

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

August 22, 2014

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

PSF No.:07MD-078

Maui

Grant of 55-Year Term, Non-Exclusive Easement to the Association of Unit Owners of (AOUO) Hale Kai O Kihei for Five (5) Encroachment Areas within the State Beach Reserve; Assess a \$500.00 Fine and \$260.00 in Administrative Costs Against the AOOU Hale Kai O Kihei, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key: (2) 3-9-008: Portion of 001.

APPLICANT:

Association of Unit Owners of Hale Kai O Kihei, a domestic nonprofit corporation.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, and 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiohuli-Keokea Beach Homesteads, situated at Kihei, Maui, identified by Tax Map Key: (2) 3-9-008: Portion of 001, as shown on the attached map labeled Exhibit A.

AREA:

Easement "1"	497 sq. ft.	Portion of pool deck and a long narrow strip of the patio area.
Easement "2"	2,090 sq. ft.	Five foot wide waterline easement fronting the encroaching patio area, to include the main waterline, from which to supply the two shower stations.
Easement "3"	186 sq. ft.	Portion of the concrete patio area fronting shuffle Board.
Easement "4"	200 sq. ft.	Shower station and waterline fronting the center of the condominium complex.

Easement "5"	176 sq. ft.	Shower station and waterline at the northern end of the condominium complex.
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The combined total area for all encroachments are 3,149 square feet, more or less.

EXHIBITS:

- Exhibit A – Tax Map Key of the subject area.
- Exhibit B – Approved Board Submittal dated February 28, 1986, Item F-4.
- Exhibit C – Right-of-Entry Permit dated March 3, 1986.
- Exhibit D – Approved County of Maui Special Management Area Assessment/Determination Permit dated March 24, 1986.
- Exhibit E- Map of the proposed easement areas.

ZONING:

State Land Use District:	Urban (State Beach Reserve)
County of Maui:	Park District and Special Management Area

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered (State Beach Reserve).

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a portion of an existing pool deck, patio area, waterline, and two (2) showers, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Install and maintain signs indicating public use allowed within easement area.
- 4) Pay a fine of \$500.00 for the placement of the unauthorized improvements upon government land, and \$260.00 in administrative costs.

REMARKS:

In January of 2007, the Maui District Land Office received several reports of unauthorized uses of the State Beach Reserve. Staff inspection of the area, revealed that the Kihei Beach Reserve contained a large amount of unauthorized improvements and lateral obstructions, giving the impression that these public areas are privately owned and not open to the public for access and use. Staff also found large hedges, fencing, and other forms of landscaping planted or constructed in a manner to obstruct lateral public access across and throughout the beach reserve.

Maui staff began the process of identifying each property owner and documenting all encroachments and unauthorized improvements which extended out into the beach reserve from the abutting inland properties. During this process the AOOU Hale Kai O Kihei was

found to have several encroaching unauthorized improvements consisting of two barbecue stations, three showers, a main waterline, and two sections of the concrete lanai.

Pursuant to a review of documents provided to the Maui District Land Office by the AOOU Hale Kai O Kihei, staff learned that on February 28, 1986, under agenda item F-4, the Board of Land and Natural Resources had approved the issuance of a Right-of-Entry (ROE) permit to the then Hale Kai O Kihei Condominium Association of Apartment Owners. The purpose of the ROE permit was for landscaping and maintenance of the portion of beach reserve fronting the condominium complex (refer to Exhibit B). Please refer also to the Right-of-Entry permit dated March 3, 1986, issued to the Hale Kai O Kihei Condominium Association of Apartment Owners' Vice President Thomas P. Shanahan (Exhibit C). The AOOU Hale Kai O Kihei did obtain a Special Management Area Assessment/Determination and Shoreline Setback permit, dated March 24, 1986, (Exhibit D) for minor landscaping work within the State beach reserve seaward of their property.

