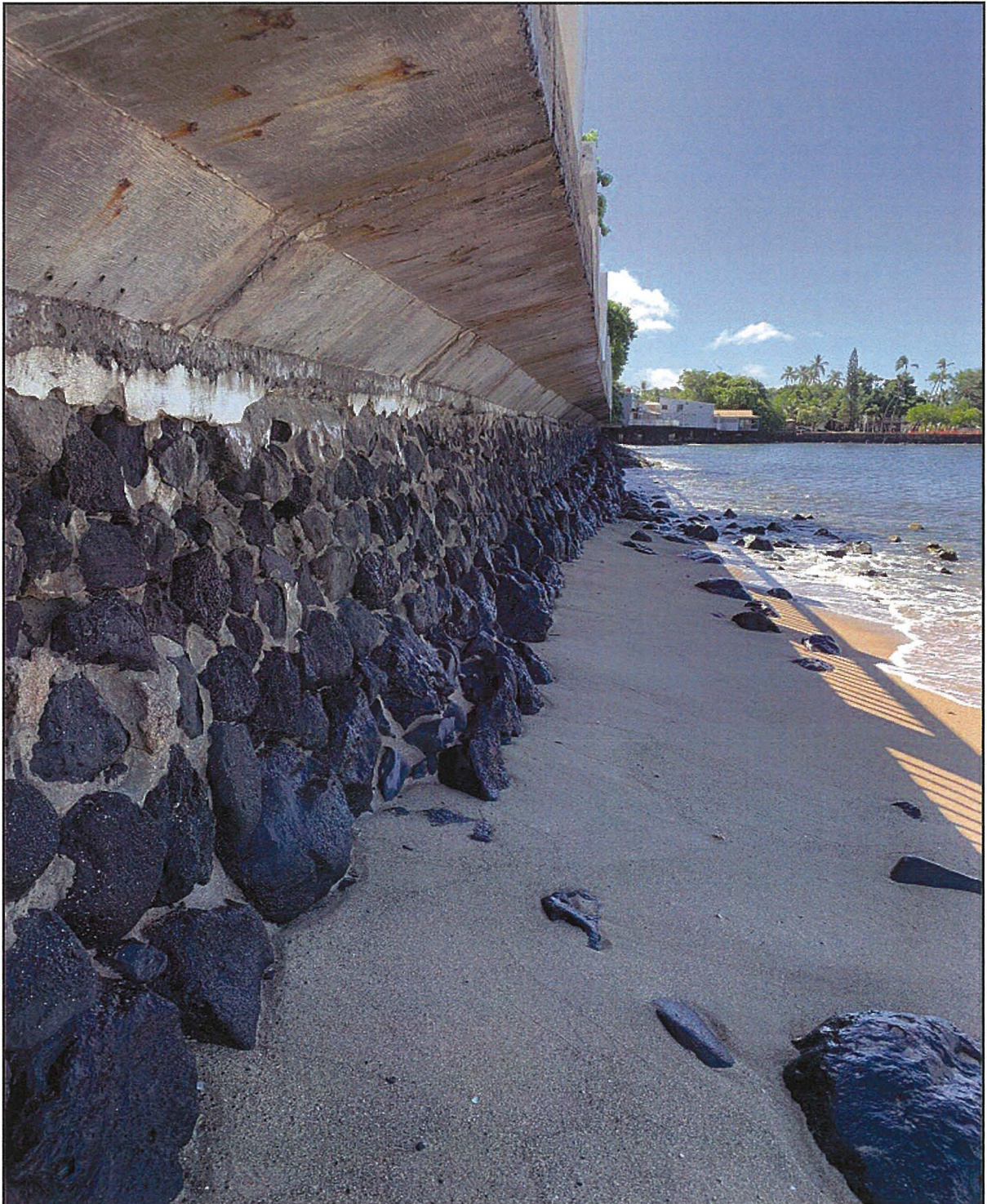
Match Line

Match line



Note: Survey map of Area 2 requested easement area.

Exhibit A-6



Note: Area 1, wave deflector looking southeast.

Exhibit C-1



Note: Area 1, revetment (stacked rocks) looking southeast.




Note: Area 1, concrete stairs looking north.




Note: Area 2, revetment (stacked rocks) and storm drainage looking northwest.

