

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 17, 1999

Mr. Bill Ries, President  
The Whaler Association of Apartment Owners  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Ries:

Re: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval for a Six (6) Foot Wide Public Access Walkway Consisting of Removable Pavers and Safety Handrails Fronting the Whaler Condominium, TMK: 4-4-8:2, Lahaina, Island of Maui, Hawaii (SM2 990092) (SSA 990021)

In response to your application received on September 2, 1999, please be advised that the Maui Planning Department (Department) has reviewed the application in accordance with Chapter 343, Hawaii Revised Statutes (HRS), relative to Environmental Impact Statements. The proposed work consists of a temporary public access walkway to provide a continuous three (3) mile pedestrian walkway along the South Kaanapali area. Pursuant to the Environmental Impact Statement Rules, Section 11-200-8, this work qualifies under Exemption Class Nos. 1 and 6 for the "construction or placement of minor structures accessory to existing facilities," and "repair and maintenance of existing structures." Therefore, this project is exempt from Chapter 343, HRS requirements.

Further, in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above-referenced project that:

1. Said project is a development;
2. Said project has a valuation not in excess of \$125,000.00 (Valuation: Approximately \$3,000.00);

Mr. Bill Ries, President  
September 17, 1999  
Page 2

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 (HRS), Chapter 205A, and is consistent with the County General Plan and Zoning.

The proposed action is also subject to the Shoreline Setback Rules of the Maui Planning Commission (Rules). It should be noted that the Department of Land and Natural Resources stated that the proposed walkway would be located within the County's jurisdiction. Pursuant to Section 12-5-11(e) of these Rules, the movable walkway is determined to be "public access walkways" which do not affect beach processes, do not artificially fix the shoreline, and do not interfere with public access or public views to and along the shoreline and may be approved administratively by the Planning Director within the shoreline setback area including the minimum twenty-five (25) foot setback area.

In consideration of the above-referenced determinations, you are hereby granted a Special Management Area Minor Permit and Shoreline Setback Approval, subject to the following conditions:

1. That construction shall be in accordance with plans submitted on September 2, 1999.
2. That a building permit shall be obtained prior to the initiation of construction, if required.
3. That appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain, ambient noise levels, disruptions in the use of the beach area and public safety during the project.
4. That construction shall be initiated by March 31, 2000, and shall be completed within one (1) year of said initiation.

Mr. Bill Ries, President

September 17, 1999

Page 2

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 (HRS), Chapter 205A, and is consistent with the County General Plan and Zoning.

The proposed action is also subject to the Shoreline Setback Rules of the Maui Planning Commission (Rules). It should be noted that the Department of Land and Natural Resources stated that the proposed walkway would be located within the County's jurisdiction. Pursuant to Section 12-5-11(e) of these Rules, the movable walkway is determined to be "public access walkways" which do not affect beach processes, do not artificially fix the shoreline, and do not interfere with public access or public views to and along the shoreline and may be approved administratively by the Planning Director within the shoreline setback area including the minimum twenty-five (25) foot setback area.

In consideration of the above-referenced determinations, you are hereby granted a Special Management Area Minor Permit and Shoreline Setback Approval, subject to the following conditions:

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4. That construction shall be initiated by March 31, 2000, and shall be completed within one (1) year of said initiation.

Mr. Bill Ries, President

September 17, 1999

Page 4

JEM:DS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director

Rob Mullane, Sea Grant Extension Service

Daren Suzuki, Staff Planner

LUCA (2)

Phil Ohta, Department of Land and Natural Resources, Maui Division

~~General File~~

~~Project File S:\ALL\DAREN\MAIPOINA\SMA.WP2~~

99 7285

ISAAC DAVIS HALL

ATTORNEY AT LAW  
2087 WELLS STREET  
WAILUKU, MAUI, HAWAII 96793  
(808) 244-9017  
FAX (808) 244-6775

October 4, 1999

'99 OCT -6 P1:19

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Via Facsimile and U.S. Mail  
(808) 270-7634

Mr. Darren Suzuki  
Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, HI 96793

Re: "Application" for SMA Minor Permit Filed by the Whaler on  
Kaanapali Beach for Sidewalk Repairs and Beach Replenishment

Dear Darren Suzuki:

Thank you for sending to me a draft of the proposed amendments to the permit dated September 17, 1999. We have talked about these and we have the following suggested revisions which would clarify the request of the AOAO as you have explained it to us:

10. That the handrails to be constructed in the locations shown on the plans dated September 2, 1999 shall be constructed of the same materials and in the same manner as the wooden handrails shown in the middle picture of "existing conditions" and in the bottom picture of page 2 of the "proposed improvements".

11. The pavers shall not be connected by grout or in any other way.

12. That no concrete or asphalt or other permanent foundation is permitted under the concrete pavers.

13. Acceptable as proposed.

14. The pavers are to be 2' wide and 2' long and ? in height or thickness.

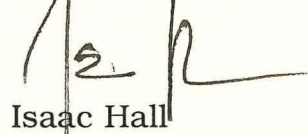
We are asking that, either in this amended permit letter or in a separate letter, language be included stating:

Since the sand has replenished itself naturally nearby the steps located by the central entrance to the beach, these steps shall be removed within 30 days.

Finally, issues with regard to the location of the shoreline (and jurisdiction as between the County of Maui and the State of Hawaii), the removal of remnant portions of the sidewalk and the location of posts underneath the sidewalk are not waived and are hereby reserved for future consideration. Through participation here, we take no responsibility for the safety of the sidewalk.

We will forego our opportunity to file an appeal of this SMA Minor Permit so long as an agreement is reached upon the language discussed above by the close of business on October 4, 1999. Again, thank you for your actual and intended future cooperation.

Sincerely yours,



Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letsuz7

6756

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



Timothy E. Johns

~~MICHAEL D. WILSON~~  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY  
~~GILBERT S. COLON~~  
Janet E. Kawelo

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

DIVISION OF LAND MANAGEMENT  
54 SOUTH HIGH STREET, ROOM 101  
WAILUKU, HAWAII 96793-2198

'99 SEP 17 P12:40

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

September 15, 1999

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT  
WATER RESOURCE MANAGEMENT

Mr. John E. Min, Director  
Department of Planning  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Mr. Min:

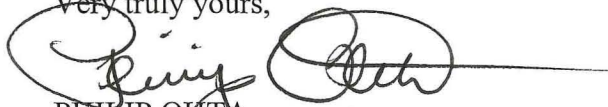
Subject: Sidewalk at the Whaler Condominium, Tax Map Key: 4-4-08: 02, Kaanapali, Lahaina, Maui.

This is in response to your August 16, 1999 letter regarding your review of a Special Management Area Minor Permit and Shoreline Setback Approval involving the sidewalk at the Whaler Condominium, Tax Map Key: 4-4-08: 02, situate in Kaanapali, Lahaina, Maui.

The Maui District Land Office's files reveals that the most recent certified shoreline for the Whaler was approved on June 29, 1993. The sidewalk was located on the mauka area of the certified shoreline at that time. In order to avoid any additional liability for the State, a new certified shoreline would place the sidewalk within this same mauka area., and therefore, be subject to your jurisdiction.

Should you have any questions regarding the above matter, please feel free to contact this office at 984-8100.

Very truly yours,

  
PHILIP OHTA  
Maui District Land Agent

cc: Central Files  
Maui Land Board Member

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 22, 1999

Mr. Charles Philips, Director of Engineering  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Philips:

RE: Special Management Area (SMA) Minor Permit Third Amendment  
for a Time Extension to Retain Portable Stairways Fronting the  
Whaler Condominium, TMK: 4-4-08:01 Lahaina, Island of Maui,  
Hawaii (SM2 980051) (SSA 980011)

The Maui Planning Department (Department) has reviewed the above-referenced request dated August 24, 1999, and conducted a site inspection of the property on September 9, 1999.

The Department still finds that the beach fronting the pool and Tower II has not fully recovered. In order to ensure safe access to and from the beach, your request is hereby granted, subject to all of the conditions placed on the original permits (SM2 980051) (SSA 980011), provided that Condition No. 4 shall be amended to read as follows:

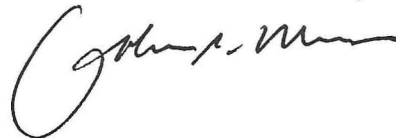
- "4. The stairway fronting the pool and Tower II shall be removed no later than February 29, 2000, or sooner, should the beach recover to a point where safe access to and from the shoreline can be accommodated."



Mr. Charles Philips, Director of Engineering  
September 22, 1999  
Page 2

Thank you for your cooperation. If additional clarification is required, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN  
Planning Director

JEM:DMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
~~Daren M. Suzuki, Staff Planner~~  
LUCA (2)  
99/SSA CZM File  
99/SM2 Minor Permit File  
General File  
(S:\ALL\DAREN\SMAMINOR\WHALER.AM4)

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 22, 1999

Mr. Charles Philips, Director of Engineering  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

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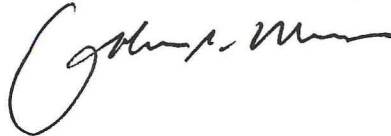
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Mr. Charles Philips, Director of Engineering  
September 22, 1999  
Page 2

Thank you for your cooperation. If additional clarification is required, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN  
Planning Director

JEM:DMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
Daren M. Suzuki, Staff Planner  
LUCA (2)  
99/SSA CZM File  
99/SM2 Minor Permit File  
General File  
(S:\ALL\DAREN\SMAMINOR\WHALER.AM4)

6881

ISAAC DAVIS HALL

ATTORNEY AT LAW  
2087 WELLS STREET  
WAILUKU, MAUI, HAWAII 96793  
(808) 244-9017  
FAX (808) 244-6775

September 17, 1999

'99 SEP 20 P1:21

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Mr. Aaron Shinmoto  
Mr. Charles Villalon  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Investigation of Sidewalk Construction at the Whaler

Dear Aaron Shinmoto and Charles Villalon:

1. Review and Copying of Affidavits Submitted

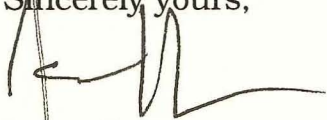
I spoke yesterday to Darren Suzuki who informed me that Affidavits have been submitted concerning the manner in which the sidewalk was constructed at the Whaler. I would like to review and copy these as soon as possible. I will pay all copying costs. Please let my office know if and when I may pick them up.

2. Scheduling a Time for an Inspection

My client and I would like to schedule a time to meet with you at the Whaler to point out to you where the violations have occurred. We do not believe that you should rely upon the Affidavits which have been submitted. We will make available at that time witnesses of the construction and witnesses on whether compliance with the conditions took place. We are prepared to show you that the construction which took place in 1993 was not in compliance with any validly issued permit or, in the alternative, of "breakaway slab joint construction." We will show you that piers were constructed that are not shown on any plans reviewed by your Department. We will further show you where the remnants that were required to be removed lie on the beach. Once we have copies of the Affidavits we will also provide Counter-Affidavits, if they are necessary.

Please contact me as soon as possible about the foregoing and kindly keep your investigation open until we have reviewed the Affidavits which have been submitted, have inspected the site with you and have had the opportunity to submit Counter-Affidavits.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Isaac Hall', written over a vertical line that extends from the text above.

Isaac Hall

IH/jp

cc: Charles D. Fox, III  
wog/letshinvil

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

'99 OCT 12 P3:43

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

October 12, 1999

Via Hand Deliver

Mr. Aaron Shinmoto  
Mr. Charles Villalon  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku, Maui, Hawaii 96793

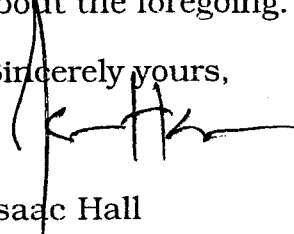
Re: Investigation of Sidewalk Construction at the Whaler

Dear Aaron Shinmoto and Charles Villalon:

We now have in our possession a videotape which is the best evidence of (a) the existence of the piers underneath the sidewalk, which were not allowed by any permit, and (b) the exposed sidewalk which should have been (but was not) removed and instead was buried.

We would like to meet with you to show you this videotape and, thereafter, to schedule a site inspection with you at the Whaler. Please contact me about the foregoing.

Sincerely yours,

  
Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letshinvil2

**Isaac Davis Hall**  
Attorney at Law  
2087 Wells Street  
Wailuku, Maui, Hawaii 96793  
Telephone: (808) 244-9017  
Facsimile: (808) 244-6775

**FACSIMILE TRANSMITTAL**

**DATE:** October 4, 1999  
**TO:** Darren Suzuki  
**FAX NO.:** 270-7634  
**PAGES:** 3 (including this cover sheet)  
**RE:** "Application" for SMA Minor Permit Filed by the Whaler on  
Kaaniapali Beach for Sidewalk Repairs and Beach Replenishment  
**REMARKS:** Transmitting letter of even date.

**IMPORTANT NOTICE**

This Fax has been sent from a law firm. It may contain attorney-client privileged and confidential information intended only for the use of the person(s) named above. If you are not an intended recipient, you are hereby notified that any dissemination or duplication of this Fax is prohibited and that there shall be no waiver of any privilege or confidence by your receipt of this transmission. If you have received this Fax in error, please notify us by collect telephone call and return it by first class mail. Thank you.

Original letter  will  will not be mailed to you.

If you do not receive all the pages please telephone or fax us immediately.  
Thank you.

ISAAC DAVIS HALL

ATTORNEY AT LAW  
2087 WELLS STREET  
WAILUKU, MAUI, HAWAII 96793  
(808) 244-9017  
FAX (808) 244-6775

October 4, 1999

Via Facsimile and U.S. Mail  
(808) 270-7634

Mr. Darren Suzuki  
Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, HI 96793

Re: "Application" for SMA Minor Permit Filed by the Whaler on  
Kaanapali Beach for Sidewalk Repairs and Beach Replenishment

Dear Darren Suzuki:

Thank you for sending to me a draft of the proposed amendments to the permit dated September 17, 1999. We have talked about these and we have the following suggested revisions which would clarify the request of the AOA as you have explained it to us:

10. That the handrails to be constructed in the locations shown on the plans dated September 2, 1999 shall be constructed of the same materials and in the same manner as the wooden handrails shown in the middle picture of "existing conditions" and in the bottom picture of page 2 of the "proposed improvements".

11. The pavers shall not be connected by grout or in any other way.

12. That no concrete or asphalt or other permanent foundation is permitted under the concrete pavers.

13. Acceptable as proposed.

14. The pavers are to be 2' wide and 2' long and 2 in height or thickness.

We are asking that, either in this amended permit letter or in a separate letter, language be included stating:

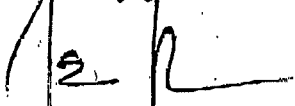


Since the sand has replenished itself naturally nearby the steps located by the central entrance to the beach, these steps shall be removed within 30 days.

Finally, issues with regard to the location of the shoreline (and jurisdiction as between the County of Maui and the State of Hawaii), the removal of remnant portions of the sidewalk and the location of posts underneath the sidewalk are not waived and are hereby reserved for future consideration. Through participation here, we take no responsibility for the safety of the sidewalk.

We will forego our opportunity to file an appeal of this SMA Minor Permit so long as an agreement is reached upon the language discussed above by the close of business on October 4, 1999. Again, thank you for your actual and intended future cooperation.

Sincerely yours,



Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letsuz7

6428

**ISAAC DAVIS HALL**

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

September 3, 1999

'99 SEP -3 P4:32

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Via Facsimile and U.S. Mail  
(808) 270-7634

Mr. Darren Suzuki  
Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, HI 96793

Re: "Application" for SMA Minor Permit Filed by the Whaler on  
Kaanapali Beach for Sidewalk Repairs and Beach Replenishment

Dear Darren Suzuki:

As you know, we have only appealed a portion of the letter regarding enforcement dated July 23, 1999. When and if you receive any of the requested affidavits, kindly immediately inform me so that I can review them.

Thank you for your anticipated cooperation.

Sincerely yours,

  
Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letsuz6

Confirmation Report - Memory Send

Time : Oct-05-99 12:47pm  
Tel line : +8082707634  
Name : DEPT OF PLANNING COUNTY OF MAUI

Job number : 797  
Date : Oct-05 12:45pm  
To : 92446775  
Document pages : 03  
Start time : Oct-05 12:46pm  
End time : Oct-05 12:47pm  
Pages sent : 03  
Status : OK

Job number : 797

\*\*\* SEND SUCCESSFUL \*\*\*

JAMES "KIMO" APANA  
Mayor  
JOHN E. MIN  
Director  
CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

FACSIMILE TRANSMISSION COVER SHEET

DATE: 10/5  
TO: Isaac Hall  
TELEPHONE NO.: \_\_\_\_\_ FACSIMILE NO.: 244-6775  
FROM: Daven Suzuki  
NO. OF PAGES (INCLUDING COVER SHEET): 3  
REMARKS OR SPECIAL INSTRUCTIONS:

If you do not receive all pages or if there is a problem with this transmittal, please call (808) 270-7735. Our facsimile number is (808) 270-7634.  
S:\ALL\FORMS\FAXTRANS.FRM

Confirmation Report - Memory Send

Time : Oct-05-99 12:46pm  
Tel line : +8082707634  
Name : DEPT OF PLANNING COUNTY OF MAUI

Job number : 796  
Date : Oct-05 12:45pm  
To : 96616033  
Document pages : 03  
Start time : Oct-05 12:45pm  
End time : Oct-05 12:46pm  
Pages sent : 03  
Status : OK

Job number : 796

\*\*\* SEND SUCCESSFUL \*\*\*

JAMES "KIMO" APANA  
Mayor  
JOHN E. MIN  
Director  
CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

FACSIMILE TRANSMISSION COVER SHEET

DATE: 10/5  
TO: Bill Ries  
TELEPHONE NO.: \_\_\_\_\_ FACSIMILE NO.: 661-6033  
FROM: Daven Suzuki  
NO. OF PAGES (INCLUDING COVER SHEET): 3  
REMARKS OR SPECIAL INSTRUCTIONS:

If you do not receive all pages or if there is a problem with this transmittal,  
please call (808) 270-7735. Our facsimile number is (808) 270-7634.  
S:\ALL\FORMS\FAXTRANS.FRM

Confirmation Report - Memory Send

Time : Sep-21-99 01:53pm  
Tel line : +8082707634  
Name : DEPT OF PLANNING COUNTY OF MAUI

Job number : 630  
Date : Sep-21 01:51pm  
To : 96618315  
Document pages : 05  
Start time : Sep-21 01:51pm  
End time : Sep-21 01:53pm  
Pages sent : 05  
Status : OK

Job number : 630

\*\*\* SEND SUCCESSFUL \*\*\*

JAMES "KIMO" APANA  
Mayor  
JOHN E. MIN  
Director  
CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

FACSIMILE TRANSMISSION COVER SHEET

DATE: September 21, 1999  
TO: Bill Ries, President  
TELEPHONE NO.: \_\_\_\_\_ FACSIMILE NO.: 661-8315  
FROM: Daren Suzuki, Staff Planner  
NO. OF PAGES (INCLUDING COVER SHEET): 5  
REMARKS OR SPECIAL INSTRUCTIONS:

If you do not receive all pages or if there is a problem with this transmittal,  
please call (808) 270-7735. Our facsimile number is (808) 270-7634.  
S:\ALL\FORMS\FAXTRANS.FRM

Confirmation Report - Memory Send

Time : Sep-21-99 01:51pm  
Tel line : +8082707634  
Name : DEPT OF PLANNING COUNTY OF MAUI

Job number : 629  
Date : Sep-21 01:49pm  
To : 92446775  
Document pages : 05  
Start time : Sep-21 01:49pm  
End time : Sep-21 01:51pm  
Pages sent : 05  
Status : OK

Job number : 629

\*\*\* SEND SUCCESSFUL \*\*\*

JAMES "KIMO" APANA  
Mayor  
JOHN E. MIN  
Director  
CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

FACSIMILE TRANSMISSION COVER SHEET

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S:\ALL\FORMS\FAXTRANS.FRM

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 17, 1999

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2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Ries:

Re: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval for a Six (6) Foot Wide Public Access Walkway Consisting of Removable Pavers and Safety Handrails Fronting the Whaler Condominium, TMK: 4-4-8:2, Lahaina, Island of Maui, Hawaii (SM2 990092) (SSA 990021)

In response to your application received on September 2, 1999, please be advised that the Maui Planning Department (Department) has reviewed the application in accordance with Chapter 343, Hawaii Revised Statutes (HRS), relative to Environmental Impact Statements. The proposed work consists of a temporary public access walkway to provide a continuous three (3) mile pedestrian walkway along the South Kaanapali area. Pursuant to the Environmental Impact Statement Rules, Section 11-200-8, this work qualifies under Exemption Class Nos. 1 and 6 for the "construction or placement of minor structures accessory to existing facilities," and "repair and maintenance of existing structures." Therefore, this project is exempt from Chapter 343, HRS requirements.

Further, in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above-referenced project that:

1. Said project is a development;
2. Said project has a valuation not in excess of \$125,000.00 (Valuation: Approximately \$3,000.00);

Mr. Bill Ries, President

September 17, 1999

Page 2

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 (HRS), Chapter 205A, and is consistent with the County General Plan and Zoning.

The proposed action is also subject to the Shoreline Setback Rules of the Maui Planning Commission (Rules). It should be noted that the Department of Land and Natural Resources stated that the proposed walkway would be located within the County's jurisdiction. Pursuant to Section 12-5-11(e) of these Rules, the movable walkway is determined to be "public access walkways" which do not affect beach processes, do not artificially fix the shoreline, and do not interfere with public access or public views to and along the shoreline and may be approved administratively by the Planning Director within the shoreline setback area including the minimum twenty-five (25) foot setback area.