After reviewing all of the documents related to the AOOU Hale Kai O Kihei's use of the State lands, staff found that the only permitted use of the area was for minor landscaping and maintenance purposes. At no time was the AOOU Hale Kai O Kihei granted permission to install improvements which were and or are currently located within the beach reserve. Therefore, at this time, staff is working towards issuance of a proper disposition in the form of a 55 year term, non-exclusive easement.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Staff recommends the Board impose a fine of \$500 for the subject encroachments. Staff additionally recommends the assessment of \$260.00 in administrative costs to cover staff's time in resolving the encroachments.

The AOOU Hale Kai O Kihei 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.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

Agency	Comments
Office of Conservation & Coastal Lands	No objections
County of Maui – Planning Dept.	No response received.
Office of Hawaiian Affairs	No response received.

The subject area of the beach reserve shall remain open for public access and use. The two shower stations which will be part of the easement, shall also remain open for public use. A requirement for the posting of proper signage will be mandatory. The signs shall be installed and maintained by the AOOU Hale Kai O Kihei and identify the area as a State beach reserve which is open for public access and use.

The proposed use of the area has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

The State is currently working with the Uluniu Beach Reserve Association (UBRA) on a Memorandum of Agreement for the unified maintenance and landscaping of the beach reserve from Waipuilani Park through Halama Street. The AOOU Hale Kai O Kihei is part of the association and will maintain the subject area in accordance with the finalized approved maintenance plan.

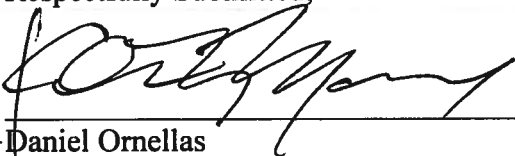
RECOMMENDATION: That the Board:

1. Find that the AOOU Hale Kai O Kihei violated the provisions of Chapter 171-6, Hawaii Revised Statutes by placing unauthorized improvements (encroachments) on government land. Therefore, staff recommends a \$500.00 fine for the unauthorized use of government land, and payment of \$260.00 in administrative costs. Total payment of \$760.00 shall be made to the Department of Land and Natural Resources within thirty (30) days of the date of the Board's action.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 3-9-008:003 and 004, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to AOOU Hale Kai O Kihei covering the subject area for five (5) encroachment areas 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 easement

document form, as may be amended from time to time;

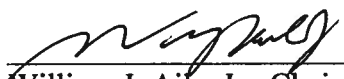
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-9-008: 003 and 004, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. The AOOU Hale Kai O Kihei shall be responsible for posting and maintenance of signage, as approved by the Maui District Land Office. The signs will properly identify the subject area as a State beach reserve open for public access and use.

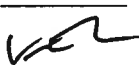
Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson 

GEORGE R. ANIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 521
HONOLULU, HAWAII 96809

DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

February 28, 1986

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

Gentlemen:

MAUI

Subject: Hale Kai O Kihei Condominium Association
of Apartment Owners' Request for Right of
Entry to Portions of Government Beach Reserve
for Landscaping and Maintenance Purposes,
Waiohuli-Keokea Beach Homesteads, Kihei, Maui,
HI, TMK 3-9-08:por. 1

The Hale Kai O Kihei Condominium is located on two (2)
parcels of land within the Waiohuli-Keokea Beach Homesteads at
Kihei, Maui. The makai boundary of the condominium property
abuts a portion of a Government Beach Reserve identified as
parcel TMK 3-9-08:01.

The residents of the condominium have asked that a
right-of-entry be given to portions of the beach reserve for
the purpose of landscaping and maintaining the area. The area
in question contains approximately 0.484 acres and is shown
outlined in red on map labeled Land Board Exhibit "A" appended
to the basic file.

Portions of the beach reserve have been landscaped and
maintained by the residents of the condominium for a number of
years without formal authorization from the State. According
to the condominium residents, they were unaware that proper
procedures were not followed in beautifying and maintaining
this area. Therefore, they would like to correct this
oversight by obtaining a formal right-of-entry so that they may
continue with the landscaping and maintenance work.