Exhibit C-2

DAVID Y. IGE
GOVERNOR OF
HAWAII





JUN 21 P 3:06

COUNTY OF MAUI
PUBLIC WORKS

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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
KAOIOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: RB

Kauanoë Batangan, Senior Associate
Munekiyo Hiraga
305 High Street, Suite 104
Wailuku, HI 96793

SUBJECT: Conservation District Use Permitting for the Proposed Front Street
Sidewalk, Railing, and Sewall Repair Project
Front Street, Lahaina, Maui
TMK(s): (2) 4-5-002:999 and 002 (por.) & (2) 4-6-009:999

DEPT. OF PUBLIC WORKS
COR: MA-21-143

DIRECTOR JUN 18 2021

DISPATCH	
RECORDING	
PERSONNEL	
OSA	
ENGR	
HWY	
PROJECT	

Dear Ms. Batangan:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence regarding the subject project. The County of Maui, Department of Public Works (DPW) is proposing improvements to the west side of Front Street in Lahaina, Maui. The Proposed project involves the County-owned Front Street roadway, State-owned land seaward of the certified shoreline, and a portion of privately owned land. The proposed project work that will occur makai (seaward) of the certified shoreline appears to be located in the Resource Subzone of the State Land Use Conservation District.

The proposed project will affect two locations along Front Street and has been identified as Area 1 and Area 2. Area 1 is approximately 715 ft long and extends from Dickenson Street to Lahainaluna Street along the makai side of Front Street. The following improvements are under consideration for Area 1:

- Removal and reconstruction of deteriorated portion of the concrete wave deflector;
- Replacement of railing with new stainless-steel posts mounted on a low concrete curb with intermediate horizontal stainless-steel tube;
- Removal and reconstruction of upper portion of the deteriorated sidewalk surface with boardform finish;
- Removal of the raised rubble masonry planters and replace with at-grade planters;

REF: OCCL: RB
Kauanoë Batangan, Senior Associate
Munekiyo Hiraga

COR: MA-21-143

- Replace overgrown trees;
- Removal of wooden bollards and patching with concrete;
- Replacement of existing light fixtures in Area 1;
- Repair of existing concrete stairs that provides public access to the beach area; and
- Replacement of other street amenities such as trash receptacles and bicycle racks.

Proposed work makai of the certified shoreline is the removal and reconstruction of the concrete wave deflector. All other improvements are outside of the certified shoreline.

Area 2 is approximately 730 ft long between Papalua Street and Baker Street also along the makai side of Front Street. The following improvements are under consideration for Area 2 of Front Street:

- Replenish boulders in the frontal wall that have been dislodged
- Removal of coconut trees growing through the wall which are leaning seaward

Proposed work makai of the certified shoreline is the replenishment of boulders in the frontal wall that have been displaced.

The project areas are located in the Center of Lahaina Town and are within the Lahaina National Landmark Historic District. The project's Final Environmental Assessment (FEA) and Finding of No Significant Impact (FONSI) determination were published in the April 23, 2021 edition of *The Environmental Notice*. The applicant states that the proposed improvements to the two seawalls are repair and maintenance in nature. According to Land District Maps, the seawall represents the common boundary between State-owned Conservation District shoreline areas and inland urban land.

Based on historical photos, Area 1 has existed since the early 1900s and photos from the 1930s show a paved Front Street with a seawall, topped with a concrete sidewalk and solid concrete wall adjacent to the shoreline. In 1979, the County of Maui repaired the seawall and replaced the concrete solid wall with the wooden railing that exists today; this repair work was completed under Conservation District Use Permit (CDUP)-1148. A concrete stairway at the north end of Area 1 was also installed in the 1979 project to provide access to the shoreline.

For Area 2, no historical plans for the existing seawall were found, however, the applicant states that the maturity of the coconut trees and weathering of the existing concrete rubble masonry (CRM) wall would suggest that the improvements have existed for quite some time. Over time, the boulder wall has experienced damage from high coastal wave events, such that there are gaps within the wall areas along the CRM wall.

REF: OCCL: RB
Kauanoë Batangan, Senior Associate
Munekiyō Hiraga

COR: MA-21-143

The proposed work is considered an identified land use pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (A-1) Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with section 183-44 and 183B-2, HRS. Therefore, the OCCL has no objection to the proposed project as described provided that the following general conditions are adhered to:

1. That in issuing this letter, the Department has relied on the information and data that has been provided in connection with the letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, enforcement proceedings may be initiated as necessary;
2. Typical best management practices (BMPs) shall be implemented while conducting any land use in the Conservation District. Unauthorized land uses such as the disposal of material within the Conservation District shall initiate enforcement proceedings;
3. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; and
4. If the scope of the project changes or the cumulative natural resource impacts is perceived to be moderate or major, the department may require authorization or approvals for the proposed land use.

The OCCL notes that the DPW filed a HRS 6E Review form with the State Historic Preservation Division (SHPD) for the proposed project in December 2019. The DPW states that it will continue to coordinate with the SHPD to receive a response to the archaeological review request.

Should you have any questions, please feel free to contact Rachel Beasley of the Office of Conservation and Coastal Lands at 587-0386.

Sincerely,

Sam Lemmo

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

cc: Maui District Land Division Office
County of Maui, Planning Department
County of Maui, Department of Public Works