In consideration of the above-referenced determinations, you are hereby granted a Special Management Area Minor Permit and Shoreline Setback Approval, subject to the following conditions:

1. That construction shall be in accordance with plans submitted on September 2, 1999.
2. That a building permit shall be obtained prior to the initiation of construction, if required.
3. That appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain, ambient noise levels, disruptions in the use of the beach area and public safety during the project.
4. That construction shall be initiated by March 31, 2000, and shall be completed within one (1) year of said initiation.

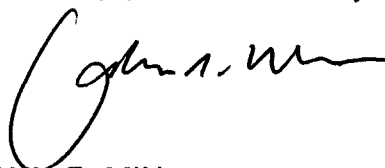


Mr. Bill Ries, President  
September 17, 1999  
Page 3

5. That should the walkway be threatened by coastal erosion or have an impact on beach processes (as evidenced by the structure being undermined or impacted by wave action), the walkway shall be either removed or reconfigured outside of the upper reaches of the wash of the waves.
6. That no top soil shall be permitted within the shoreline area. Soils released into the ocean may have an adverse impact on water quality and the coral reef ecosystem.
7. No construction, operation of equipment, storage of materials, excavation or deposition of soil or other materials shall occur seaward of the vegetation line without the appropriate approvals from the Department of Land and Natural Resources and the Army Corps of Engineers.
8. That the temporary walkway shall be removed no later than September 30, 2000, subject to extensions by the Maui Planning Department.
9. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN  
Planning Director

Mr. Bill Ries, President  
September 17, 1999  
Page 4

JEM:DS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
Rob Mullane, Sea Grant Extension Service  
Daren Suzuki, Staff Planner  
LUCA (2)  
Phil Ohta, Department of Land and Natural Resources, Maui Division  
General File  
Project File S:\ALL\DAREN\MAIPOINA\SMA.WP2

AMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 17, 1999

Isaac Davis Hall, Esq.  
Attorney at Law  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: The Whaler at Kaanapali Beach

This letter is in response to your two (2) letters received on September 3, 1999.

You requested an explanation on why correspondence from the Maui Planning Department (Department) to you has been sent to persons who were not shown as having been sent copies. As you are well aware, project correspondence is public record, and anyone requesting a copy of any letter may do so.

On the other hand, correspondence relating to an ongoing investigation may not be available for public viewing until the investigation is complete. As such, the Department may be unable to provide you with copies of the affidavits and related correspondence at this time.

For the record, on September 14, 1999, you were advised that a Special Management Area (SMA) Minor Permit was received for the sidewalk and is available for your review.

Should you have any questions on the the SMA Minor Permit, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735. Should you have any questions on the investigation, please contact Mr. Aaron Shinmoto, PE, Planning Program Administrator, of this office at 270-7253.

Isaac Davis Hall, Esq.  
September 17, 1999  
Page 2

Very truly yours,



JOHN E. MIN  
Planning Director

JEM:DMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, PE, Planning Program Administrator (2)  
~~Daren Suzuki~~, Staff Planner  
Project File  
General File  
S:\ALL\DAREN\WHALER.RE4

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 17, 1999

Isaac Davis Hall, Esq.  
Attorney at Law  
2087 Wells Street  
Wailuku, Hawaii 96793

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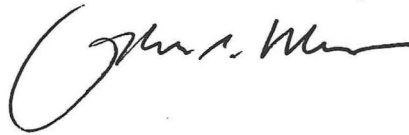
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Isaac Davis Hall, Esq.  
September 17, 1999  
Page 2

Very truly yours,



JOHN E. MIN  
Planning Director

JEM:DMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, PE, Planning Program Administrator (2)  
Daren Suzuki, Staff Planner  
~~Project File~~  
General File  
S:\ALL\DAREN\WHALER.RE4

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RUSH

**ISAAC DAVIS HALL**

ATTORNEY AT LAW  
2087 WELLS STREET  
WAILUKU, MAUI, HAWAII 96793  
(808) 244-9017  
FAX (808) 244-6775

September 3, 1999

MAUI  
PLANNING  
DEPARTMENT

JOHN  
CLAYTON  
PLANNING  
ZAED  
JILL

	FYI	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESPONSE
JOHN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLAYTON	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PLANNING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ZAED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JILL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Date: \_\_\_\_\_  
by: *jm* Date: *9/5/99*

Via Facsimile and U.S. Mail  
(808) 270-7634

Mr. Darren Suzuki  
Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, HI 96793

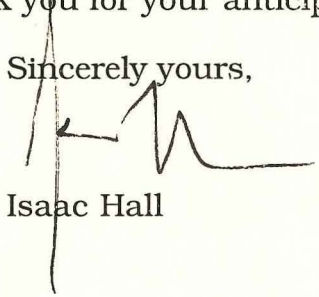
Re: "Application" for SMA Minor Permit Filed by the Whaler on  
Kaanapali Beach for Sidewalk Repairs and Beach Replenishment

Dear Darren Suzuki:

As you know, we have only appealed a portion of the letter regarding enforcement dated July 23, 1999. When and if you receive any of the requested affidavits, kindly immediately inform me so that I can review them.

Thank you for your anticipated cooperation.

Sincerely yours,



Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letsuz6

**ISAAC DAVIS HALL**

ATTORNEY AT LAW  
2087 WELLS STREET  
WAILUKU, MAUI, HAWAII 96793  
(808) 244-9017  
FAX (808) 244-6775

September 3, 1999

**Via Facsimile and U.S. Mail**  
(808) 270-7634

Mr. Darren Suzuki  
Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, HI 96793

Re: "Application" for SMA Minor Permit Filed by the Whaler on  
Kaanapali Beach for Sidewalk Repairs and Beach Replenishment

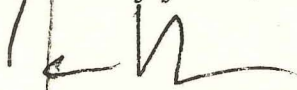
Dear Darren Suzuki:

It has come to my attention that correspondence from the Planning Department to me has been sent to persons who were not shown as having been sent copies. I would appreciate any explanation that you have for this.

At the same time, in spite of my repeated requests, the Planning Department has sent correspondence concerning this matter to persons at the Whaler without sending me copies. Since all of the above-referenced documents are public records, please explain why this is happening?

This letter is to confirm your undertaking to notify me when you determine that the purported SMA minor permit application is complete. I will want to review this application at the time it is complete and before any action is taken upon it.

Sincerely yours,



Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letsuz5



JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 17, 1999

Mr. Bill Ries, President  
The Whaler Association of Apartment Owners  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Ries:

Re: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval for a Six (6) Foot Wide Public Access Walkway Consisting of Removable Pavers and Safety Handrails Fronting the Whaler Condominium, TMK: 4-4-8:2, Lahaina, Island of Maui, Hawaii (SM2 990092) (SSA 990021)

In response to your application received on September 2, 1999, please be advised that the Maui Planning Department (Department) has reviewed the application in accordance with Chapter 343, Hawaii Revised Statutes (HRS), relative to Environmental Impact Statements. The proposed work consists of a temporary public access walkway to provide a continuous three (3) mile pedestrian walkway along the South Kaanapali area. Pursuant to the Environmental Impact Statement Rules, Section 11-200-8, this work qualifies under Exemption Class Nos. 1 and 6 for the "construction or placement of minor structures accessory to existing facilities," and "repair and maintenance of existing structures." Therefore, this project is exempt from Chapter 343, HRS requirements.

Further, in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above-referenced project that:

1. Said project is a development;
2. Said project has a valuation not in excess of \$125,000.00 (Valuation: Approximately \$3,000.00);

Mr. Bill Ries, President  
September 17, 1999  
Page 2

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 (HRS), Chapter 205A, and is consistent with the County General Plan and Zoning.

The proposed action is also subject to the Shoreline Setback Rules of the Maui Planning Commission (Rules). It should be noted that the Department of Land and Natural Resources stated that the proposed walkway would be located within the County's jurisdiction. Pursuant to Section 12-5-11(e) of these Rules, the movable walkway is determined to be "public access walkways" which do not affect beach processes, do not artificially fix the shoreline, and do not interfere with public access or public views to and along the shoreline and may be approved administratively by the Planning Director within the shoreline setback area including the minimum twenty-five (25) foot setback area.

In consideration of the above-referenced determinations, you are hereby granted a Special Management Area Minor Permit and Shoreline Setback Approval, subject to the following conditions:

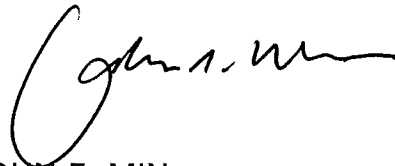
1. That construction shall be in accordance with plans submitted on September 2, 1999.
2. That a building permit shall be obtained prior to the initiation of construction, if required.
3. That appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind and rain, ambient noise levels, disruptions in the use of the beach area and public safety during the project.
4. That construction shall be initiated by March 31, 2000, and shall be completed within one (1) year of said initiation.

Mr. Bill Ries, President  
September 17, 1999  
Page 3

5. That should the walkway be threatened by coastal erosion or have an impact on beach processes (as evidenced by the structure being undermined or impacted by wave action), the walkway shall be either removed or reconfigured outside of the upper reaches of the wash of the waves.
6. That no top soil shall be permitted within the shoreline area. Soils released into the ocean may have an adverse impact on water quality and the coral reef ecosystem.
7. No construction, operation of equipment, storage of materials, excavation or deposition of soil or other materials shall occur seaward of the vegetation line without the appropriate approvals from the Department of Land and Natural Resources and the Army Corps of Engineers.
8. That the temporary walkway shall be removed no later than September 30, 2000, subject to extensions by the Maui Planning Department.
9. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,

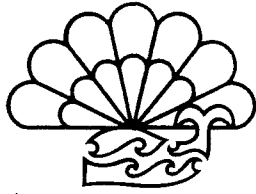


JOHN E. MIN  
Planning Director

Mr. Bill Ries, President  
September 17, 1999  
Page 4

JEM:DS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director  
Rob Mullane, Sea Grant Extension Service  
~~Daren Suzuki, Staff Planner~~  
LUCA (2)  
Phil Ohta, Department of Land and Natural Resources, Maui Division  
General File  
Project File S:\ALL\DAREN\MAIPOINA\SMA.WP2



**The Whaler**  
On Kaanapali Beach

Association of Apartment Owners

'99 AUG 30 08:17

DEPT. OF PUBLIC WORKS  
COUNTY OF MAUI  
RECEIVED

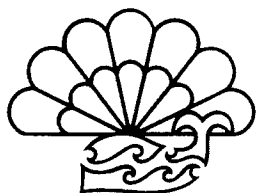
August 27, 1999

Mr. John Min  
Director of Planning  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

Dear Mr. Min,

In response to your letter dated July 23, 1999, please find enclosed the following items that were requested:

1. A site drawing and photos indicating where the 1988 sidewalk still exists.
2. Two (2) copies of the breakaway slab joint construction dated March 29, 1988.
3. A notarized affidavit from Charles Phillips.
4. A notarized affidavit from Fred Putnam.
5. A notarized affidavit from Dave Atkinson.
6. A copy of the receipt for the removal of the piers (invoice 10001).
7. Copies of two (2) receipts for the removal of the sidewalk and other related debris (invoices 12352 and 12370).



**The Whaler**

On Kaanapali Beach

*Association of Apartment Owners*

Mr. John Min  
August 27, 1999  
page 2

As you are aware, The Whaler has always worked in good faith with the County and State to meet all of the applicable conditions and regulations. We trust that the documents submitted will satisfy the County's recent requirements.

We appreciate your continued cooperation with our difficult situation and we look forward to clearing our Association of any allegations of non-compliance. If you should need further documentation please contact me.

Sincerely,

Charles Philips  
Director of Engineering

cc: Mr. Bill Ries, The Whaler AOAO  
Mr. Daren Suzuki, Planner

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

September 20, 1999

'99 SEP 20 P3:32

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Via Hand Deliver

Mr. John Min, Director  
Mr. Daren Suzuki, Staff Planner  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

Re: Application for a SMA Minor Permit for a Temporary  
Sidewalk at the Whaler Condominiums; TMK (II) 4-4-08:02;  
Kaanapali, Lahaina, Maui

Dear John Min and Daren Suzuki:

My client and I have reviewed the documents which you have represented constitute an application for a SMA Minor Permit and a Shoreline Setback Variance for a temporary sidewalk at the Whaler. We have the following comments on the application at this time:

1. The application is not accompanied by a valid survey of the shoreline certified by the State Surveyor. Section 12-202-12(c)(2)(D).
2. The plans which have been submitted are unintelligible to us and do not meet the standards for plans and specifications set out in the Maui Planning Commission rules. Section 12-202-12(c)(2)(C),(E),(G). While the plans may turn out not to be objectionable, they must first meet the requirements of your rules.
3. The preliminary materials furnished to us with respect to this application indicated that there would be sand or beach replenishment. Has this been abandoned? The status of this portion of the application should be clarified before any permit is granted.
4. There is no written valuation of the project (supplied to us). Section 12-202-12(c)(2)(H).

Mr. John Min, Director  
Mr. Daren Suzuki, Staff Planner  
September 20, 1999  
Page - 2 -

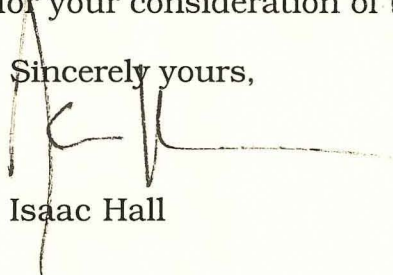
5. There is no determination that an Environmental Assessment is not required. Section 12-202-12(c)(1).

6. What is the duration of this temporary authorization?

We are prepared to meet with you at any reasonable time to discuss the foregoing. If you should grant this permit before this discussion takes place, please send us a copy of the letter granting the permits immediately so that we will have a full ten days to decide whether an appeal should be taken.

Thank you for your consideration of these matters.

Sincerely yours,

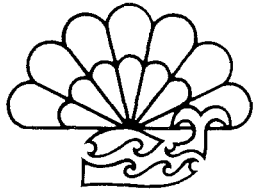


Isaac Hall

IH/sn

cc: Charles D. Fox, III  
wog/letminsuz2





**The Whaler**  
On Kaanapali Beach

*Association of Apartment Owners*

99 SEP -2 10 24 18

September 2, 1999

Mr. John Min  
Director of Planning  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

Dear Mr. Min,

In response to a discussion with Daren Suzuki, the planner working on our SMA Minor permit application, I would like to submit the following items to complete our application:

1. A revised application form signed by the Association President, Bill Ries.
2. Two (2) pages from the Whaler Board of Directors Meeting establishing the Board's approval for installation of the temporary beach sidewalk.
3. Photos illustrating the existing conditions.
4. A site plan indicating the location of the proposed improvements for the temporary beach sidewalk.
5. Photos illustrating the proposed improvements.
6. Photos of the pavers that are the proposed material for the temporary beach sidewalk.
7. A brief description addressing the anticipated impacts.

Mr. John Min  
September 2, 1999  
page 2

Our beach sidewalk has been in need of this repair for well over a year now and we appreciate your continued assistance in helping to rectify the situation. The beach sidewalk is the visitors main thoroughfare within the resort and also serves as a public access between all the Kaanapali Resort properties.

Because of the inaccessible status of the portion in front of the Whaler, it prevents a continued access route between the properties and throughout the resort. To a certain extent the disruption in the beach sidewalk poses a liability for The Whaler because people continue to use the walkways regardless of the barriers and signage.

Therefore, we sincerely appreciate your continued assistance and attention to our application. I would like to assist in any way to expedite this process so please contact me immediately if you should need any further information or documentation.

Sincerely,



~~Charles Philips~~  
Director of Engineering

cc: Mr. Bill Ries, The Whaler AOAO  
Mr. Daren Suzuki, Planner

AUG-24-99 32:47PM

FROM-DEPT OF PLANNING COUNTY OF MAUI

#0082707684

T-985 P.02/04 6-213



COUNTY OF MAUI
DEPARTMENT OF PLANNING
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7735; FAX (808) 243-7834

MAUI PLANNING COMMISSION
SPECIAL MANAGEMENT AREA ASSESSMENT AND/OR
MINOR PERMIT APPLICATION

DATE:
PERMIT TYPE: Minor Permit PROJECT NAME: Temporary Beachwalk
PROPOSED DEVELOPMENT: Construction of a temporary sidewalk using removable pavers, approximately 91 feet long and 6 feet wide and a handrail where necessary.
TAX MAP KEY NO.: (2) 4-4-8: 2 C/P/N/P NO.: LAND AREA: 6.658
PROPERTY ADDRESS: 2481 Kaanapali Parkway
OWNER: The Whaler Association of Apartment Owners PHONE: 661-6000
ADDRESS: 2481 Kaanapali Parkway
CITY: Lahaina STATE: Hawaii ZIP CODE: 96761
SIGNATURE: [Signature] Bill Ries, President
APPLICANT: same as above
ADDRESS:
CITY: STATE: ZIP CODE:
PHONE (HOME): PHONE (BUSINESS): FAX:
SIGNATURE:
CONTACT: Chuck Philips, Director of Engineering
ADDRESS: 2481 Kaanapali Parkway
CITY: Lahaina STATE: Hawaii ZIP CODE: 96761
PHONE (HOME): PHONE (BUSINESS): 661-6000 FAX: 661-6033
EXISTING USE OF PROPERTY: grassy common area
CURRENT STATE LAND USE DISTRICT BOUNDARY DESIGNATION: Urban
COMMUNITY PLAN DESIGNATION: Hotel
MAUI COUNTY ZONING DESIGNATION: Hotel
OTHER SPECIAL DESIGNATIONS:

22/01/09/1999

Revised August 3, 1998

**The Whaler on Kaanapali Beach  
Board of Directors Meeting  
May 28, 1999  
9:00 A.M.  
Meeting Room, Tower I, Lower Level**

**DIRECTORS PRESENT:** Bill Ries, Peer Oppenheimer, MaryDee Karp, Jim Kelly, Kay Sinnett, Otto Schacht, Gary McDaniel, Rune Frossmo, Marty Wible.

**OTHERS PRESENT:** Robert Rowland, Association Attorney, Mancini, Rowland & Welch; Chuck Philips, Director of Engineering; Laurie Ledbetter, Recording Secretary.

**OTHERS PRESENT:** See Appendix "A", attached hereto.

**ROLL CALL AND CALL TO ORDER:**

The meeting was called to order by President Bill Ries at 9:00 A.M. A quorum was established with all Board members present.

**PROOF OF NOTICE OF MEETING:**

President Ries certified that Proof of Notice was mailed to each Director on April 19, 1999 and filed in the Association office.

**APPROVAL OF MINUTES:**

**MOTION:** To approve the minutes of the Board of Directors Meeting dated January 25, 1999 as distributed. (Karp/Frossmo)

**VOTE:** Carried unanimously.

**MOTION:** To approve the minutes of the Special Meeting of the Board of Directors dated March 3, 1999 as distributed. (Frossmo/Karp)

**VOTE:** Carried unanimously.

**MOTION:** To approve the minutes of the Special Meeting of the Board of Directors dated March 19, 1999 with the following correction:

1) To include Otto Schacht as present at the meeting.  
(Karp/McDaniel)

**VOTE:** Carried unanimously.

**The Whaler on Kaanapali Beach  
Board of Directors Meeting  
May 28, 1999 - Page 4**

**MOTION:** The existing gas barbecue grills not be replaced until the Building and Long Range Planning Committees have an opportunity to research and submit a recommendation to upgrade and/or renovate. (Wible/Frossmo)

Both Mrs. Wible and Mr. Philips volunteered to research various options and costs. The Board agreed to review the above information at the August meeting.

**VOTE:** Carried unanimously.

**Beach Sidewalk:**

Mr. Philips stated a second meeting with representatives from the State and County of Maui, as well as other Kaanapali Beach properties, met on May 24, 1999, to discuss methods in which to streamline and expedite the permit process.

Mr. Philips stated that because the sand has not naturally restored itself in a timely manner, a proposal for beach quality sand replenishment, and construction of a temporary beach sidewalk on the Tower II side of the property, was submitted to the County of Maui Planning Department on May 26, 1999. He reviewed the specifics of the proposed sidewalk, which is a temporary situation to address a need for access to accommodate the public. The proposal also included a request for approval to restore the sidewalk to its original location, when nature returns the sand in the same location.

LeRoy Cox, #815, suggested the Association's insurance company be apprised of the additional non-resident and non-guest foot traffic on Whaler property as a result of the beach sidewalk situation. President Ries advised this will be done.