The condominium owners are aware that this work will be
done at no cost to the State. They also understand that the
public will have full and unrestricted use of this area at all
times.

Other condominium owners in this area have been granted
similar right-of-entry to portions of the government beach
reserve abutting their respective properties for landscaping
and maintenance purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

ITEM F-4

2/28/86

Exhibit B

RECOMMENDATION:

That the Board:

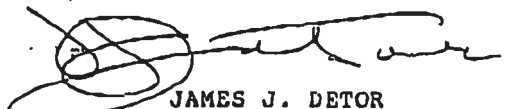
Authorize a right-of-entry to the subject parcel to Hale Kai O Kihei Condominium Association of Apartment Owners for landscaping and maintenance purposes subject to the following terms and conditions:

1. Plans covering all phases of the proposed landscaping shall be submitted to the Chairperson for approval prior to initiating of any work on the premises.
2. Implementation of the approved plans shall be conducted under the supervision of the Maui District Superintendent of State Parks who shall be given no less than forty-eight (48) hours prior notice.
3. All the clearing, grading, landscaping and maintenance of the area shall be performed by the applicants at no cost to the State of Hawaii.
4. The public shall have full and unrestricted use of the subject area at all times. Signs to indicate that the area is State owned and open to the public shall be posted and continuously maintained by the applicants.
5. The applicants shall maintain the area in accordance with our Division of State Parks standards for maintenance of a park.
6. Should any historic or archaeological sites or remains be encountered during clearing and grading of the area, the applicant will stop work and immediately notify this department's Office of Historic Sites of same.
7. The Hale Kai O Kihei Condominium Association of Apartment Owners will defend, indemnify and hold the State of Hawaii and its political subdivisions harmless against any loss, liability, claim or demand for property damage, personal injury or death arising out of any activity by Hale Kai O Kihei, its agents or representatives under this right of entry.
8. The applicants shall purchase and continuously maintain a policy of liability insurance with minimum limits as follows and naming the State of Hawaii as additional insured:

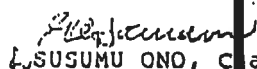
DI	\$100,000/\$300,000
PD	\$ 10,000
Medical	\$ 1,000

9. The applicants shall coordinate this right of entry with the County of Maui's public right-of-way and drainage project.
10. Such other terms and conditions as may be prescribed by the Chairperson.

Respectfully submitted,


JAMES J. DETOR
Land Management Administrator

APPROVED FOR SUBMITTAL:


SUSUMU ONO, Chairperson

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 1049
WAILUKU, HAWAII 96793

DIVISIONS:
AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

March 3, 1986

Association of Apartment Owners
Hale Kai O Kihei Condominium
Kihei, Hawaii 96753

Attention: Mr. Bruce M. Gascoigne

Gentlemen:

We are pleased to inform you that at its meeting of February 28, 1986 the Board of Land and Natural Resources approved the request of the Association of Apartment Owners of the Hale Kai O Kihei Condominium for a right-of-entry to portions of Government Beach Reserve situate at Waiohuli-Keokea Beach Homesteads, Kihei, Maui (Tax Map Key 3-9-08:01), for landscaping and maintenance purposes subject to the following terms and conditions as shown on Item F-4 of the attached Land Board Submittal:

1. Plans covering all phases of the proposed landscaping shall be submitted to the Chairperson for approval prior to the initiation of any work on the premises.
2. Implementation of the approved plans shall be conducted under the supervision of the Maui District Superintendent of State Parks who shall be given no less than forty-eight (48) hours prior notice.
3. All the clearing, grading, landscaping and maintenance of the area shall be performed by the applicants at no cost to the State of Hawaii.
4. The public shall have full and unrestricted use of the subject area at all times. Signs to indicate that the area is State-owned and open to the public shall be posted and continuously maintained by the applicants.

EXHIBIT "C"

Association of Apartment Owners
Hale Kai O Kihei Condominium
March 3, 1986

Page 2

5. The applicants shall maintain the area in accordance with our Division of State Parks standards for maintenance of a park.
6. Should any historic or archaeological sites or remains be encountered during the clearing and grading of the area, the applicant will stop work and immediately notify this department's Office of Historic Sites of same.
7. That Hale Kai O Kihei Condominium Association of Apartment Owners will defend, indemnify and hold the State of Hawaii and its political subdivisions harmless against any loss, liability, claim or demand for property damage, personal injury or death arising out of any activity by Hale Kai O Kihei, its agents or representatives under this right-of-entry.
8. The applicants shall purchase and continuously maintain a policy or liability insurance with minimum limits as follows and naming the State of Hawaii as additional insured:

BI \$100,000/\$300,000
PD \$ 10,000
Medical \$ 1,000
9. The applicants shall coordinate this right-of-entry with the County of Maui's public right-of-way and drainage project.
10. Such other terms and conditions as may be prescribed by the Chairperson.

Should the terms and conditions of this right-of-entry be acceptable, kindly acknowledge such acceptance by having the president of the Homeowner's Association or his authorized representative sign in the space provided below and return this letter along with a copy of a current liability insurance policy with the minimum limits shown in Condition No. 8 naming the State of Hawaii as additional insured.

Association of Apartment Owners
Hale Kai O Kihei Condominium
March 3, 1986

Page 3

Please call our Maui District Office at 244-4272 or
244-4456 if there are any questions.

Very truly yours,

Alan Tokunaga

ALAN TOKUNAGA
Land Agent

AT:kr
Attachment

Thomas P. Shanahan

THOMAS P. SHANAHAN
Vice President
Hale Kai O Kihei Condominium
Association of Apartment Owners

3-5-86

Date

MAUI PLANNING COMMISSION
 David T. Fukuda, Chairman
 Joseph C. Ventura, Vice Chairman
 Toshi Anai
 Joseph Felipe
 Joseph J. Franco
 Rachael Jio
 Roy Suda
 Tom Sato
 Susumu Sakaida
 Vince Baguyo, Jr., Ex-Officio
 Alvin Fukunaga, Ex-Officio



HANNIBAL TAVARES
 Mayor

CHRISTOPHER L. HART
 Planning Director

RALPH N. MASUDA
 Deputy Planning Director

COUNTY OF MAUI
 PLANNING DEPARTMENT

200 S. HIGH STREET
 WAILUKU, MAUI, HAWAII 96793

March 24, 1986

Mr. Bruce M. Gascoigne
 Hale Kai O'Kihei

Kihei, HI 96753

Dear Mr. Gascoigne:

Re: Special Management Area Assessment/Determination and Shoreline
 Setback Approval for minor landscaping work within the State
 Beach Reserve Fronting Hale Kai O'Kihei Condominium,
 TMK 3-9-08:1, Kihei, Maui.

Pursuant to the requirements of the Environmental Impact Statement
 Rules of the State Department of Health, the minor landscaping work
 and quality as "minor alterations in the conditions of land, water,
 or vegetation," and is therefore exempt from said rule.

Furthermore, pursuant to Section 2-9 of the Special Management Area
 (SMA) Rules and Regulations, it is hereby determined that an SMA
 Minor Permit is required for the following reasons:

1. The installation of irrigation line qualify as development;
2. Said project has a valuation not in excess of \$65,000.00;
3. Said project has no significant adverse environmental or
 ecological effect taking into account potential cumulative
 effects; and
4. Said project is consistent with the objectives, policies,
 and Special Management Area guidelines set forth in the
 Hawaii Revised Statutes 205-A and is consistent with the
 County General Plan and Zoning.

In addition, said project is located within the forty (40) ft.
 shoreline setback area and therefore, subject to the Shoreline
 Setback Rules and Regulations of the County of Maui. Pursuant to
 Section 13, landscape development limited to enhancement of the
 natural shoreline character through the addition of trees, shrubs,
 or groundcover, and by selected thinning and pruning of existing
 vegetation; and the construction of unpaved walkways and other
 similar treatment may be permitted by the Director.