**MOTION:** To approve an additional \$15,000 for sand replenishment and the installation of a temporary beach sidewalk on the side of Tower II per the proposal submitted to the County and upon the issuance of proper permits. (Oppenheimer/Frossmo)

**VOTE:** Carried unanimously.

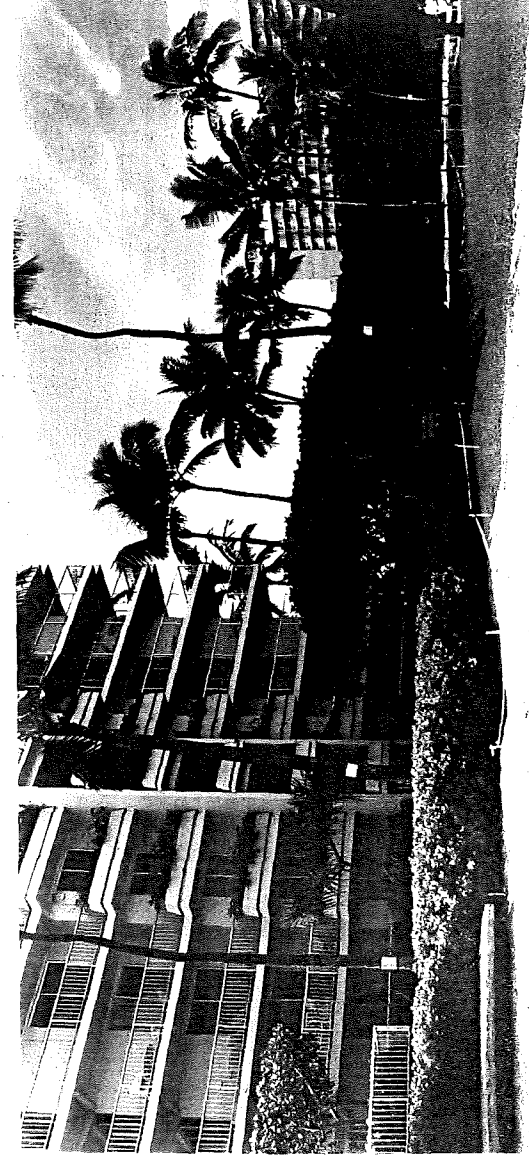
**GROUND:**

Kay Sinnett reported the shade tree by the pool is scheduled to be trimmed within the next month, horizontally, to grow back and provide more shade. The palm tree by the pool was removed due to the hazardous condition of the tree. The Board reviewed the following options: 1) Replant with the same size coconut tree at a cost of approximately \$6,000 to \$9,000 plus the cost of a crane; 2) Replace with a smaller shade tree; 3) Concrete the area. This would require approval by 75% of the

The anticipated impacts of the proposed installation  
of a temporary walkway at  
The Whaler on Kaanapali Beach

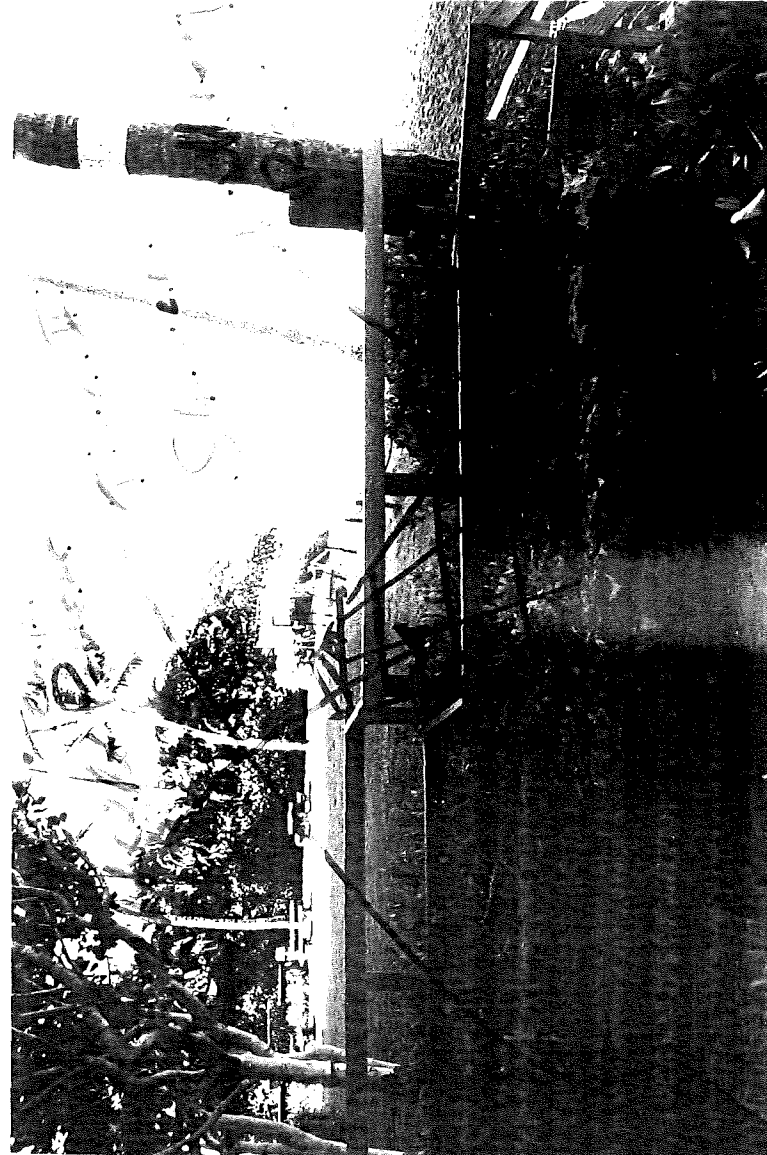
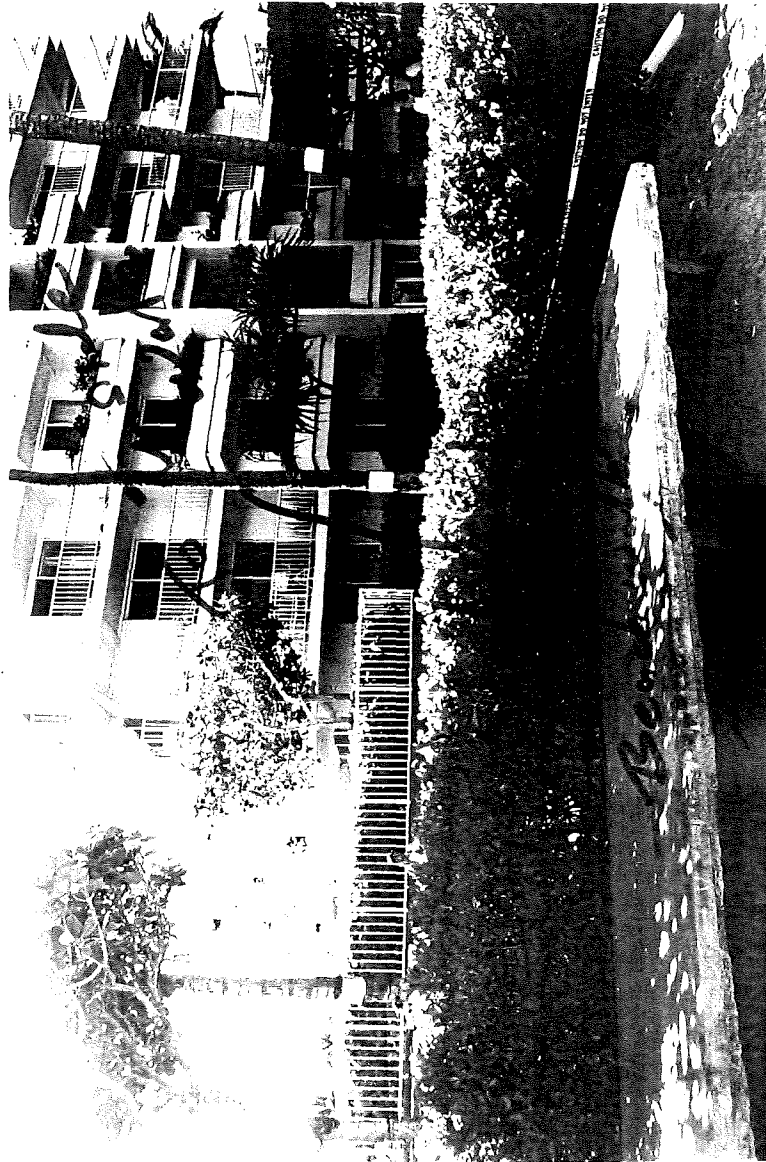
- a. The setting of the proposed temporary walkway is on the makai side of the Whaler condominium property. The beachwalk is currently unusable in the area in front of Tower 2. The temporary walkway would be approximately two to three feet above the vegetation line on the grassed area.
- b. The temporary location of the beach walk is consistent with the land use plan. The beach walk has been an approved component of the property as far back as the early 1980's.
- c. Because of the temporary nature of the proposed action, there should be no impacts on the ocean and coastal environment. Furthermore, in the event of high surf and a threat of shoreline erosion, the temporary pavers can be removed so as to prevent any possible negative impacts from the beachwalk.
- d. Again, because the proposed action is temporary, the pavers can be removed at any time if shoreline erosion poses a threat. Therefore, any adverse environmental effects can be avoided by removal of the pavers during threatening conditions.
- e. Because the beach walk is designed as a continuous three mile pedestrian walk way that provides access throughout the resort along the coastline, there is no alternative route available. The current situation is dangerous because when walkers reach the end of the existing walkway they are forced onto the unstable sand. Worse yet some pedestrians ignore the barriers and continue to use the exposed walkway, which ends abruptly and could cause injury.
- f. The temporary location is positioned mauka of the scarp by at least three feet. This location was chosen as the best route in order to minimize any coastal impacts. The temporary installation of the pavers is also a preventive measure since they can be removed during erosion occurrence.
- g. The proposed action is for a temporary beach walk and therefore there is no irreversible or irretrievable commitment of resources.

# EXISTING CONDITIONS



# PROPOSED IMPROVEMENTS

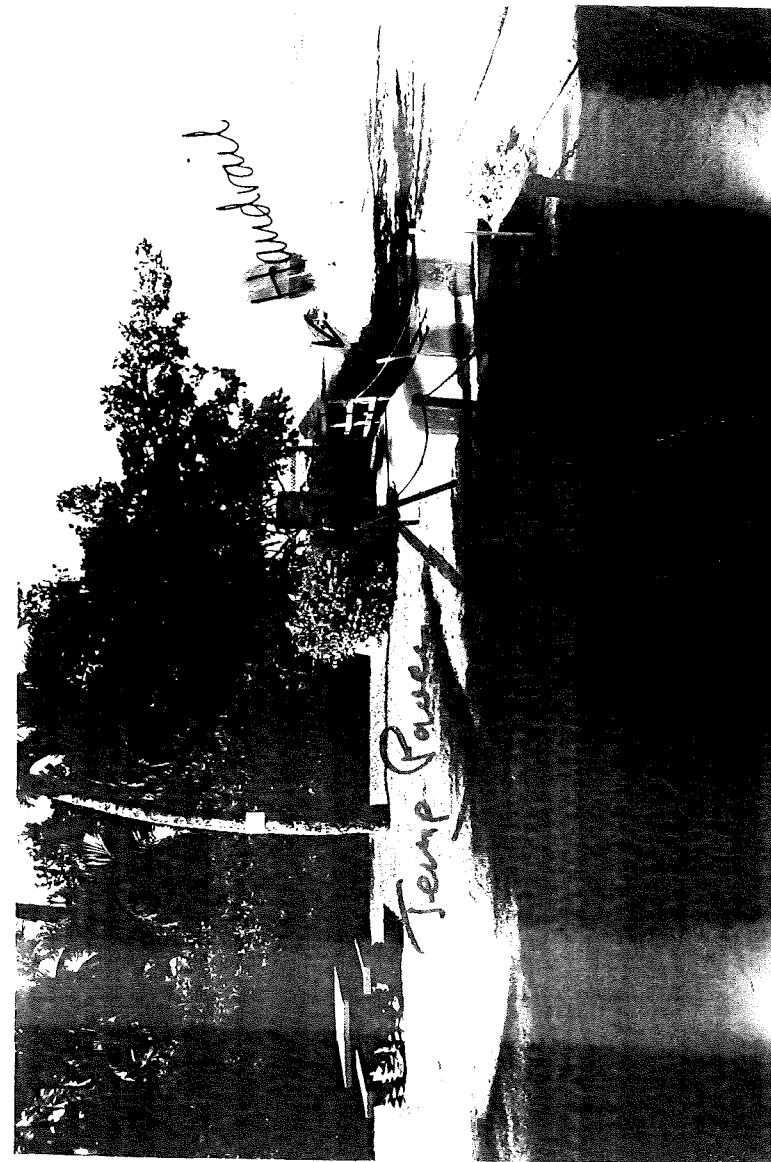
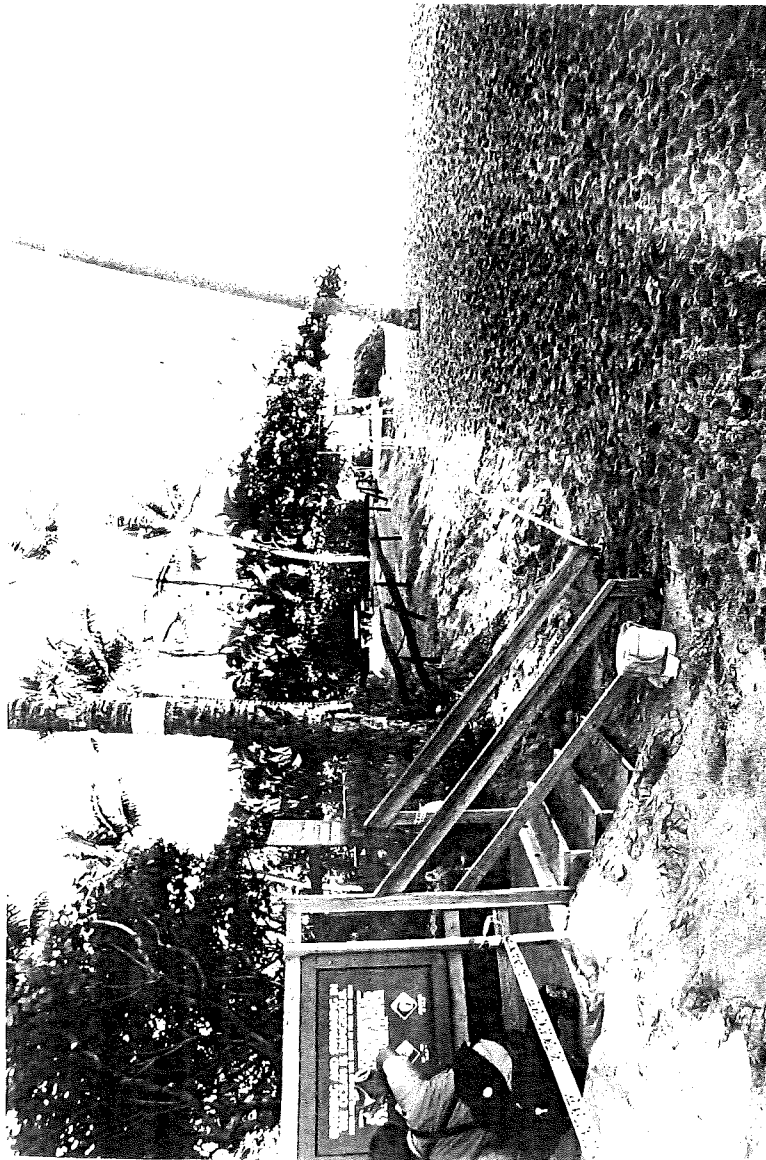
PAGE 1





# PROPOSED IMPROVEMENTS

PAGE 2



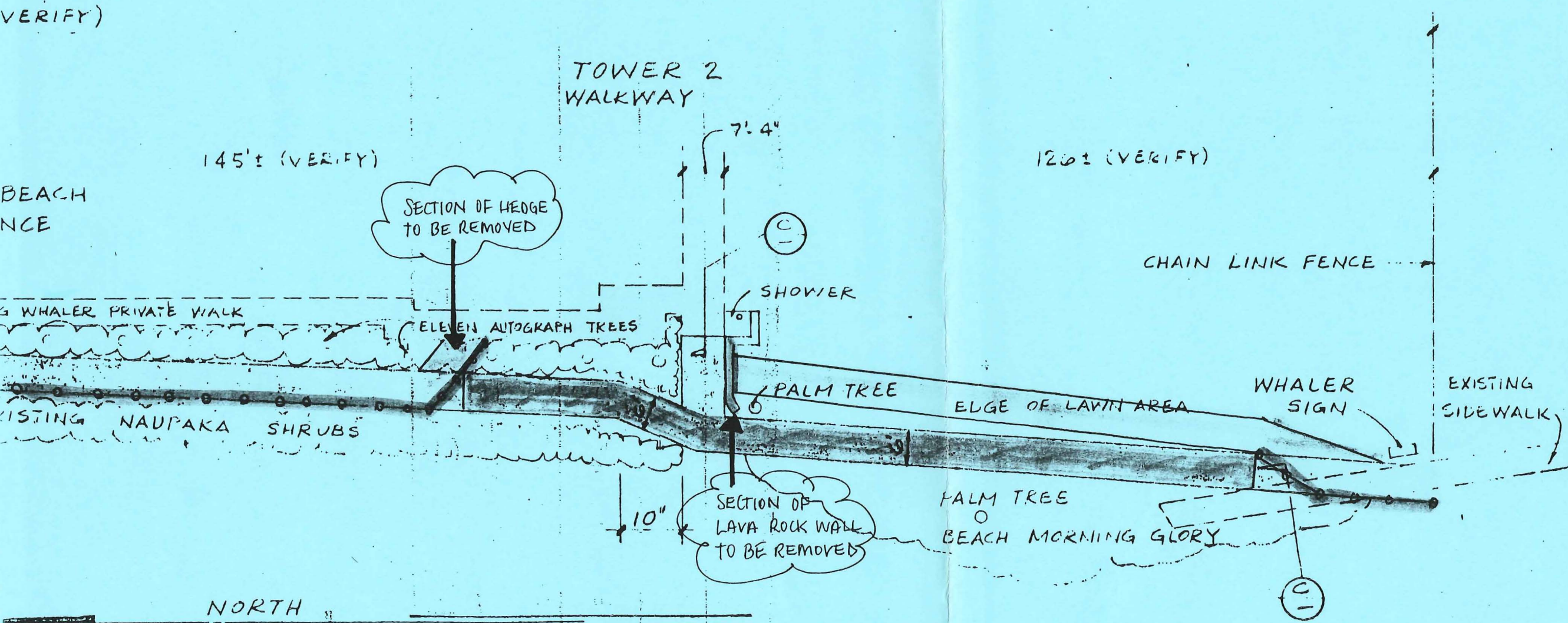
# PROPOSED PAVERS



PW# 242-8088  
 Fax# 244 3303

**Gholkar & A**  
 Structural & Civil E

**PROPOSED IMPROVEMENTS**



for:  
**NEW SIDEWALK  
 THE WHALER  
 KAANAPALI, MAUI, HAWAII**

SCALE: 1" = 20'





VERIFY)

BEACH  
 NCE

WHALER PRIVATE WALK

EXISTING NAUPAKA SHRUBS

NORTH  
 SC: 1" = 20'

-  EXISTING SIDEWALK
-  MISSING SIDEWALK
-  PROPOSED TEMPORARY PAVERS
-  PROPOSED SAFETY HAND RAILS

DATE: 3-29-88

JOB NO. 88-49

SHEET NO

OF 1 SHEETS

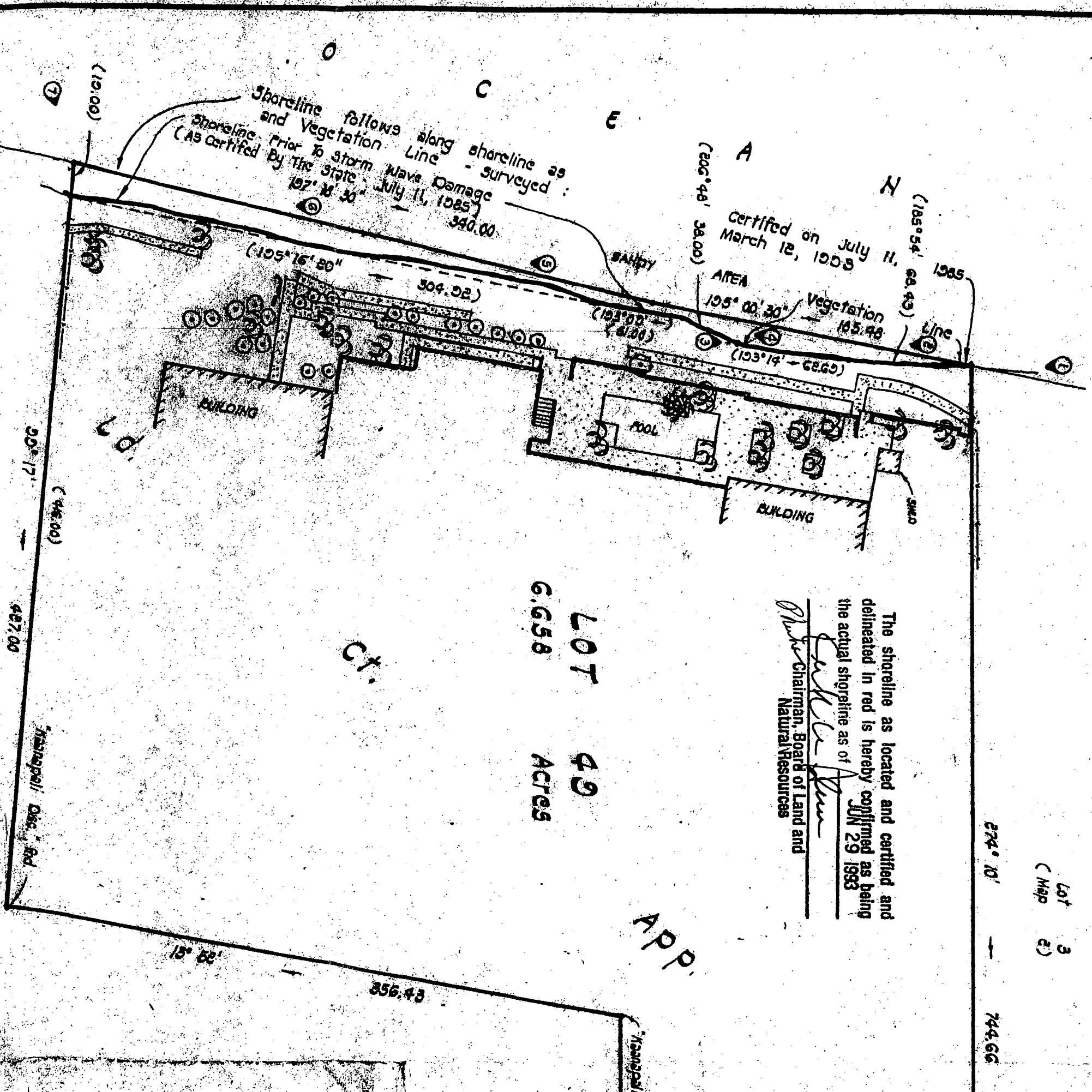
Lot 3  
(Map 10)

274.10' — 744.66

The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of  
**JUN 29 1993**  
*Charles W. Allen*  
Chairman, Board of Land and Natural Resources

APP.