EXHIBIT " D "

EDDIE T. ANSAI
District Land Agent-Maui DistrictSTATE OF HAWAII
Department of Land & Natural Resources
(Division of Land Management)

Mr. Bruce M. Gascoigne

March 24, 1986

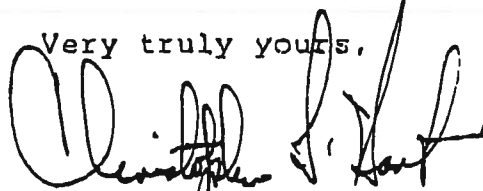
Page 2

In consideration of the foregoing, an SMA Minor Permit and Shoreline Setback Approval is hereby granted for the minor landscape work and installation of an irrigation line, subject to the following conditions:

1. That the minor landscape work and installation of an irrigation line shall be in accordance with attached plans received on March 14, 1986.
2. That no work shall occur on the existing sand dune fronting the shoreline.
3. That full compliance with the requirements of the State Department of Land and Natural Resources letter dated March 3, 1986 shall be rendered.
4. That all work shall be limited to the beach reserve area.
5. That all other State and County requirements shall be met.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama of my office.

Very truly yours,

CHRISTOPHER L. HART
Planning Director

CS:hk

encl.

cc: LUCA

DLNR - Eddie Ansa

R. Masuda

C. Suyama

EXHIBIT "E"



Exhibit Showing

a portion of

STATE OF HAWAII BEACH RESERVE

fronting

LOTS 9 & 10

of the

WAOHULI-KEOKEA BEACH LOTS 1ST SERIES

(per Grant 11,398 to Puani Grant 10,806 to Tine)

Situated at

Waiohuli-Kenokea, Kula, Maui, Hawaii

Surveyed by: [Name] 1 inch = 100 feet

Project Title: Waiohuli-Keokea Beach Lots 1st Series Surveyor: Valley Isle Surveyors, Inc. Date: 10/10/2010 Scale: 1 inch = 100 feet North Arrow: True North Legend: 1. This map is a plan view of the beach lots. 2. The lots are shown in yellow. 3. The lots are numbered 9 and 10. 4. The lots are situated at Waiohuli-Kenokea, Kula, Maui, Hawaii. 5. The lots are shown in plan view. 6. The lots are shown in plan view. 7. The lots are shown in plan view. 8. The lots are shown in plan view. 9. The lots are shown in plan view. 10. The lots are shown in plan view.	Notes: 1. This map is a plan view of the beach lots. 2. The lots are shown in yellow. 3. The lots are numbered 9 and 10. 4. The lots are situated at Waiohuli-Kenokea, Kula, Maui, Hawaii. 5. The lots are shown in plan view. 6. The lots are shown in plan view. 7. The lots are shown in plan view. 8. The lots are shown in plan view. 9. The lots are shown in plan view. 10. The lots are shown in plan view.
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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 22, 2014

EXEMPTION NOTIFICATION

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

Project Title:	Grant of 55-Year Term, Non-Exclusive Easement to the Association of Unit Owners of (AOUO) Hale Kai O Kihei for Five (5) Encroachment Areas within the State Beach Reserve; Assess a \$500.00 Fine and \$260.00 in Administrative Costs Against the AOOU Hale Kai O Kihei.
Project / Reference No.:	PSF No. 07MD-078
Project Location:	State Beach Reserve, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Hawaii, TMK: (2) 3-9-008: Por. of 001.
Project Description:	Granting of a Term Non-Exclusive Easement for Five (5) Encroachments (3,149 sq. ft.).
Chap. 343 Trigger(s):	Use of State Lands in Conservation District (Shoreline)
Exemption Class No. and Description:	In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states: Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing " and Class No. 4 that states "Minor alteration in the conditions of land, water, or vegetation."
Recommendation:	It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


William J. Aila Jr., Chairperson

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