LOT 49  
6.658 ACRES



- NOTES:
- All bearings and record coordinates refer to Government Survey Triangulation station MAMUN.
  - Figures shown thus  $\odot$  indicates number of photo and the position and direction in which it was taken.

Tax Map Key: 4-4-08-02

15" x 21"

Scale 1" = 40'

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF LAND MANAGEMENT  
64 SOUTH HIGH STREET, ROOM 101  
WAILUKU, HAWAII 96793-2198

September 15, 1999

Timothy E. Johns

~~XXXXXXXXXX~~  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY  
~~XXXXXXXXXX~~  
Janet E. Kawelo

AQUACULTURE DEVELOPMENT PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RECORDS ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT  
WATER RESOURCE MANAGEMENT

Mr. John E. Min, Director  
Department of Planning  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Mr. Min:

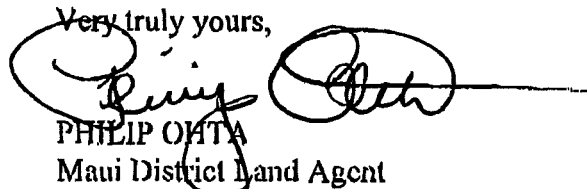
Subject: Sidewalk at the Whaler Condominium, Tax Map Key: 4-4-08: 02, Kaanapali, Lahaina, Maui.

This is in response to your August 16, 1999 letter regarding your review of a Special Management Area Minor Permit and Shoreline Setback Approval involving the sidewalk at the Whaler Condominium, Tax Map Key: 4-4-08: 02, situate in Kaanapali, Lahaina, Maui.

The Maui District Land Office's files reveals that the most recent certified shoreline for the Whaler was approved on June 29, 1993. The sidewalk was located on the mauka area of the certified shoreline at that time. In order to avoid any additional liability for the State, a new certified shoreline would place the sidewalk within this same mauka area., and therefore, be subject to your jurisdiction.

Should you have any questions regarding the above matter, please feel free to contact this office at 984-8100.

Very truly yours,

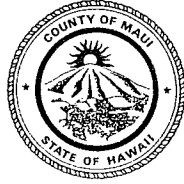
  
PHILIP OHTA  
Maui District Land Agent

cc: Central Files  
Maui Land Board Member

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

August 16, 1999

Mr. Philip Ohta, Maui District Land Agent  
Department of Land and Natural Resources  
54 South High Street  
Wailuku, Hawaii 96793

Dear Mr. Ohta:

Re: Sidewalk at the Whaler, TMK: 4-4-8:2, Kaanapali, Island of Maui,  
Hawaii

The Maui Planning Department (Department) is currently reviewing a Special Management Minor Permit and Shoreline Setback Approval request for the above-referenced project. In lieu of establishing jurisdiction with a valid shoreline certification, we are requesting that you provide us with verification that the proposed walkway is located mauka of the existing shoreline, thereby, within the County's jurisdiction.

Enclosed for your information is a copy of the project plans and a copy of a photograph of existing conditions. Please note that the proposed "temporary" sidewalk will be situated approximately two (2) feet mauka of the posts and chains.

Thank you for your cooperation. Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner of this office at 270-7735.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Min", is written over a horizontal line.

JOHN E. MIN  
Planning Director

Mr. Philip Ohta, Maui District Land Agent

August 13, 1999

Page 2

JEM:DS:osy

Enclosures

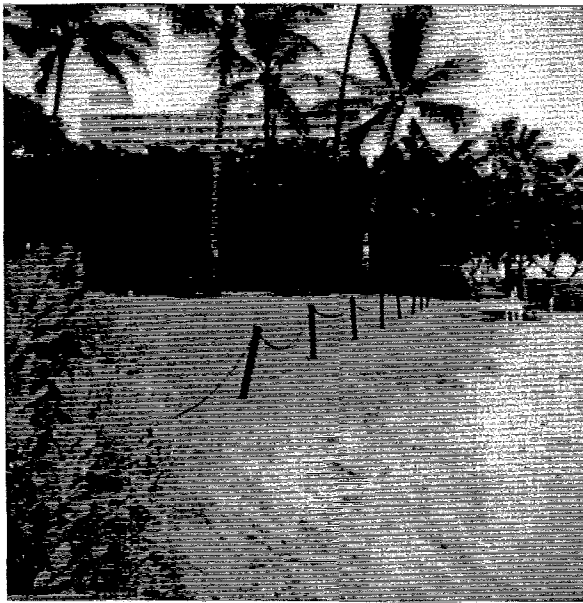
c: Clayton Yoshida, AICP, Deputy Planning Director

Daren Suzuki, Staff Planner

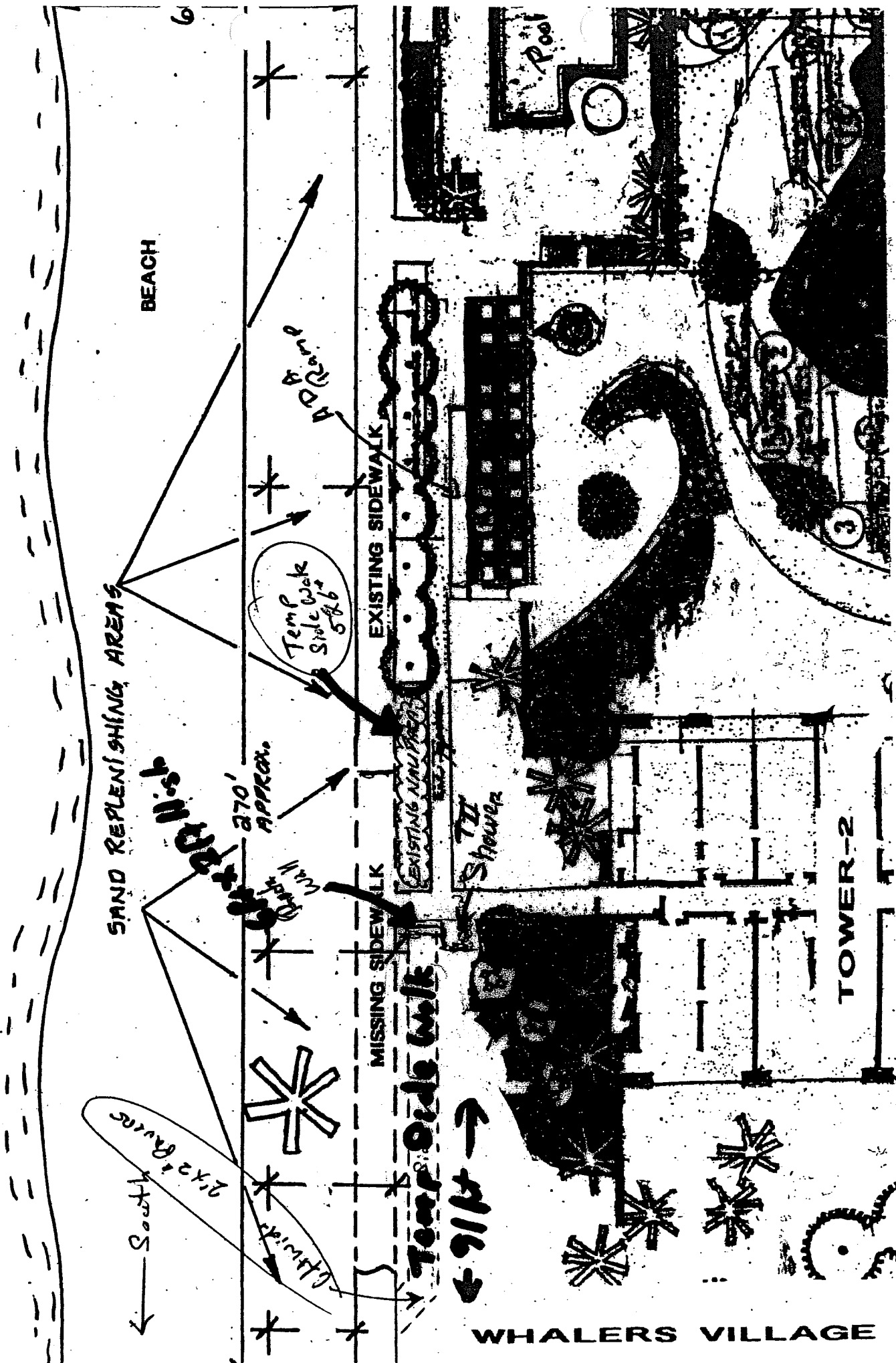
Project File

General File

(S:\ALL\DAREN\WHALER.LT3)







BEACH

SAND REPLENISHING AREAS

EXISTING SIDEWALK

MISSING SIDEWALK

Temp Side Walk

Temp Work Side Walk

A/D Ramp

Shower

POOL

TOWER-2

WHALERS VILLAGE

6

2x2 Rows

270' APPROX.

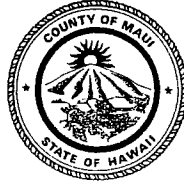
2x2 Rows

← 9114 →

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

August 3, 1999

Isaac Davis Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: Whaler Condominium, TMK: 4-4-8:2, Kaanapali, Maui

This letter is in response to your letter dated July 28, 1999 regarding an application for a Special Management Area (SMA) Minor Permit filed by the Whaler on Kaanapali Beach for sidewalk repairs and beach replenishment.

First of all, an SMA Minor Permit application was received by the Maui Planning Department (Department) on July 15, 1999 and was given to you on July 27, 1999. We feel that providing you with this information within ten (10) working days is a reasonable response time considering the numerous other applications this Department processes and monitors. Should this response time for the delivery of future correspondences be unacceptable, we would also ask your cooperation in regularly requesting the file from the project planner and asking for copies as needed.

Regarding your allegations that we breached our obligation by failing to notify you promptly of a submitted SMA Minor Permit application pursuant to Hawaii Revised Statutes (HRS), Chapter 205A-29, please note that this section refers to SMA Use Permit procedures, not the SMA Minor Permit procedures.

You stated that you are concerned whether the Planning Department is protecting your client's rights under the Coastal Zone Management Law by the inability to rely upon representations made. Specifically, you noted that Mr. Daren Suzuki represented to you that enforcement issues will be handled by Mr. Aaron Shinmoto, yet it turns out that Mr. Suzuki is "in charge" of the investigation. Since Mr. Suzuki has the most background knowledge on this issue, he is assisting Mr. Charles Villalon, Zoning Inspector, in drafting a letter to address these alleged violations. Mr. Villalon is under the supervision of Mr. Aaron Shinmoto, Planning Program Administrator, Zoning Administration and Enforcement Division, and is the primary staff in charge of

Isaac Davis Hall, Esq.  
August 3, 1999  
Page 2

this overall investigation. Regardless of who is in charge of the investigation, please note that all departmental positions on enforcement go through the Planning Director.

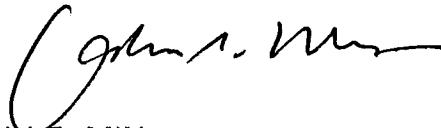
We believe that we have provided you with copies of all permits/submittals filed with the Planning Department for the sidewalk repair and beach replenishment. However, please feel free to review our files to verify this.

You are correct in your assessment that the SMA Minor Permit application is incomplete. Although the permit is inadequate to complete our review, it is recognized as a "pending application". Therefore, we will notify the Whaler of the required submittals to complete the application upon the return of the applicant from vacation (sometime in mid-August). When these submittals are received, we will make an assessment for which SMA approval is sought.

Lastly, please contact Mr. Charles Villalon, Zoning Inspector, for any site inspections on the property.

Should you have any questions, please contact Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN  
Planning Director

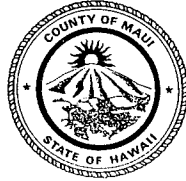
JEM:DMS:cmb

- c: Clayton Yoshida, AICP, Deputy Director of Planning
- Aaron Shinmoto, Planning Program Administrator
- Daren Suzuki, Staff Planner
- Charles Villalon, Zoning Inspector
- Project File
- General File
- S:\ALL\DAREN\4.WPD

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

June 1, 1999

Via Facsimile: 661-6033

Mr. Charles Philips  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Philips:

RE: Beach Replenishment and Temporary Walkway for the Whaler,  
TMK: 4-4-8:1, Kaanapali, Maui

This letter is in response to your letter dated May 26, 1999. Please be advised that sand replenishment at this time is not permitted without the prior approval from the State Department of Land and Natural Resources (State) and the Department of Planning. It is our understanding that you have a pending request with the State to conduct such activity.

Regarding the temporary sidewalk, please submit a complete Special Management Area Assessment application for further processing. Please attach clean copies of the project plans and include site photographs with this application. A copy of the application is enclosed for your use.

Thank you for your cooperation. Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Min".

JOHN E. MIN  
Director of Planning

Mr. Charles Philips  
June 1, 1999  
Page 2

JEM:DMS:cmb

Enclosure

c: Clayton Yoshida, AICP, Deputy Director of Planning  
Daren Suzuki, Staff Planner

Project File

General File

S:\ALL\DAREN\WHALER.BNP

3495

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

'99 MAY 14 P1:30

DEPT OF PLANNING  
COUNTY OF MAUI

OF COUNSEL:  
G. RICHARD GESCH

May 12, 1999

Via Facsimile and U.S. Mail

Mr. Sam Lemmo  
Senior Planner, Planning Division  
Dept. of Land & Natural Resources  
State of Hawaii  
PO Box 621  
Honolulu HI 96713  
(Fax: 587-0455)

Mr. Darren Suzuki, Staff Planning  
Maui Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793  
(Fax: 243-7634)

Mr. Phil Ohta  
Maui Land Agent  
Dept. of Land & Natural Resources  
State of Hawaii  
54 S. High St.  
Wailuku HI 96793  
(Fax: 984-8111)

Mr. Charles W. Penque  
Division of Boating & Recreation  
Dept. of Land and Natural  
Resources  
State of Hawaii  
2145 Wells Street, Suite 106  
Wailuku HI 96793  
(Fax: 243-5829)

Re: Beach Replenishment, Artificial Shoreline Landscaping, Removal and Reconstruction of Sidewalk at the Whaler Condominium, TMK (II) 4-4-8:1, Lahaina, Hawaii

Dear Sam Lemmo, Phil Ohta, Darren Suzuki and Charles Penque:

This letter is written on behalf of Mr. Charles Fox who is, with his wife, the owner of an apartment within the Whaler on Kaanapali Beach. Mr. Fox is concerned with the protection and preservation of coastal resources, the proper establishment of the shoreline, assuring that appropriate permits are obtained for developments and structures within the shoreline area and the enforcement of existing permit conditions.

I have written to all of you in the past asking to be notified of the filing of any applications for permits or approvals and for copies of any such applications (for which we will pay any copying costs). Unfortunately, we only recently discovered that an application for a Conservation District Use ("CDUA") permit has been filed with the Department of Land and Natural Resources ("DLNR") for beach replenishment and landscaping, without anyone informing us of this fact or sending us a copy of the application. We would

appreciate it if you would now send to me a copy of this application and all correspondence which has been generated with respect to the application.

We have the following preliminary comments, based upon the information which we have been able to obtain to date.

I. Background

A sidewalk was constructed fronting the Whaler some time before 1988. Wave action destroyed all or a portion of this sidewalk at that time and the Whaler sought a Special Management Area ("SMA") minor permit and Shoreline Setback Variance ("SSV") which was granted. It permitted reconstruction of the sidewalk in accordance with plans prepared by Gholkar and Associates, Inc. which call for "breakaway" slab construction. The reconstructed sidewalk does not appear to have been built in compliance with these plans.

After Hurricane Iniki, the sidewalk was again undermined. Representatives of the Whaler applied for an SMA minor permit and an SSV approval to replace the concrete sidewalk. See 93/SM2-219 and 93/SSA-010. These permits were issued on October 18, 1993 requiring the walkway to be constructed of "prefab concrete pavers." This condition was never properly amended. The reconstruction which took place in 1993 was not in conformity with the permits issued, or any proper amendment to these permits. The remnants of the 1988 sidewalk were left buried in the sand mostly seaward of the shoreline.

As a necessary component of these two permit applications, a certified shoreline, approved by DLNR, was submitted. The date of this certification is July 12, 1993. We have no knowledge of any shoreline certifications which have been prepared and approved since then.

By virtue of strong wave action, through an unnamed storm in 1998, the solid concrete walkway was undermined once again. These waves also uncovered the remnants of the 1988 and 1993 sidewalks. The erosion also made plainly visible the concrete piers which had been used to construct the sidewalk, which had never been authorized by Maui County, in any fashion.

In 1998, the Whaler applied for an SMA minor permit and SSV approval for the placement of sand bags, the construction of three temporary stairways and the placement of a safety hand railing along the existing sidewalk which were granted on June 22, 1998. See SM 2 980051 and SSA 980011. Pertinent conditions to the permit were as follows:

6. That all sidewalk debris, including the fallen sidewalk from the Hurricane Iniki that is exposed, shall be removed from the beach area within two (2) weeks from the date of this permit.

7. That appropriate permits shall be obtained from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, prior to initiation of construction.

It does not appear that any permits were obtained from DLNR prior to the initiation of this construction. The debris, which was plainly visible in photographs taken at the time, has not been removed and has instead been buried (by Whaler staff or agents and not through natural ocean processes).

II. A Current Certified Shoreline Must Be Approved Before Any Permits Are Applied for or Received to Determine Whether Jurisdiction Lies with the State of Hawaii or the County of Maui, or Both

It is believed that the Whaler retained a surveying firm to prepare a shoreline survey for certification. To our knowledge, this shoreline survey, if actually prepared, has not been submitted to DLNR for review and approval.

The shoreline, if certified now, would be a significant distance "mauka" or inland, of the shoreline certified in 1993. This is extremely important for many reasons. For the purposes of this letter, however, one of the most important reasons is that jurisdiction as between the State of Hawaii and the County of Maui cannot be accurately ascertained without a current, certified and approved shoreline survey. It is apparent that some of the "improvements" for which the Whaler is now seeking approval from DLNR will take place between the area mauka of the shoreline as certified in 1993 and makai or below the shoreline as it would be, but has not been, certified now. If the 1993 shoreline is still being relied upon now (improperly) the landscaping and some of the beach replenishment will be taking place within the shoreline setback area and permits and approvals need to be obtained from the Maui Planning Commission, instead of from DLNR. This was plainly contemplated by the Maui Planning Department and the Whaler was so informed in letters dated September 14, 1998 and December 8, 1998, both of which state:

Please be advised that all redevelopment of the property shall require review and approval from the Department. These activities shall include sidewalk repairs, landscaping, and irrigation.

Because this application has been submitted to DLNR instead of to the Maui Planning Commission, it is apparent that DLNR is not processing this application based upon the 1993 certified shoreline and, instead, considers this as an application for improvements below a shoreline which has never been surveyed, certified or approved.

It is plain that the 1993 certification has expired. It is equally plain that jurisdiction as between DLNR and the County of Maui cannot properly be ascertained without a current certified shoreline. It simply will not suffice to assume that the shoreline, if certified today, would be "mauka" so that jurisdiction lies with DLNR instead of the Maui Planning Commission.



### III. No Permit or Approval Can Be Issued Through Which the Shoreline Would be Artificially Established

By law, the shoreline is a recognition of where, through natural processes, the high wash of the waves occurs. It is fluid and not intended to be manipulated through artificial processes.

It is plain that one of the intents of this application is to artificially fix the shoreline. As it was explained to me, even though the shoreline, through natural processes, is now located further inland, the purpose of the landscaping is to recover the areas lost since the 1993 certification. The Whaler seeks permission to plant naupaka (essentially below the current shoreline) to recover the land lost since the 1993 certification. The Whaler would be permitted to plant naupaka below the area which would be certified, if certification were required now. The Whaler would be permitted to bring in dirt within which to grow these plants which will runoff and could affect coral life. The Whaler would be permitted to irrigate this naupaka, which might not grow unless artificially sustained.

All of this is in contradiction to and undermines the whole purpose and intent of establishing the shoreline. It would extend what is already a bad precedent. It would constitute an unwarranted and unnecessary capitulation to those who have built too close to the ocean in the first place. Until and unless our courts and legislature decide that the shoreline can be artificially manipulated, applications such as this one should not even be processed, or should not receive staff recommendations for approval and certainly should not be approved by any federal, state or county agency.

### IV. Review of the Whole Project

The beach replenishment and landscaping is only the first phase of a larger project which will ultimately involve the demolition and reconstruction of the sidewalk. It appears that this first phase is in preparation for a new certified shoreline which will have been artificially induced. A shoreline survey is a required component of any application for an SMA/SSV permit from the County of Maui. Once the shoreline has been artificially established, such an application can then be submitted to the County for the demolition and construction of the sidewalk.

This project must be reviewed as a whole. Before any approval can be granted for beach replenishment and landscaping, a plan must be submitted for the sidewalk demolition and reconstruction.

### V. Past Infractions

The Whaler has left a trail of permit violations behind it. These must all be dealt with appropriately before any further permits can be issued. If and when it is determined that the sidewalk was not constructed based upon plans which were approved, those portions must be removed. In addition, the Whaler

has never removed those portions of the sidewalk which now lie in the sand (how far, or not far, below the surface we do not know) as was required by the Planning Department.

VI. Environmental Assessment

An Environmental Assessment must be prepared and submitted with any application to DLNR and/or with any application submitted to the Maui Planning Commission. The first involves the use of state lands or the conservation district and the second involves the use of the shoreline setback area. No exemption is applicable. The important issues outlined above must be fully addressed at least in an Environmental Assessment.

Thank you for the opportunity to provide you with our initial comments. Kindly send copies of the documents which we have requested at your earliest opportunity and we will promptly reimburse you for any copying costs. Please contact me at your earliest convenience to discuss these matters. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox

**ISAAC DAVIS HALL**

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

OF COUNSEL:  
G. RICHARD GESCH

'99 MAY 13 17:46

DEPT OF PLANNING  
COUNTY OF MAUI

**FACSIMILE TRANSMITTAL**

DATE: 5/12/99

TO: Sam Lemmo, 587-0455  
Phil Ohta, 984-8111  
Darren Suzuki, 243-7634  
Charles Penque, 243-5829

FAX NO.:

PAGES: 6 (including this cover sheet)

RE: Beach replenishment, sidewalk,  
Whaler Condominium

REMARKS:

**IMPORTANT NOTICE**

This Fax has been sent from a law firm. It may contain attorney-client privileged and confidential information intended only for the use of the person(s) named above. If you are not an intended recipient, you are hereby notified that any dissemination or duplication of this Fax is prohibited and that there shall be no waiver of any privilege or confidence by your receipt of this transmission. If you have received this Fax in error, please notify us by collect telephone call and return it by first class mail. Thank you.

Original letter  will ( ) will not be mailed to you.

If you do not receive all the pages please telephone or fax us immediately.  
Thank you.

**ISAAC DAVIS HALL**

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

OF COUNSEL:  
G. RICHARD GESCH

May 12, 1999

Via Facsimile and U.S. Mail

Mr. Sam Lemmo  
Senior Planner, Planning Division  
Dept. of Land & Natural Resources  
State of Hawaii  
PO Box 621  
Honolulu HI 96713  
(Fax: 587-0455)

Mr. Phil Ohta  
Maui Land Agent  
Dept. of Land & Natural Resources  
State of Hawaii  
54 S. High St.  
Wailuku HI 96793  
(Fax: 984-8111)

Mr. Darren Suzuki, Staff Planning  
Maui Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793  
(Fax: 243-7634)

Mr. Charles W. Penque  
Division of Boating & Recreation  
Dept. of Land and Natural  
Resources  
State of Hawaii  
2145 Wells Street, Suite 106  
Wailuku HI 96793  
(Fax: 243-5829)

Re: Beach Replenishment, Artificial Shoreline Landscaping, Removal and  
Reconstruction of Sidewalk at the Whaler Condominium, TMK (II) 4-4-  
8:1, Lahaina, Hawaii

Dear Sam Lemmo, Phil Ohta, Darren Suzuki and Charles Penque:

This letter is written on behalf of Mr. Charles Fox who is, with his wife, the owner of an apartment within the Whaler on Kaanapali Beach. Mr. Fox is concerned with the protection and preservation of coastal resources, the proper establishment of the shoreline, assuring that appropriate permits are obtained for developments and structures within the shoreline area and the enforcement of existing permit conditions.

I have written to all of you in the past asking to be notified of the filing of any applications for permits or approvals and for copies of any such applications (for which we will pay any copying costs). Unfortunately, we only recently discovered that an application for a Conservation District Use ("CDUA") permit has been filed with the Department of Land and Natural Resources ("DLNR") for beach replenishment and landscaping, without anyone informing us of this fact or sending us a copy of the application. We would

appreciate it if you would now send to me a copy of this application and all correspondence which has been generated with respect to the application.

We have the following preliminary comments, based upon the information which we have been able to obtain to date.

I. Background

A sidewalk was constructed fronting the Whaler some time before 1988. Wave action destroyed all or a portion of this sidewalk at that time and the Whaler sought a Special Management Area ("SMA") minor permit and Shoreline Setback Variance ("SSV") which was granted. It permitted reconstruction of the sidewalk in accordance with plans prepared by Gholkar and Associates, Inc. which call for "breakaway" slab construction. The reconstructed sidewalk does not appear to have been built in compliance with these plans.

After Hurricane Iniki, the sidewalk was again undermined. Representatives of the Whaler applied for an SMA minor permit and an SSV approval to replace the concrete sidewalk. See 93/SM2-219 and 93/SSA-010. These permits were issued on October 18, 1993 requiring the walkway to be constructed of "prefab concrete pavers." This condition was never properly amended. The reconstruction which took place in 1993 was not in conformity with the permits issued, or any proper amendment to these permits. The remnants of the 1988 sidewalk were left buried in the sand mostly seaward of the shoreline.

As a necessary component of these two permit applications, a certified shoreline, approved by DLNR, was submitted. The date of this certification is July 12, 1993. We have no knowledge of any shoreline certifications which have been prepared and approved since then.

By virtue of strong wave action, through an unnamed storm in 1998, the solid concrete walkway was undermined once again. These waves also uncovered the remnants of the 1988 and 1993 sidewalks. The erosion also made plainly visible the concrete piers which had been used to construct the sidewalk, which had never been authorized by Maui County, in any fashion.

In 1998, the Whaler applied for an SMA minor permit and SSV approval for the placement of sand bags, the construction of three temporary stairways and the placement of a safety hand railing along the existing sidewalk which were granted on June 22, 1998. See SM 2 980051 and SSA 980011. Pertinent conditions to the permit were as follows:

6. That all sidewalk debris, including the fallen sidewalk from the Hurricane Iniki that is exposed, shall be removed from the beach area within two (2) weeks from the date of this permit.

7. That appropriate permits shall be obtained from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, prior to initiation of construction.

It does not appear that any permits were obtained from DLNR prior to the initiation of this construction. The debris, which was plainly visible in photographs taken at the time, has not been removed and has instead been buried (by Whaler staff or agents and not through natural ocean processes).

II. A Current Certified Shoreline Must Be Approved Before Any Permits Are Applied for or Received to Determine Whether Jurisdiction Lies with the State of Hawaii or the County of Maui, or Both

It is believed that the Whaler retained a surveying firm to prepare a shoreline survey for certification. To our knowledge, this shoreline survey, if actually prepared, has not been submitted to DLNR for review and approval.

The shoreline, if certified now, would be a significant distance "mauka" or inland, of the shoreline certified in 1993. This is extremely important for many reasons. For the purposes of this letter, however, one of the most important reasons is that jurisdiction as between the State of Hawaii and the County of Maui cannot be accurately ascertained without a current, certified and approved shoreline survey. It is apparent that some of the "improvements" for which the Whaler is now seeking approval from DLNR will take place between the area mauka of the shoreline as certified in 1993 and makai or below the shoreline as it would be, but has not been, certified now. If the 1993 shoreline is still being relied upon now (improperly) the landscaping and some of the beach replenishment will be taking place within the shoreline setback area and permits and approvals need to be obtained from the Maui Planning Commission, instead of from DLNR. This was plainly contemplated by the Maui Planning Department and the Whaler was so informed in letters dated September 14, 1998 and December 8, 1998, both of which state:

Please be advised that all redevelopment of the property shall require review and approval from the Department. These activities shall include sidewalk repairs, landscaping, and irrigation.

Because this application has been submitted to DLNR instead of to the Maui Planning Commission, it is apparent that DLNR is not processing this application based upon the 1993 certified shoreline and, instead, considers this as an application for improvements below a shoreline which has never been surveyed, certified or approved.

It is plain that the 1993 certification has expired. It is equally plain that jurisdiction as between DLNR and the County of Maui cannot properly be ascertained without a current certified shoreline. It simply will not suffice to assume that the shoreline, if certified today, would be "mauka" so that jurisdiction lies with DLNR instead of the Maui Planning Commission.

### III. No Permit or Approval Can Be Issued Through Which the Shoreline Would be Artificially Established

By law, the shoreline is a recognition of where, through natural processes, the high wash of the waves occurs. It is fluid and not intended to be manipulated through artificial processes.

It is plain that one of the intents of this application is to artificially fix the shoreline. As it was explained to me, even though the shoreline, through natural processes, is now located further inland, the purpose of the landscaping is to recover the areas lost since the 1993 certification. The Whaler seeks permission to plant naupaka (essentially below the current shoreline) to recover the land lost since the 1993 certification. The Whaler would be permitted to plant naupaka below the area which would be certified, if certification were required now. The Whaler would be permitted to bring in dirt within which to grow these plants which will runoff and could affect coral life. The Whaler would be permitted to irrigate this naupaka, which might not grow unless artificially sustained.

All of this is in contradiction to and undermines the whole purpose and intent of establishing the shoreline. It would extend what is already a bad precedent. It would constitute an unwarranted and unnecessary capitulation to those who have built too close to the ocean in the first place. Until and unless our courts and legislature decide that the shoreline can be artificially manipulated, applications such as this one should not even be processed, or should not receive staff recommendations for approval and certainly should not be approved by any federal, state or county agency.

### IV. Review of the Whole Project

The beach replenishment and landscaping is only the first phase of a larger project which will ultimately involve the demolition and reconstruction of the sidewalk. It appears that this first phase is in preparation for a new certified shoreline which will have been artificially induced. A shoreline survey is a required component of any application for an SMA/SSV permit from the County of Maui. Once the shoreline has been artificially established, such an application can then be submitted to the County for the demolition and construction of the sidewalk.

This project must be reviewed as a whole. Before any approval can be granted for beach replenishment and landscaping, a plan must be submitted for the sidewalk demolition and reconstruction.

### V. Past Infractions

The Whaler has left a trail of permit violations behind it. These must all be dealt with appropriately before any further permits can be issued. If and when it is determined that the sidewalk was not constructed based upon plans which were approved, those portions must be removed. In addition, the Whaler

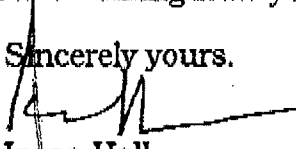
has never removed those portions of the sidewalk which now lie in the sand (how far, or not far, below the surface we do not know) as was required by the Planning Department.

VI. Environmental Assessment

An Environmental Assessment must be prepared and submitted with any application to DLNR and/or with any application submitted to the Maui Planning Commission. The first involves the use of state lands or the conservation district and the second involves the use of the shoreline setback area. No exemption is applicable. The important issues outlined above must be fully addressed at least in an Environmental Assessment.

Thank you for the opportunity to provide you with our initial comments. Kindly send copies of the documents which we have requested at your earliest opportunity and we will promptly reimburse you for any copying costs. Please contact me at your earliest convenience to discuss these matters. I look forward to hearing from you.

Sincerely yours,

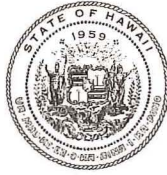


Isaac Hall

IH/jp  
cc: Charles Fox



3168



'99 APR 30 P2:33

DEPT OF PLANNING

AQUACULTURE DEVELOPMENT PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

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

P.O. BOX 621  
HONOLULU, HAWAII 96809

Ref.:PB:SL

APR 27 1999

The Honorable John Min, Director  
County of Maui Planning Department  
200 South High Street  
Wailuku, Maui, Hawaii 96766

Attn: Daren Suzuki:

Dear Mr. Min:

Subject: Proposed Landscaping and Sand Replenishment at the Whaler on Kaanapali Beach, Maui

Please find attached material regarding a proposal by the Whaler on Kaanapali Beach to do beach nourishment and re-vegetation in the shoreline area of the subject property. We would appreciate your input on this matter, since the proposal may affect the plans, policies and programs of the County of Maui.

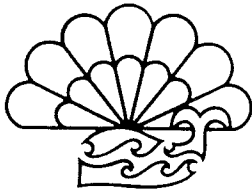
Please feel free to contact Sam Lemmo, at 587-0381, should you have any questions on this matter.

Aloha,

Dean Y. Uchida, Administrator  
Land Division

Attachments

cc: Chairman's Office  
Maui Board Member  
Maui District Land Agent  
Charles Phillips



# The Whaler

On Kaanapali Beach

Association of Apartment Owners

January 13, 1999

Dean Uchida  
Department of Land & Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, Hi. 96809

Dear Mr. Uchida,

I met with Phil Ota on December 17, 1998 regarding the loss of sidewalk, vegetation, irrigation and sand replenishment in front of The Whaler on Kaanapali Beach, a request for determination whether a conservation use permit is necessary for sand replenishment and vegetation, and a detailed plan showing the location of approximately 4,000 sq.ft. of sand replenishment and 1,800 sq.ft. of naupaka vegetation within the sand replenishment.

We would appreciate your support on this so we can move forward in an effort to receive approval from the Maui Planning Department.

I have enclosed copies of letters to Phillip Ota from Janis Casco, Elective Director/Managing Agent of The Whaler as well as a letter to Mrs. Casco from Charles Penque of the Department of Land & Natural Resources.

Please contact me at your earliest convenience on this issue. We have a pre-Board of Directors Meeting on January 23, 1999 wherein this issue will be addressed. If you have any questions, please call me at 808/661-6001. Thanking you in advance for your time and consideration on this matter.

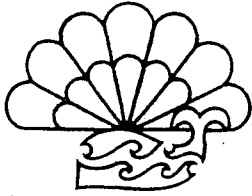
Sincerely,

Charles Phillips  
Director of Engineering

CP/ljl

cc: enclosures  
Phillip Ota  
Bill Ries, President - The Whaler AOA  
Janis Casco - Executive Director/Managing Agent, The Whaler

RECEIVED  
DIVISION OF  
LAND MANAGEMENT  
JAN 19 9 01 AM '99



## The Whaler

On Kaanapali Beach

Association of Apartment Owners

Mr. Phillip Ota

Land Management Division

54 S. High Street

Wailuku, HI 96793

November 30, 1998

Dear Mr. Ota:

Today John Hino called me and asked me to forward a letter similar to the one I sent to Chuck Penque, to you for assistance.

The Whaler lost a section of its sidewalk nearest Hula Grill in June of this year. Although a lot of sand has returned, there is a 1-2 foot drop off along the entire length of our property.

We had hoped to be able to restore our sidewalk in its original location. We understand there was a determination made by DLNR confirming Sheraton would lose land to the state if they re-certified their shoreline, and we fear the same.

At our Board meeting on November 16, 1998, we decided to pursue permits to dump sand along the beach front depression where sand has not returned, in an effort to "nourish" the beach. We called Darren Suzuki at the county who requested photos and a letter supporting our desires. Darren told us upon receipt of the pertinent documents, the county would approve the dumping of sand so long as we had the appropriate state approvals.

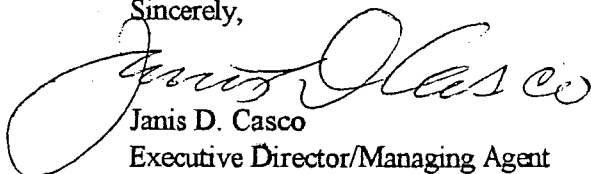
We are asking the Land Board for just such permission herewith.

Also, since it is now apparent we will most likely lose land to the state when we pull our certified shoreline permit, we would like to ask for an easement over the section of land which may be determined to be state land along the vegetation line in order to complete our sidewalk, and re-join the congruous Kaanapali Beach walkway.

We have received many letters from the shop owners in Whaler's Village who claim to be losing revenue because of the lost sidewalk. We are also concerned about the liability posed by the hanging ledge of sidewalk under which children have been seen playing.

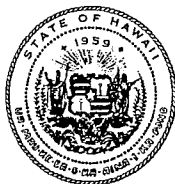
Thank you for taking our request to the Land Board. We'll look forward to your reply.

Sincerely,



Janis D. Casco  
Executive Director/Managing Agent

BENJAMIN J. CAYETANO  
GOVERNOR



MICHAEL D. WILSON  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

MAUI DISTRICT

HARBORS  
HANA  
KAUNAKAKAI  
LAHAINA  
MA'ALAEA  
MANELE

FACILITIES  
KA'ANAPALI  
KAHULUI  
KIHEI  
MALA  
MALIKO

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

2145 WELLS STREET, SUITE 106  
WAILUKU, MAUI, HAWAII 96793

November 27, 1998

GILBERT S. COLOMA-AGARAN  
DEPUTY DIRECTOR

BOR-M  
110.99

Ms. Janis D. Casco  
Executive Director/Managing Agent  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761-1994

Dear Ms. Casco:

Thank you for your letter of November 20, 1998 regarding the sidewalk and sand replenishment in front of The Whaler on Kaanapali Beach.

Confirming our telephone conversation, the request for an easement to construct a sidewalk on state property and add sand to the beach will, most likely, require approval of the Board of Land and Natural Resources. I have forwarded your letter and discussed your desires with Mr. John Hino, our Property Manager. He will be contacting you to discuss this further.

Yours truly,

Charles W. Penque  
Maui District Manager

CWP:ha

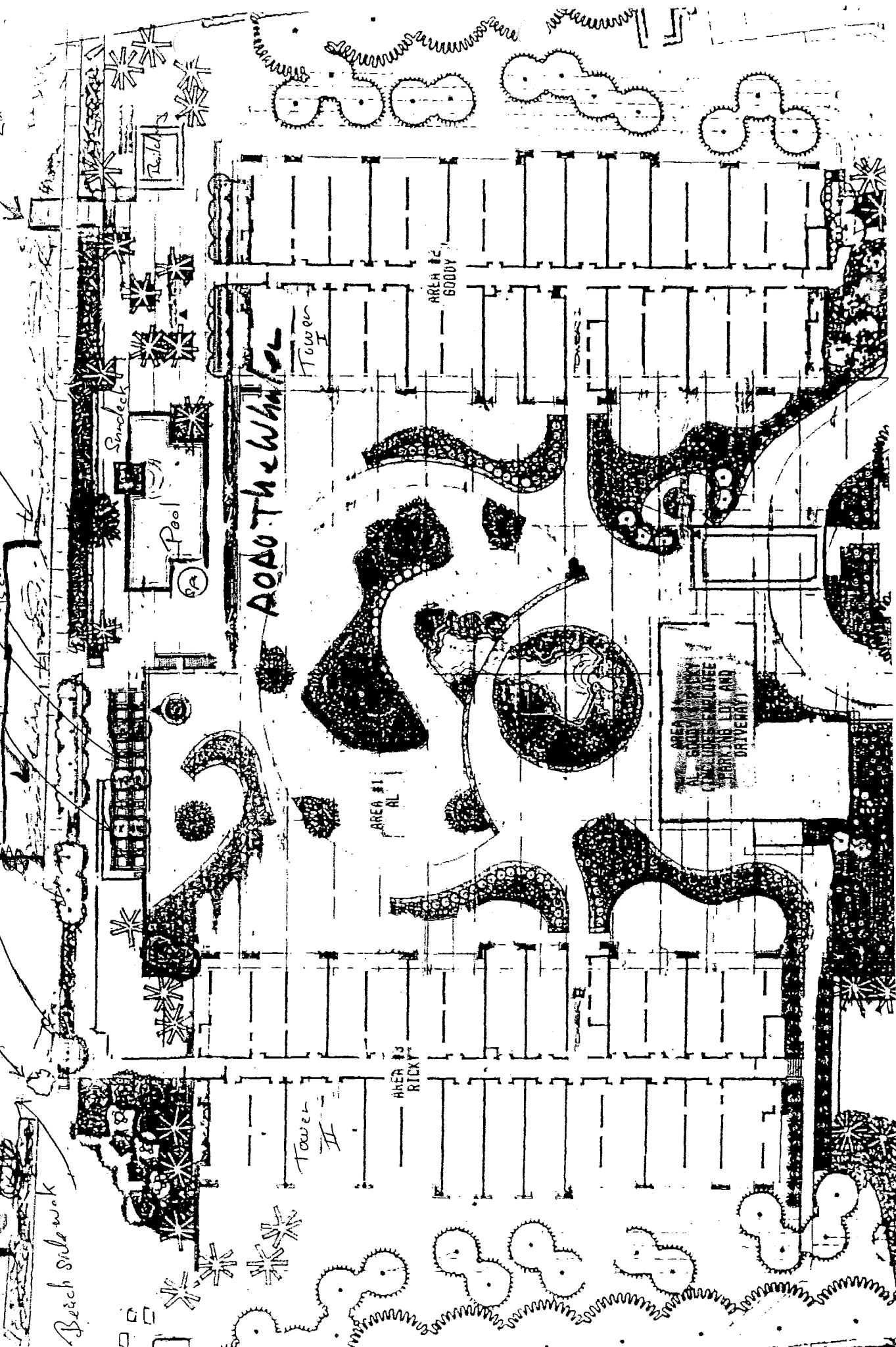
cc: J. Hino

1978  
Use 1978  
Vegetation of Sand  
Coccoloba Tree  
Beach Exit  
Beach side walk

Sand & Vegetation

Acrostoph Trees  
Ramp  
Cooling Tower  
Beach Exit  
Nunapaka

Beach  
Exit



AREA #1 AL  
AREA #2 RICKY  
AREA #3 GOODY

AQAQ The Whaler

Tower I

Tower II

AREA #3 RICKY

AREA #1 AL

AREA #2 GOODY

Sanddeck

Pool

Nunapaka

Cooling Tower

Ramp

Acrostoph Trees

Coccoloba Tree

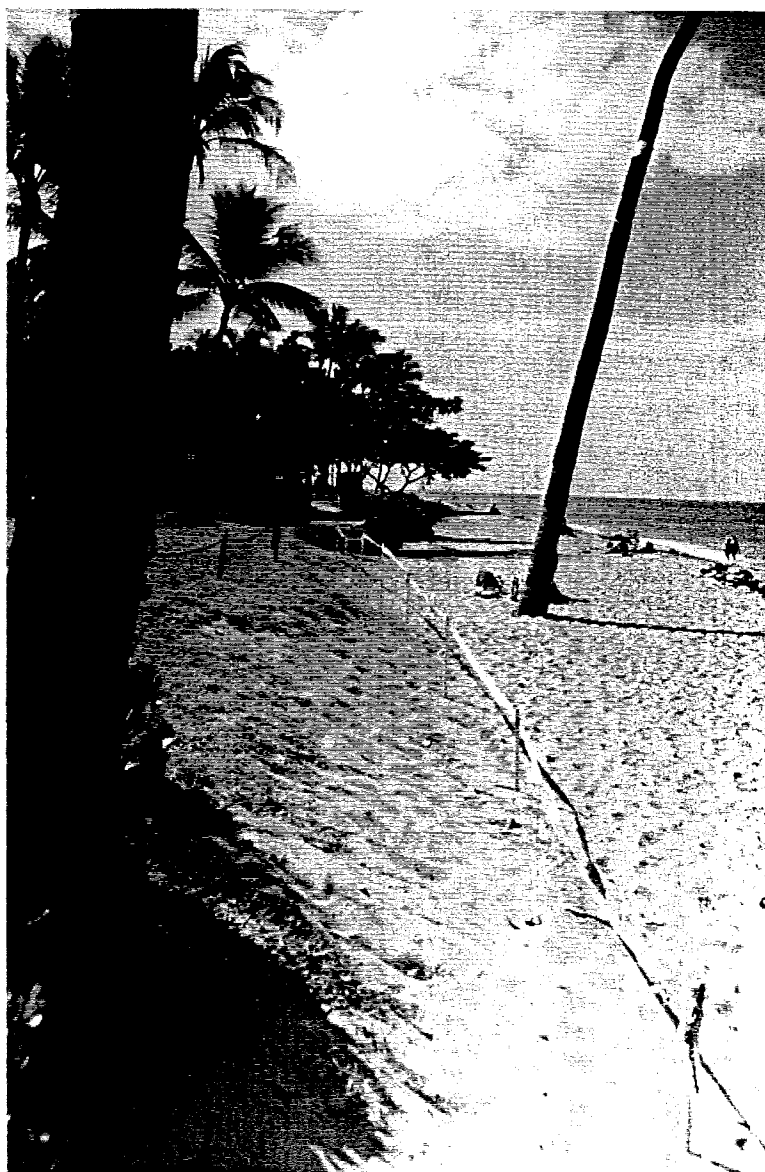
Beach Exit

Beach side walk

Beach Exit



Tower II  
Beach  
Before



Tower II  
Beach  
Now

**WHALERS VILLAGE**

Fine Shops &amp; Restaurants

June 30, 1998

Mr. A. William Ries  
President, AOA  
The Whaler on Kaanapali Beach  
4871 Finlandia Way  
Carmichael, CA 95608

Dear Mr. Ries:

The Beachwalk fronting the Whaler Condominium

Thank you for your letter of June 22, 1998. I appreciate and share your concerns with regards to the safety of the many individuals who use this very important resort amenity. I agree that the existing condition of the walkway area fronting The Whaler Condominium is unsafe, but I must also point out that a similar condition exists along the beach fronting Whalers Village.

Like The Whaler, we have also applied to the County for permission to build temporary stairs that would allow access from the beach to Whalers Village and the properties to our South. I have been told that your approved stairway system is for a temporary period of time, I am concerned with not fully understanding what the Association of Apartment Owners' specific plans are to address the replacement of the walkway.

My specific concerns are, as you are undoubtedly aware, the walkway is a very important amenity to all the visitors staying in the Kaanapali Beach Resort area. The Kaanapali Beach Resort Association spends thousands of dollars annually promoting Kaanapali Beach Resort as a destination consisting of many amenities; one of them being, the ability to walk and/or access the other resort properties anywhere from the Sheraton Hotel to the Hyatt Hotel.

My other concern is the amount of pedestrian traffic my shopping center is losing daily due to the lack of convenient and easy access to Whalers Village. In fact, I was talking with one of the Whaler apartment owners just yesterday who told me that he watches nightly from his room approximately 100 people who walk up to the temporary fence on the Whaler side and simply turn around. I am sure you can understand the reluctance of a visitor or owner dressed for an evening to get theirs or their companions' shoes full of sand or possibly water.

**WHALERS VILLAGE**

Fine Shops &amp; Restaurants

July 14, 1998

Ms. Janis D. Casco  
Executive Director/Managing Agent  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, HI 96761-1994

Dear Janis:

Beach Walkway

Thank you for your letter of July 9, 1998. I appreciate your responding to my letter of June 30, 1998, which was addressed to Mr. A. William Ries.

In my letter to Mr. Ries, I addressed specific issues that were not reviewed in your letter. I would appreciate hearing from Mr. Ries concerning these issues. To re-address my concerns they are:

- How long did the County grant the use of your temporary stair system? What are the Association of Apartment Owners, (AOAO) plans to maintain pedestrian traffic flow when the permit expires.
- Why doesn't the AOAO allow temporary access through the property until the County approves the walkway replacement plans?

In your letter you mention that you are uncertain when AOAO will be allowed to proceed with a replacement walkway. As the walkway is a very important amenity to Kaanapali Beach Resort's marketing efforts, not to mention the businesses within the Kaanapali Beach Resort, what does the AOAO propose to do when the County grants its permission to replace the old system?




**WHALERS VILLAGE**

Fine Shops &amp; Restaurants

Ms. Janis D. Casco  
Executive Director/Managing Agent  
July 14, 1998  
Page 2

Janis, I would appreciate a response from the AOA board's president on these questions. The tenants at Whalers Village are being financially impacted daily by the loss of pedestrian traffic caused by this unfortunate situation.

Very truly yours,  
THE ESTATE OF JAMES CAMPBELL



Donald N. Reaser  
Asset Manager, Maui

dnr:e:\maui\01052100\k10231

cc: Cynthia Herzberg  
Mr. Rice, President AOA



**MINUTES  
KAANAPALI BEACHWALK MEETING  
Thursday, August 13, 1998**

This meeting was organized by the Kaanapali Beach Resort Association office. Mike White chaired, as we discussed the Kaanapali beachwalk, recent erosion issues (most specifically at The Whaler and Sheraton Maui properties) and rebuilding procedures.

Our guests were Lisa Nuyen, Planning Director and Darren Suzuki, Project Manager, with the County of Maui. Also present were Ed Ilagan and Randall Ha (Sheraton Maui), Ray Catugal and Barbara Allen (Sugar Cane Train), Donna Whitlock (KBRA), Don Reaser and Jim Shea (Whalers Village), Doug Rath (Maui Marriott), Jon Gersonde (The Westin Maui), Gary Bulson (Hyatt Regency Maui), Geoffrey Graf (Outrigger Maui Eldorado), Carol Koepke (Village Resorts at The Whaler), Chuck Philips and Fred Putman (Whaler AOA), Mike White (Ka'anapali Beach Hotel), and Laurie Ledbetter (for Janis Casco). Meeting notes taken by Shannon Carozza of KBRA.

Mike White opened the meeting at 10:10 a.m.

Don reported that approximately 1.8 million people visited Whalers Village in 1997, half of whom entered via the beachwalk. Mike pointed out that Kaanapali Resort property and room taxes account for approximately 20% of the Maui County tax revenues. Donna stated the importance of the beachwalk, which is promoted as a cohesive Resort element, in world-wide advertising. In short, our Resort members feel that the beachwalk is a significant asset and wish to see it remain as a link to all ocean front properties.

Lisa Nuyen recognized our desire to rebuild and maintain the beachwalk for the benefit of residents and Resort visitors, and offered the County's assistance. She also pointed out some factors which will control the rebuilding/maintenance processes. Lisa referenced the Beach Management Plan, used as the guiding document relative to Planning Department and County objectives, including projects of this sort. The Plan does not promote the use of hardened materials such as concrete, which can disturb natural sand shifting and water movement, for reconstruction of the beachwalk. While Resort members favor the use of concrete for this type of job, Lisa remained open to suggestions, including materials yet to be studied.

**WHALERS VILLAGE**

Fine Shops &amp; Restaurants

August 13, 1998

Mr. A. William Ries  
President, AOA  
The Whaler on Kaanapali Beach  
4871 Finlandia Way  
Carmichael, CA 95608

Dear Mr. Ries:

Re: Beachwalk Fronting The Whaler on Kaanapali Beach

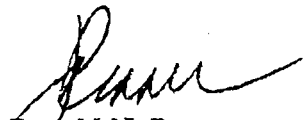
I attended a meeting at your property today, along with several members of The Whaler staff, Kaanapali Resort and County Planning Department to discuss the Beachwalk situation. Ms. Lisa Nuyen, Planning Director, and Mr. Daren Suzuki, Project Manager were the representatives from County of Maui, and they had several helpful recommendations and insights into the expedient replacement of the beachwalk without adversely affecting the shoreline.

The first key step to rectifying this situation for the benefit of all parties requires The Whaler to request in writing an SMA Assessment from the County of Maui. At that time, The County can assess the situation and formally provide their recommendations to the AOA Board and its representatives for replacement of the beachwalk.

I strongly urge the AOA Board to request the SMA Assessment immediately to get the ball rolling in the repair process of the beachwalk, or to provide the necessary authorization to your AOA staff at the Property to do so on your behalf.

Please call me with any questions regarding the meeting. I look forward to your prompt response.

Very truly yours,  
THE ESTATE OF JAMES CAMPBELL

  
Donald N. Reaser  
Asset Manager, Maui

cc: Janis Casco

jwr:\mau3\01052100\k10599

October 26, 1998

Ka Honu, Ltd  
277 Wili Ko#40  
Lahaina, Hi 96761

Mr. William A. Reis  
President, AOA  
The Whaler on Ka'anapali Beach  
4871 Finlandia Way  
Carmichael, CA 95608

Dear Mr. Reis,

I've been a tenant at The Whalers Village since it opened in 1970. It has been a wonderful shopping village serving the entire Ka'anapali area. The Whaler on Ka'anapali Beach has been a good neighbor.

As you know, the beachwalk is enjoyed by hundreds of visitors each day and was a marvelous idea. It is an inconvenience and an unsightly aspect of the shoreline to have the Whaler condominium's section damaged and remaining so. Didn't your organization agree to maintain the beachwalk when you agreed to build it? I am surprised and a bit saddened to see your section left unusable for so long.

May I encourage your group to hasten to do the necessary repairs on your section of the Beachwalk. The winter is peak season for Ka'anapali visitors. Surely you'll wish to participate in the overall satisfaction of the guests who visit our beautiful destination area.

I trust this matter is of serious concern for the image of the Whaler on Ka'anapali Beach.

Thanking you for your positive response, I remain Yours Truly,

  
Virginia Ka'ai  
Ka Honu, Ltd

cc: W.A. Ries, J. Casco

Handwritten notes and stamps on the right side of the page, including a date stamp that appears to say "OCT 26 1998".



# WHALERS VILLAGE

FINE SHOPS & RESTAURANTS  
FREE WHALE MUSEUMS

October 26, 1998

Mr. A. William Ries  
President, AOAO  
The Whaler on Kaanapali Beach  
4871 Finlandia Way  
Carmichael, CA 95608

Dear Mr. Ries:

Re: Beachwalk Fronting The Whaler on Kaanapali Beach

This letter is a follow up to my correspondence to you dated August 13, 1998. At that time the recommendation had been made that the AOAO Board request an SMA Assessment from the County of Maui to initiate the process of eventually replacing the walkway. We at Whalers Village have been working with the County regarding our own temporary SMA Permit and have found them to be extremely cooperative and insightful through this process.

I would like to request an update from the AOAO Board on your progress with this SMA Assessment so that I may convey it to the Whalers Village tenants. As you can imagine, all are eagerly awaiting the reopening of the beachwalk to the north as the peak winter season is rapidly approaching. I look forward to your prompt response.

Very truly yours,  
THE ESTATE OF JAMES CAMPBELL

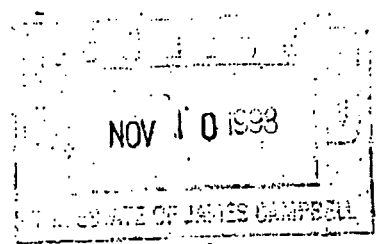
Donald N. Reaser  
Asset Manager, Maui

cc: Janis Casco

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File



November 2, 1998

Mr. William A. Ries  
President, AOA  
The Whaler on Kaanapali Beach  
4871 Finlandia Way  
Carmichael, CA 95608

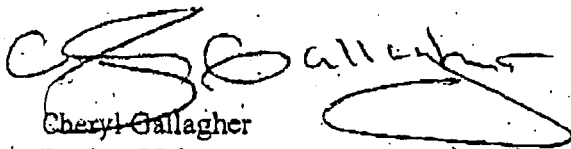
Dear Mr. Ries,

I am writing to ask your sense of urgency and the support of yourself and The Whaler Board in petitioning the County to repair the beach walk fronting The Whaler Condos. As a frequent traveler to Maui and an early morning walker, I have noticed the need for this repair for many months now. As an employee of a business at Whaler's Village, I could understand why visitors/customers staying in this area were feeling inconvenience.

I just learned that the process to get these repairs done through the County has not yet begun. It would be beneficial for the Kaanapali area visitors to be able to experience such a beautiful, memorable and visual amenity without any obstacles.

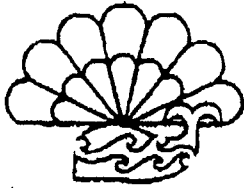
Please call on me if I can offer any support to yourself or The Whaler Board towards these results.

Aloha,

  
Cheryl Gallagher  
Regional Manager

CG:eh

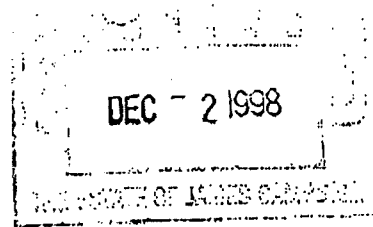
cc: Don Reaser, Whaler's Village  
Janice Casco, The Whaler on Kaanapali Beach  
Kelley Hamm, Crazy Shirts



## The Whaler

On Kaanapali Beach

Association of Apartment Owners  
Mr. Phillip Ota  
Land Management Division  
54 S. High Street  
Wailuku, HI 96793



November 30, 1998

Dear Mr. Ota:

Today John Hino called me and asked me to forward a letter similar to the one I sent to Chuck Penque, to you for assistance.

The Whaler lost a section of it's sidewalk nearest Hula Grill in June of this year. Although a lot of sand has returned, there is a 1-2 foot drop off along the entire length of our property.

We had hoped to be able to restore our sidewalk in it's original location. We understand there was a determination made by DLNR confirming Sheraton would lose land to the state if they re-certified their shoreline, and we fear the same.

At our Board meeting on November 16, 1998, we decided to pursue permits to dump sand along the beach front depression where sand has not returned, in an effort to "nourish" the beach. We called Darren Suzuki at the county who requested photos and a letter supporting our desires. Darren told us upon receipt of the pertinent documents, the county would approve the dumping of sand so long as we had the appropriate state approvals.

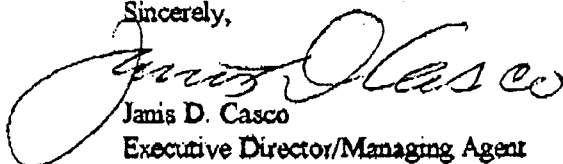
We are asking the Land Board for just such permission herewith.

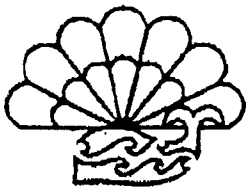
Also, since it is now apparent we will most likely lose land to the state when we pull our certified shoreline permit, we would like to ask for an easement over the section of land which may be determined to be state land along the vegetation line in order to complete our sidewalk, and re-join the congruous Kaanapali Beach walkway.

We have received many letters from the shop owners in Whaler's Village who claim to be losing revenue because of the lost sidewalk. We are also concerned about the liability posed by the hanging ledge of sidewalk under which children have been seen playing.

Thank you for taking our request to the Land Board. We'll look forward to your reply.

Sincerely,

  
Janis D. Casco  
Executive Director/Managing Agent



# The Whaler

On Kaanapali Beach

Association of Apartment Owners

*CHECK FILE*  
*Answer is the date who has contract with Honolulu*  
*DUNN*  
*FILE: BOSTON*

January 13, 1999

Dean Uchida  
Department of Land & Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Uchida, *called 1/2*  
*984-8100*

*1/25 Talked with Phil Ota, he was aware of this letter, hasn't heard from Honolulu on their decision. I explained our concerns & need for the sidewalk. I asked him to keep me posted*

I met with Phil Ota on December 17, 1998 regarding the loss of sidewalk, vegetation, irrigation and sand replenishment in front of The Whaler on Kaanapali Beach, a request for determination whether a conservation use permit is necessary for sand replenishment and vegetation, and a detailed plan showing the location of approximately 4,000 sq. ft. of sand replenishment and 1,800 sq. ft. of naupaka vegetation within the sand replenishment.

We would appreciate your support on this so we can move forward in an effort to receive approval from the Maui Planning Department.

I have enclosed copies of letters to Phillip Ota from Janis Casco, Elective Director/Managing Agent of The Whaler as well as a letter to Mrs. Casco from Charles Penque of the Department of Land & Natural Resources.

Please contact me at your earliest convenience on this issue. We have a pre-Board of Directors Meeting on January 23, 1999 wherein this issue will be addressed. If you have any questions, please call me at 808/661-6001. Thanking you in advance for your time and consideration on this matter.

Sincerely,

Charles Phillips  
Director of Engineering

CP/ljl

- cc: enclosures
- Phillip Ota
- Bill Ries, President - The Whaler AOA
- Janis Casco - Executive Director/Managing Agent, The Whaler



OCEAN

AVERAGE  
HIGH TIDE

SAND REPLENISHING AREAS  
APPROX. 156 cu/yd.

BEACH

60 FT

270'  
APPROX.

12'

18'

18'

12'

12'

ADA  
Ramp

EXISTING NAUPAKA

EXISTING  
NAUPAKA

EXISTING  
NAUPAKA

MISSING SIDEWALK

EXISTING SIDEWALK

EXISTING SIDEWALK

FENCE

FENCE

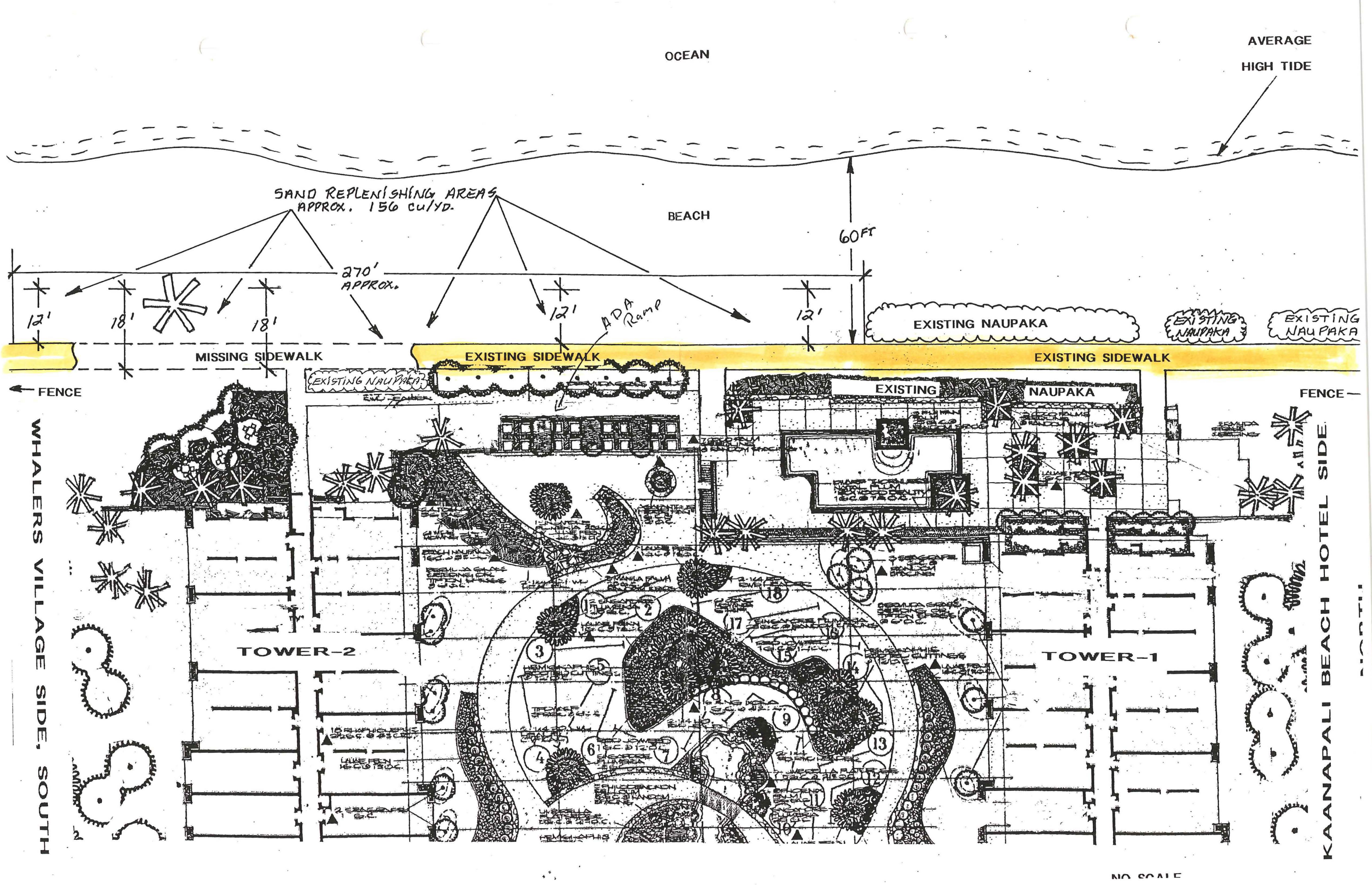
WHALEERS VILLAGE SIDE, SOUTH

KAANAPALI BEACH HOTEL SIDE

TOWER-2

TOWER-1

NO SCALE





Ref.PB:SL

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

99 MAY -6  
DEPT OF PL  
COUNTY OF MAUI  
RECEIVED  
AQUACULTURE DEVELOPMENT PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Mr. Charles Phillips  
Director of Engineering  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1994

APR 27 1999

Dear Mr. Phillips:

Subject: Proposed Landscaping and Sand Replenishment at the Whaler on Kaanapali Beach, Maui

This is in response to new information submitted in support of your proposal for landscaping and sand nourishment at Kaanapali Beach, West Maui.

In our February 16, 1999 letter, we suggested that a Site Plan Approval could be obtained for the subject work. However upon re-consideration, we have decided to defer this matter, pending consultation with the County of Maui, Planning Department.

Of particular interest is the overall intent of your proposal. Judging by the photographs, it appears that you may be interested in re-constructing the walkway that was destroyed as a result of coastal erosion, although this was not mentioned in your January 13, 1999 letter. The proposed location of the walkway is an important factor in determining how to proceed with this proposal.

We have sent a copy of your proposal to the County to solicit their input and to insure that the proposal is consistent with their plans, polices and procedures for work within the shoreline area.

Thank you for your cooperation in this matter. Please call Sam Lemmo at 587-0381 should you have any questions on this matter.

Sincerely,

Dean Y. Uchida, Administrator  
Land Division

cc: Chairman's Office  
Maui Board Member  
Rob Mullane  
Maui County Planning Department



99 APR 29 A 9:42

AQUACULTURE DEVELOPMENT PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref. PB:SL

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

APR 27 1999

Mr. Charles Phillips  
Director of Engineering  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1994

Dear Mr. Phillips:

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Sincerely,  
  
Dean Y. Uchida, Administrator  
Land Division

cc: Chairman's Office  
Maui Board Member  
Rob Mullane  
Maui County Planning Department



**The Whaler**  
 On Kaanapali Beach  
 Association of Apartment Owners

The contents accompanying this transmission contain confidential information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited.

Confidentiality Notice

**FAX TRANSMISSION**

To: *Attn. Debra Suzuki* Date: *4-29-99*  
 From: *Chuck Phillips*

Total Number of Pages Included this cover sheet: 3

Additional Message:  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Acknowledgement Required: YES NO

If all pages are not received, please contact: 808-661-6000 (voice)  
 808-661-6033 (fax)



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 621  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.:PB:SL

APR 27 1999

The Honorable John Min, Director  
County of Maui Planning Department  
200 South High Street  
Wailuku, Maui, Hawaii 96766

Attn: Daren Suzuki:

Dear Mr. Min:

Subject: Proposed Landscaping and Sand Replenishment at the Whaler  
on Kaanapali Beach, Maui

Please find attached material regarding a proposal by the Whaler on  
Kaanapali Beach to do beach nourishment and re-vegetation in the  
shoreline area of the subject property. We would appreciate your  
input on this matter, since the proposal may affect the plans,  
policies and programs of the County of Maui.

Please feel free to contact Sam Lemmo, at 587-0381, should you have  
any questions on this matter.

Aloha,

Dean Y. Uchida, Administrator  
Land Division

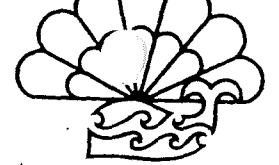
Attachments

cc: Chairman's Office  
Maui Board Member  
Maui District Land Agent  
Charles Phillips

OCEAN

AVERAGE

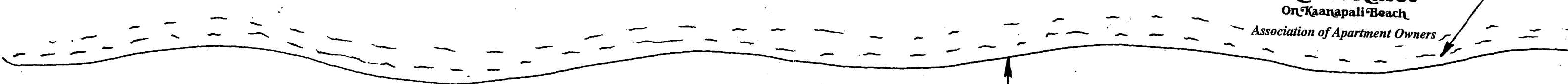
HIGH TIDE



**The Whaler**

On Kaanapali Beach

Association of Apartment Owners



NEW NAUPAKA AREAS  
APPROX. AREA 1800 SQ. FT.

BEACH

60 FT

270'  
APPROX.

ADA  
Ramp

6 TO 7'

EXISTING NAUPAKA

EXISTING NAUPAKA

EXISTING NAUPAKA

MISSING SIDEWALK

EXISTING SIDEWALK

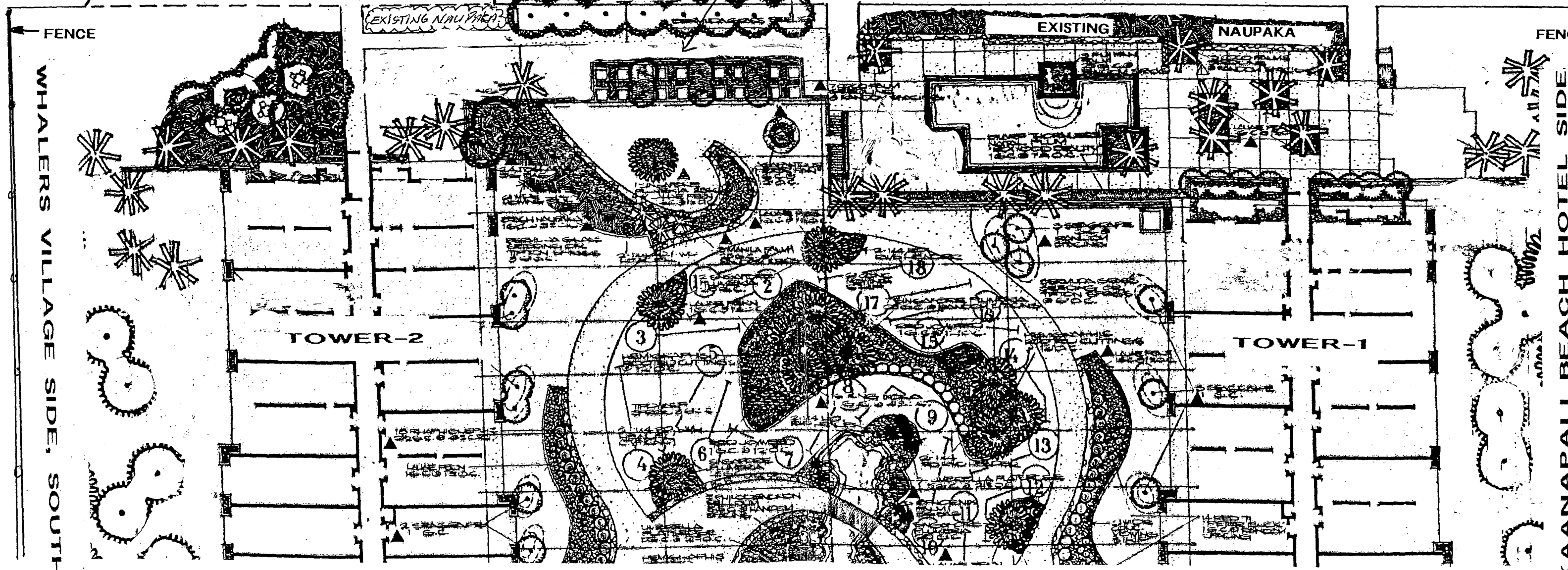
EXISTING SIDEWALK

FENCE

FENCE

WHALEERS VILLAGE SIDE, SOUTH

KAANAPALI BEACH HOTEL SIDE



NO SCALE



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

LAND DIVISION  
P.O. BOX 621

HONOLULU, HAWAII 96809

FEB 16 1999

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Ref.PB:SL

Mr. Charles Phillips  
Director of Engineering  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1994

Dear Mr. Phillips:

Subject: Proposed Landscaping and Sand Replenishment at the Whaler  
on Kaanapali Beach, Maui

We are in receipt of your January 13, 1999 request for landscaping  
and sand nourishment at Kaanapali Beach, West Maui, and have the  
following comments.

According to your January 13, 1999 letter, the Whaler on Kaanapali  
Beach lost its sidewalk, vegetation and irrigation due to erosion.  
You are currently seeking approval to nourish the area with the  
placement of approximately 4,000 square feet of sand and 1,800  
square feet of naupaka.

We have determined that this project could be considered a minor  
landscaping action in the Conservation District pursuant to Section  
13-5-25, Hawaii Administrative Rules (HAR), wherein landscaping is  
defined as alternation to plant cover, including trees, in an area  
of less than 10,000 square feet.

However, before we process an application, additional information  
is required to help us evaluate the project impacts and scope:

1. Submission of sand source sample and resident sand sample for  
comparative purposes.
2. Amount of sand calculated in cubic yards.
3. More detailed landscaping plan showing area of sand placement  
in relation to the eroding escarpment and the sea, and the  
location of new plantings.
4. Discussion of existing public/visitor use and the probable  
effect of the project on future use of the area.

The information will allow us to determine whether the project will have any adverse effects on the marine environment and public use and access within the immediate shoreline area. In addition, the information will help us confirm whether the project can be processed as a Site Plan Approval.

Please call Sam Lemmo at 587-0381 should you have any questions on this matter.

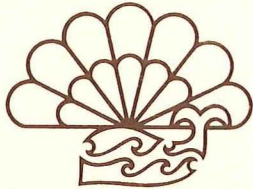
Sincerely,



Dean Y. Uchida, Administrator  
Land Division

cc: Chairman's Office  
Maui Board Member  
Rob Mullane  
Maui County Planning Department





**The Whaler**  
On Kaanapali Beach

Association of Apartment Owners

'99 JUN -9 P12:31

DEPT OF PLANNING  
OFFICE OF THE  
PLANNING DIRECTOR

May 26, 1999

County of Maui Planning Dept.  
Darren Suzuki  
250 South High St.  
Wailuku, Hi. 96793

Dear Mr. Suzuki,

Per our conversation on Monday, May 24, 1999, in the past, we have requested approval for beach quality sand replenishment, however, because the sand has not naturally restored itself in a more timely manner, we are requesting approval for the following secondary plan:

- 1) Beach quality sand replenishment.
- 2) Construct a temporary sidewalk on the Tower II side of the property, approximately 91 ft. long, 6 ft. wide, running parallel along the existing missing sidewalk. This would allow north and south access to the property.
- 3) Remove an approximate 6 ft. section of the rock wall to the south side of the property, by the Tower II shower, to connect the sidewalk to the beach walkway, using 2'x2' pavers (6 ft. wide).
- 4) Remove an approximate 5 ft. section (6 ft. wide) of naupaka, at an angle, farther down by the cooling tower so that the existing inside sidewalk connects to the existing beach walkway.

When nature returns the sand in the same location, the owners would like the option to restore the sidewalk to the original location.

A schematic of the above proposed plan is enclosed for your review. Thanking you in advance for your consideration.

Sincerely,

Charles Philips  
Director of Engineering

CP/ljl



BEACH

SAND REPLENISHING AREAS

South

2'x2' Pavers

370' APPROX.

Temp Book Side Book 5'x6'

ADA Ramp

60

Altitude

MISSING SIDEWALK

Temp Side Walk

← 915 →

Shower

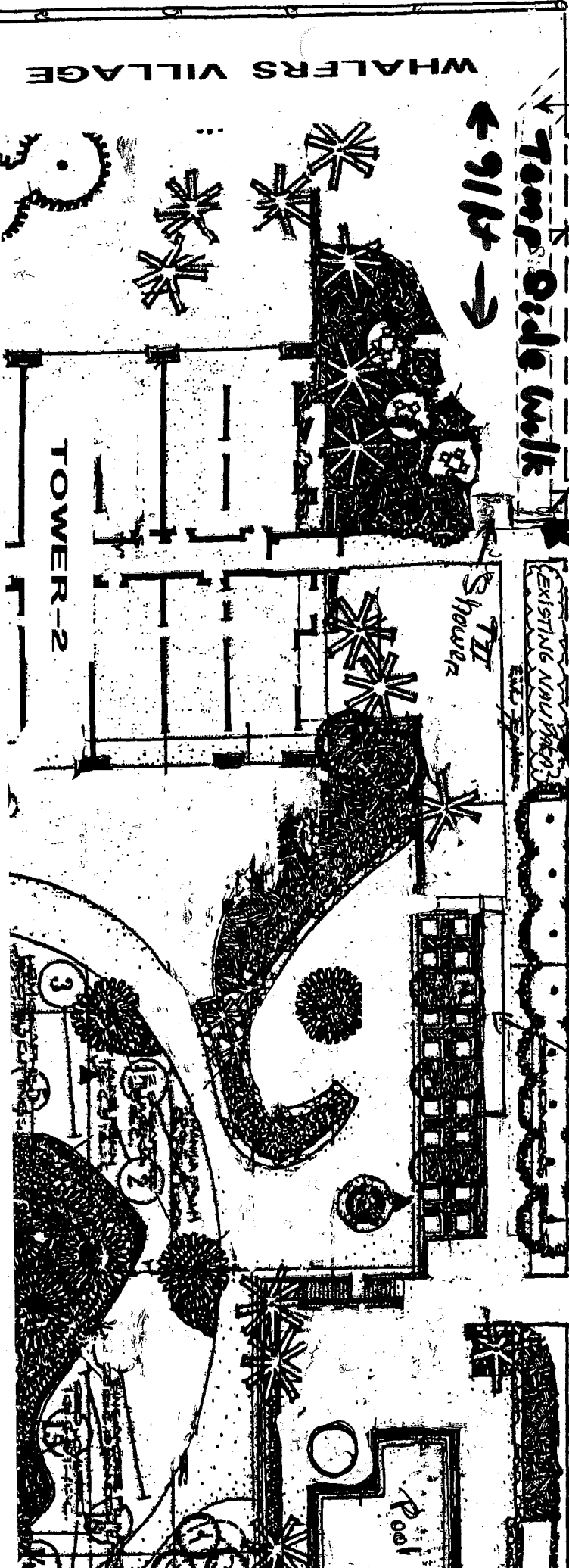
EXISTING NAILHEAD

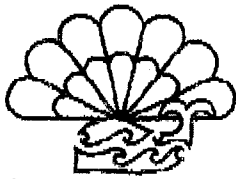
EXISTING SIDEWALK

Pool

TOWER-2

WHALEERS VILLAGE





**The Whaler**  
On Kaanapali Beach

Association of Apartment Owners

May 26, 1999

County of Maui Planning Dept.  
Darren Suzuki  
250 South High St.  
Wailuku, Hi. 96793

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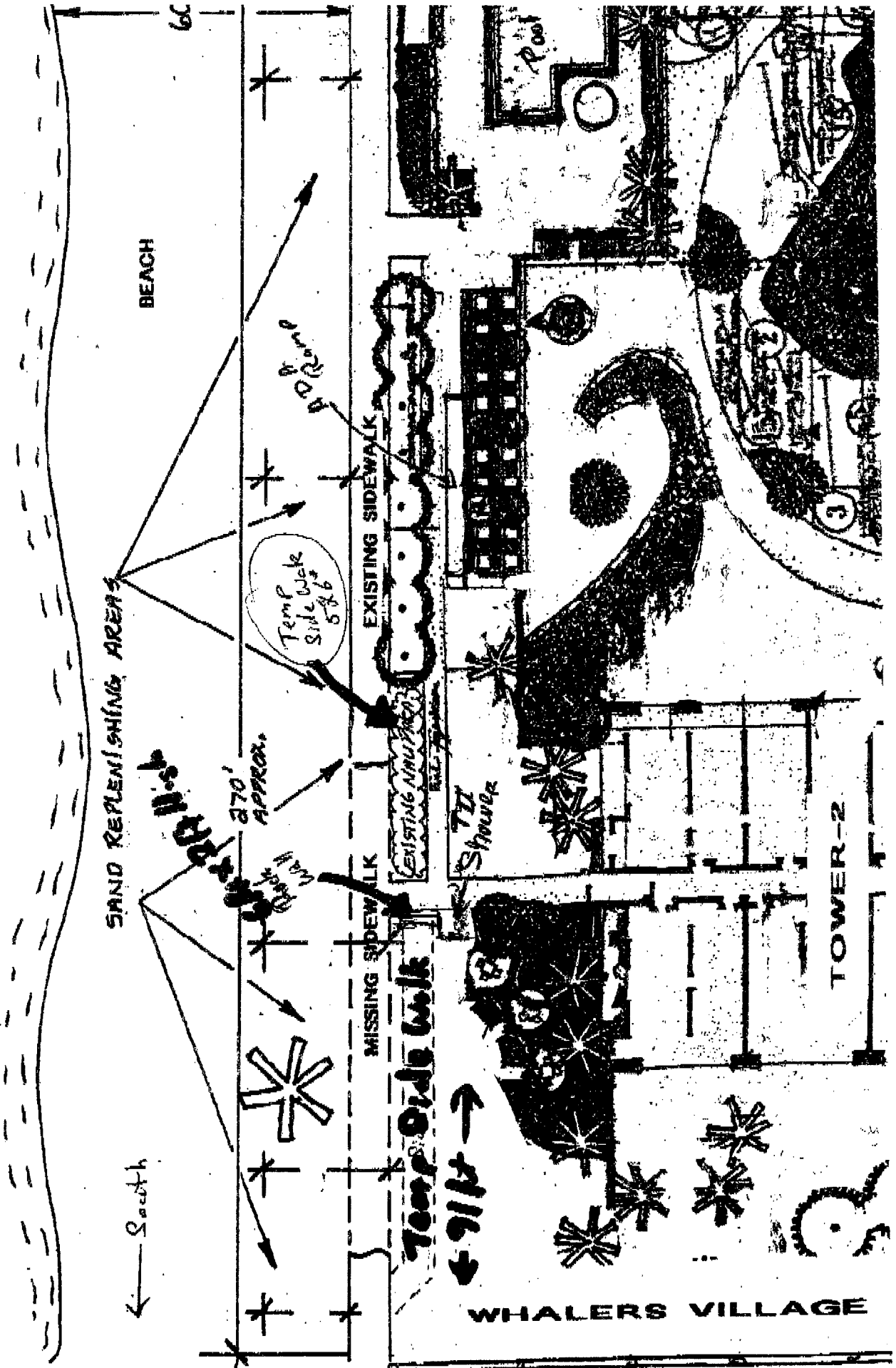
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A schematic of the above proposed plan is enclosed for your review. Thanking you in advance for your consideration.

Sincerely,

Charles Philips  
Director of Engineering

CP/ljl



WHALERS VILLAGE

Dms

'99 MAY 26 P1:54

DEPT OF PLANNING



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Confidentiality Notice

**FAX TRANSMISSION**

Darren Suzuki

To: County of Maui Planning Dept

Date: May 26th 1999

From: Charles Philip

Total Number of Pages Included this cover sheet: Three

Additional Message:

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Acknowledgement Required:

YES

NO

If all pages are not received, please contact:

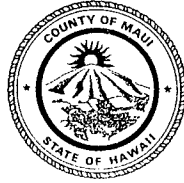
808-001-6000 (voice)

808-001-0033 (fax)

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

April 20, 1999

Mr. Charles Philips, Director of Engineering  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761

Dear Mr. Philips:

RE: Special Management Area (SMA) Minor Permit Third Amendment  
for a Time Extension to Retain Portable Stairways Fronting the  
Whaler Condominium, TMK: 4-4-08:01 Lahaina, Island of Maui,  
Hawaii (SM2 980051) (SSA 980011)

The Maui Planning Department (Department) has reviewed the above-referenced request dated March 25, 1999, and conducted a site inspection of the property on April 1, 1999.

The Department still finds that the beach fronting the pool and Tower II has not fully recovered. In order to ensure safe access to and from the beach, your request is hereby granted, subject to all of the conditions placed on the original permits (SM2 980051) (SSA 980011), provided that Condition No. 4 shall be amended to read as follows:

- "4. The stairway fronting the pool and Tower II shall be removed no later than August 31, 1999, or sooner, should the beach recover to a point where safe access to and from the shoreline can be accommodated."

Please be advised that all redevelopment of the property shall require review and approval from the Department. These activities shall include sidewalk repairs, landscaping, and irrigation.

Mr. Charles Philips, Director of Engineering  
April 20, 1999  
Page 2

Thank you for your cooperation. If additional clarification is required, please contact Mr. Daren Suzuki, Staff Planner, of this office at 243-7735.

Very truly yours,



JOHN E. MIN  
Director of Planning

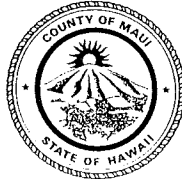
JEM:DMS:cmb

c: Clayton Yoshida, AICP, Deputy Director of Planning  
Daren M. Suzuki, Staff Planner  
LUCA (2)  
98/SSA CZM File  
98/SM2 Minor Permit File  
General File  
(S:\ALL\DAREN\SMAMINOR\WHALER.AM3)

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

April 7, 1999

Isaac Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: The Whaler at Kaanapali Beach

In response to your letter dated March 22, 1999, the Maui Planning Department offers the following answers to your numbered questions.

1. No. The rule in effect when the permit was granted on October 18, 1993 was Article II, Special Management Area Rules and Regulations of the County of Maui. However, both rules are the same, with the exception of Subsection (f).
2. Yes.
3. No.
4. We have no record of plans submitted with the October 18, 1993 approval. Regardless, it was conditional at the time that the walkway shall be constructed of prefab concrete pavers similar to Kaanapali Shores. Therefore, it is likely that plans were not submitted to reflect this condition.
5. No.
6. No.
7. No.
8. No.



Isaac Hall, Esq.  
April 7, 1999  
Page 2

9. No.

Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner, of this office at 243-7735.

Very truly yours,



JOHN E. MIN  
Director of Planning

JEM:DMS:cmb

c: Clayton Yoshida, AICP, Deputy Director of Planning  
Daren Suzuki, Staff Planner  
Project File  
General File  
S:\ALL\DAREN\WHALER.RE3

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

March 22, 1999

OF COUNSEL:  
G. RICHARD GESCH

99 MAR 22 P4:01  
DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Hand Delivery

Mr. John Min, Director  
Mr. Darren Suzuki, Staff Planner  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Amendments to SMA Permits

Dear John Min and Darren Suzuki:

Through your letter dated February 4, 1999, you have provided answers to the questions which we submitted in my letter dated December 11, 1998. We subsequently met to discuss these answers and the current situation at the Whaler. There was a need to clarify Questions 3 and 4 and the answers to those questions. We trust that your answers to the following questions will do so:

1. The Special Management Area ("SMA") Rules and Regulations of the Maui Planning Commission state, in §12-202-17, the following with respect to amendments to SMA permits:

§12-202-17 Amendments to and determinations of permit terms, conditions, and time stipulations. (a) Any person who has been issued a special management area emergency permit, minor permit, or use permit may request the director or commission, as appropriate, to amend, delete, or determine any terms, conditions or time stipulations placed upon such permit.

(b) Any person seeking to amend, delete, or determine a permit condition shall file an application with the department in a form provided by the department, the content of which shall include:

(1) The term, condition, or time stipulation to be amended, deleted, or determined;

(2) If an extension of a time stipulation is requested, the length of time extension desired;

(3) The reasons for the requested amendment, deletion or determination;

(4) An administrative fee as established in the county budget; and

(5) Any other information and documentation requested by the director.

...  
(f) Findings of fact, conclusions of law, and decision and order for any special management area use permit application seeking to amend, delete, or determine permit terms, conditions, and time stipulations shall be issued in accordance with the rules of practice and procedure of the commission in effect when action is taken and the review guidelines as set forth in section 12-202-11. [Eff. January 1, 1994 am September 28, 1997] (Auth: HRS §§91-2, 205A-29, 205a-30) (Imp: HRS §205A-26, 205A-29) (Emphasis added.)

Is this the rule with respect to amendments to SMA permit which was in effect in 1993?

2. Was an SMA minor permit issued by the Planning Director on October 18, 1993 to the Whaler at Kaanapali Beach for certain sidewalk improvements?

3. Was the aforementioned SMA permit issued on an "emergency" basis?

4. Were project plans submitted with the application for the aforementioned SMA permit and, if so, would you kindly identify them and allow us to review and copy them?

5. Was a written application ever submitted by the Whaler to amend the terms and conditions of the aforementioned SMA minor permit?

6. Were project plans attached to the application for the amendment of terms and conditions to the aforementioned SMA permit and if so would you kindly identify them and allow us to review and copy them?

7. Did the Planning Director approve in writing any application requesting an amendment to the aforementioned SMA permit?

8. Were project plans identified in any approval by the Planning Director in his approval of any application for an amendment to the terms and conditions of the aforementioned SMA permit and, if so, would you kindly identify them and allow us to review and copy them?

9. Does HRS 205A or the Rules and Regulations of the Maui Planning Commission anywhere authorize the issuance of verbal SMA permits or amendments to SMA permits and, if so, kindly identify the provisions which allow for the verbal issuance of permits?

We believe that these questions are straightforward and can be answered based upon a review of the record and applicable rules in fairly short order. Thank you in advance for doing so.

If you have any questions about any of the above, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Isaac Hall', written over a vertical line that extends from the 'Sincerely yours,' text.

Isaac Hall

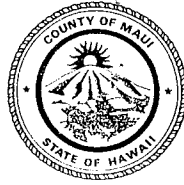
IH/jp

cc: Charles Fox

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

February 4, 1999

Isaac Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: The Whaler at Kaanapali Beach

This letter is in response to your letter dated December 11, 1998 regarding violation of Special Management Area (SMA) regulations.

After lengthy research and investigations of our records, we offer the following comments to your inquiries:

1. Was the concrete walkway authorized through the 1988 SMA Minor Permit actually constructed in accordance with the plans dated March 29, 1988?

Response: Unable to verify. We have no record of an inspection being conducted after the project was complete, nor can we locate plans dated March 29, 1988. Although a copy of these plans could possibly be obtained from the project architect, an investigation would not be feasible at this time since we also have no inspection record of the 1985 and 1993 construction. Moreover, this 1988 sidewalk may not even exist today.

2. If the sidewalk construction which took place based upon the 1988 SMA Minor Permit was not constructed in accordance with plans dated March 29, 1988, what are the corrective actions (removal, fines) required by the applicable rules and regulations?

Response: Enforcement for noncompliance to conditions established with an SMA Permit are found in Section 12-202-23

of the SMA Rules for the Maui Planning Commission. Corrective actions could include one or a combination of the following: 1) removal, 2) fines, 3) immediate application for appropriate permits, and 4) removal and reconstruction in accordance with approved plans. Corrective actions are determined case-by-case, based on individual circumstances.

3. Based upon the Rules and Regulations of the Maui Planning Commission, is it not true that an amendment or modification to any SMA permit, including an SMA Minor Permit, can only take place in accordance with Section 12-202-17 of the Rules and Regulations of the Maui Planning Commission?

Response: Yes. Pursuant to said section, any person who has been issued an SMA Minor Permit may request the director or commission, as appropriate, to amend any terms or conditions placed upon such permit.

4. Is it not true that the SMA Minor Permit issued on October 18, 1993 was never amended or modified in accordance with the procedures established in Section 12-202-17 to permit "breakaway slab joint construction?"

Response: Yes. Although modifications were not formally acknowledged by the director in writing, there was an understanding between The Whaler and the Department that the proposed walkway would be constructed with the "breakaway slab joint material" by way of letter dated November 30, 1993.

5. What corrective action (removal, fines) do your rules and regulations require if the sidewalk constructed through the 1993 SMA Minor Permit was not:
  - a. Prefab concrete pavers (not grouted or fastened together); or
  - b. Breakaway slab joint construction.

and was instead, in effect, a solid concrete walkway?

Response: Same as Response No. 2.

6. What corrective actions (removal, fines) are necessary according to your Rules and Regulations if the remnants of the 1988 and 1993 sidewalks, which were visible as of June 22, 1998, were not removed within two weeks of that date?

Response: Same as Response No. 2.

7. What corrective actions (removal, fines) are necessary according to your Rules and Regulations if the remnants of the 1988 and 1993 sidewalks now lie, in part or wholly, seaward of the Shoreline Setback Area on what is now public property?

Response: Same as Response No. 2. It should be noted that the Department of Land and Natural Resources also has the jurisdiction for enforcement of structures seaward of the shoreline.

8. Did representatives of The Whaler obtain permits from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation prior to initiating the construction authorized in the 1998 SMA Minor Permit?

Response: Yes.

9. Did the sidewalk which was constructed in 1988 and 1993 affect beach processes?

Response: Both sidewalk(s) did not affect beach processes when they were approved and constructed. When the shoreline reached and undermined the sidewalk structure, it is likely that beach processes were affected during these short-term erosion events. Although we have no record of an inspection being done to verify the impacts of the sidewalk to beach processes, these impacts were recognized through conditions of the 1998 SMA Minor Permit. Condition No. 6 of said permit states that all fallen sidewalk debris shall be removed from the beach area.

Isaac Hall, Esq.  
February 4, 1999  
Page 4

10. Did the sidewalk which was constructed in 1988 and 1993 artificially fix the shoreline?

Response: Both sidewalk(s) did not artificially fix the shoreline when they were approved and constructed. When the shoreline reached and undermined the sidewalk structure, it is likely that the structure did artificially fix the shoreline during these short-term erosion events. Again, this issue was recognized by requiring the applicant to remove all fallen sidewalks through a condition of the 1998 SMA Minor Permit.

We apologize for the delay in our response and thank you for your patience and understanding. We have attempted to answer these questions fully and without equivocation and trust that the foregoing will put this matter to rest.

Of course, we reserve the right to modify or supplement statements in this letter as appropriate, based on any other information or evidence discovered after the date of this letter.

Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner, of this office at 243-7735.

Very truly yours,



JOHN E. MIN  
Director of Planning

JEM:DMS:cmb

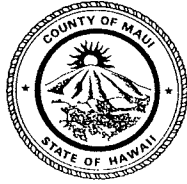
c: Clayton Yoshida, AICP, Deputy Director of Planning  
Aaron Shinmoto, Planning Program Administrator  
Charles Villalon, Jr., Zoning Inspector  
Daren Suzuki, Staff Planner  
Project File  
General File  
(S:\ALL\DAREN\SMAMINOR\WHALER.V12 )



JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 28, 1999

Isaac Davis Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

Re: Special Management Area Violation at The Whaler at Kaanapali  
Beach, Lahaina, Island of Maui, Hawaii

As a follow-up to the Maui Planning Department's (Department) letter dated December 21, 1998, please be advised that this matter is still under research and investigation. Therefore, it is anticipated that the Department will be able to respond to your letter dated December 11, 1998 by mid-February, 1999.

The Department trusts that you understand that this additional time is necessary to answer your questions fully and without equivocation. Thank you for your patience and understanding in this matter.

Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner, of this office at 243-7735.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Min".

JOHN E. MIN  
Director of Planning

LINDA LINGLE  
Mayor

LISA M. NUYEN  
Director

DONALD A. SCHNEIDER, II  
Deputy Director



CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 21, 1998

Isaac Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

Re: The Whaler at Kaanapali Beach

This letter is in response to your letter dated December 11, 1998 regarding violation of Special Management Area regulations.

Please be advised that your request would appear to require lengthy research and investigations of this matter over the past ten (10) years. As such, it is anticipated that additional time is needed to adequately and accurately analyze the issues raised, perhaps thirty (30) days.

Should you have any questions, please contact Mr. Daren Suzuki, Staff Planner, of this office at 243-7735.

Sincerely,

A handwritten signature in black ink that reads "Lisa M. Nuyen". The signature is written in a cursive, flowing style.

LISA M. NUYEN  
Director of Planning

LMN:DS:osy

c: Aaron Shinmoto, PE, Planning Program Administrator  
Clayton Yoshida, AICP, Planning Program Administrator  
Charles Villalon, Jr., Zoning Inspector  
Daren Suzuki, Staff Planner  
Project File  
General File (S:\ALL\DAREN\WHALER.VIO )

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

December 11, 1998

OF COUNSEL:  
G. RICHARD GESCH

'98 DEC 11 P3:59

DEPT OF PLANNING  
COUNTY OF MAUI  
RECORDS

Via Hand Delivery

Ms. Lisa M. Nuyen, Planning Director  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Inquiry Regarding Violation of SMA Permit Conditions and SMA Laws  
and Regulations

Dear Lisa Nuyen:

This letter is written on behalf of Charles Fox who, with his wife, owns two apartments at The Whaler on Kaanapali Beach. Mr. Fox has become aware of various violations by representatives of The Whaler of Special Management Area ("SMA") permit terms and conditions and the SMA law and regulations. He has attempted, without success, to resolve these matters internally within The Whaler and informally through communications with Maui Planning Department staff.

Mr. Fox believes that a disclosure of the facts and circumstances concerning the sidewalk construction to the Maui Planning Department and its enforcement officials is now required on a formal basis to determine once and for all what corrective actions these violations require.

We believe that you are aware of the factual background. We will reiterate it for convenience.

Part III of Chapter 205A HRS deals with construction within the Shoreline Setback Area. These provisions forbid structures which "affect beach processes" or "artificially fix the shoreline." Structures which were approved prior to 1989 may not be enlarged without a variance.

If a structure lies seaward of the shoreline, so long as any part of that structure lies within the Shoreline Setback Area, the entire structure is deemed to be within the Shoreline Area. No variance may be granted, according to HRS §205A-46(c), unless appropriate conditions are imposed:

- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
- (2) To minimize risk of adverse impact on beach processes;

(3) To minimize risk of structures failing and becoming loose rocks or rubble on public property and

(4) To minimize adverse impacts on public views to, from and along the shoreline. (Emphasis added.)

HRS Chapter 205A has at all pertinent times contained objectives and policies against “hardening” of the shoreline because of the resulting adverse impacts through coastal processes including erosion and diminishment of sandy beaches in front of neighboring properties. At all pertinent times, the Maui Planning Department has opposed the construction of solid concrete walkways within the Shoreline Setback Area because these walkways cause the hardening discussed above.

The “Beach Management Plan for Maui” dated December 1997 restates these policies, particularly on page 30 which states:

Certain shoreline structures have been shown to have an impact on coastal processes.... Concrete sidewalks ... historically have been permitted within the shoreline setback area as “minor structures.” Some of these existing structures are threatened by coastal erosion or hinder the normal coastal processes. The shoreline setback rules should be amended to regulate these type of permanent and immovable structures within the shoreline area by limiting minor structures to those that are portable, expendable, or under a certain dollar value. If the structure is threatened by coastal erosion or has an adverse effect on shoreline processes, the structure should be conditionally relocated or removed. (Emphasis added.)

In 1988, The Whaler constructed and repaired a solid concrete walkway within the Shoreline Setback Area. An SMA minor permit was issued in 1988 permitting sidewalk reconstruction in accordance with plans dated March 29, 1988 as prepared by Gholkar and Associates, Inc. These plans call for “breakaway” slab construction. Those portions of the sidewalk reconstructed in 1988 do not appear to have been built in compliance with these plans.

After Hurricane Iniki, the sidewalk was again undermined. Representatives of The Whaler applied for an SMA minor permit and Shoreline Setback Approval to replace the concrete sidewalk. See 93/SM2-219 and 93/SSA-010. These permits were issued on October 18, 1993. Two conditions to these permits were the following:

1. That the walkway shall be constructed of prefab concrete pavers similar to the Kaanapali Shores walkway.
2. That said pavers shall not be grouted or fastened together.

Representatives of The Whaler requested an amendment to these permits through which the Board of Directors of The Whaler would be given the latitude to make the decision on the type of materials to be used. Then-

Planning Director Brian Miskae replied on November 5, 1993 that the Planning Department would not object to prefab concrete pavers being grouted, also stating that: "... we still have problems, however, with a solid concrete walkway." (Emphasis added.)

This SMA permit was not thereafter modified or amended in writing as is required by the Maui Planning Commission Rules and Regulations. A meeting was conducted and a self-serving letter dated November 30, 1993 was sent to "Ann Cua, Deputy Planning Director," advising that "... our beach front sidewalk repair will be of breakaway slab joint construction." The 1993 permits were never amended properly in writing and in accordance with the applicable regulations to allow this type of construction. See the procedure required in §12-202-17.

The remnants of the 1988 sidewalk were left buried in the sand mostly seaward of the Shoreline Setback Area. The sidewalk repairs were not made in conformity with the SMA minor permit. They were not constructed of grouted pavers or, in the alternative, constructed of breakaway slab joint construction as described in the 1988 plans of Gholkar and Associates. In addition, concrete piers were constructed which are not shown on any approval plans.

By virtue of strong wave action, through an unnamed storm in 1998, the solid concrete walkway was undermined once again. These waves also uncovered the remnants of the 1988 and 1993 sidewalks. The erosion also made plainly visible the concrete piers which had been used, which had never been authorized by Maui County, in any fashion.

We enclose copies of two pictures and a newspaper article which were published on June 25, 1998. The two pictures show the concrete piers which had been used as well as the remnants of the 1988 and 1993 sidewalks. The picture in The Maui News shows workers attempting to remove remnants of the sidewalk.

Even though Maui County Rules and Regulations have provisions providing for the application for and receipt of SMA permits on an emergency basis, representatives of The Whaler placed sand bags in the area and did some shoring up of the sidewalk, without any permits. Enforcement action, including violations and penalties, was contemplated through a referral to Francis Cerrizo of the Enforcement Division. Later, representatives of The Whaler were allowed to apply for after the fact permits and, to date, no violations and penalties have been assessed for the construction which took place without proper permits.

According to County spokesman Lloyd Yonenaka, the SMA minor permit requires any sidewalk debris and vegetation to be removed within two weeks. Instead of removing the remnants of the 1988 and 1993 sidewalks, they were buried in the sand. This had the effect of burying the evidence which shows that the repairs performed in 1988 and 1993 were not undertaken in accordance with the SMA permits or the SMA rules and regulations. The three

pictures which we hereby present show the sidewalk remnants. These remnants cannot be allowed to remain buried; they must be uncovered and removed and be used as evidence of the type of construction employed.

An SMA minor permit and Shoreline Setback Approval for the placement of sand bags, the construction of three temporary stairways and the placement of a safety hand railing along the existing sidewalk was granted on June 22, 1998. See SM2 980051 and SSA 980011. Pertinent conditions to the permit were as follows:

4. That stairway construction shall be temporary and portable and shall be removed no later than August 31, 1998.

6. That all sidewalk debris, including the fallen sidewalk from the Hurricane Iniki that is exposed shall be removed from the beach area within two (2) weeks from the date of this permit.

7. That appropriate permits shall be obtained from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, prior to initiation of construction.

8. That this permit is an after-the-fact approval for the placement of the sand bags. All sand bags shall be removed after the construction of the stairway. (Emphasis added.)

The Whaler representatives have not yet removed the stairway. The sidewalk debris was not removed within two weeks of the date of the permit and still has not been removed. The sand bags were removed after the construction of the stairway.

Permits were not obtained from the Department of Land and Natural Resources ("DLNR"), prior to the initiation of construction. The three pictures show that the sidewalk now lies primarily on the seaward side of the shoreline which is state-owned and within the Conservation District. To our knowledge, no permits or approvals were obtained from DLNR for the work on the sidewalks undertaken in the Conservation District. The pictures we enclose show that this work was being conducted in the Conservation District.

Due to the erosion, the shoreline has moved inwards and the sidewalk now lies largely "makai" of the shoreline, within the Conservation District. Hence, The Whaler must obtain a Conservation District Use Permit and an easement from the State of Hawaii if its sidewalk is to remain in the same general location. We have also been reliably informed that representatives of The Whaler are seeking approval for beach "nourishment." This may or may not be an appropriate response. We are concerned that this "nourishment" not be permitted until and unless the sidewalk remnants are unearthed and removed.

The Shoreline Setback Rules of the County of Maui forbid structures which impede the natural movements of the shoreline or affect beach processes or artificially fix the shoreline. It should be obvious that the sidewalk construction in 1988 and in 1993 has, in fact, impeded the natural movement

of the shoreline and affected beach processes and artificially fixed the shoreline.

We believe that The Whaler's representatives have violated Chapter 205A with respect to construction within the Special Management Area and with respect to construction within the Shoreline Setback Area.

The Maui Planning Commission Special Management Area Rules contain provisions with respect to enforcement. See §12-202-23. Any development which has not received a required SMA permit or complied with conditions established with such a permit "shall be removed" or the violation shall be corrected by immediate application for the appropriate permit. Under these circumstances, a permit cannot be granted for the sidewalks actually constructed by The Whaler's representatives because what was constructed could not be permitted based upon the laws discussed above. As such, removal is the proper remedy. §12-202-23(b). When any part of the structure is on private property, for purposes of enforcement, the development shall be construed as being entirely within the Special Management Area, as is the case here. As such, your rules require that a Notice of Violation and Order be issued and fines imposed for these violations.

We present the following issues for you and your enforcement officials. In answering them, please apply your rules and regulations and not practices which may have taken place at a certain time which are at variance with these rules.

1. Was the concrete walkway authorized through the 1988 SMA minor permit actually constructed in accordance with the plans dated March 29, 1988?

2. If the sidewalk construction, which took place based upon the 1988 SMA minor permit was not constructed in accordance with plans dated March 29, 1988, what are the corrective actions (removal, fines) required by the applicable rules and regulations?

3. Based upon the Rules and Regulations of the Maui Planning Commission, is it not true that an amendment or modification to any SMA permit, including an SMA minor permit, can only take place in accordance with §12-202-17 of the Rules and Regulations of the Maui Planning Commission?

4. Is it not true that the SMA minor permit issued on October 18, 1993 was never amended or modified in accordance with the procedures established in §12-202-17 to permit "breakaway slab joint construction"?

5. What corrective action (removal, fines) do your rules and regulations require if the sidewalk constructed through the 1993 SMA minor permit was not:

a. Prefab concrete pavers (not grouted or fastened together); or

b. Breakaway slab joint construction and was instead, in effect, a solid concrete walkway?

6. What corrective action (removal, fines) is necessary according to your Rules and Regulations if the remnants of the 1988 and 1993 sidewalks, which were visible as of June 22, 1998, were not removed within two weeks of that date?

7. What corrective actions (removal, fines) are necessary according to your Rules and Regulations if the remnants of the 1988 and 1993 sidewalks now lie, in part or wholly, seaward of the Shoreline Setback Area on what is now public property?

8. Did the representatives of The Whaler obtain permits from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, prior to initiating the construction authorized in the 1998 SMA minor permit?

9. Did the sidewalk which was constructed in 1988 and 1993 affect beach processes?

10. Did the sidewalk which was constructed in 1988 and 1993 artificially fix the shoreline?

Kindly respond to each and every one of these questions fully and without equivocation so that these issues can be put to rest.

Please contact me at your convenience to discuss the above. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp  
cc: Charles Fox  
Encl.



LINDA LINGLE  
Mayor

LISA M. NUYEN  
Director

DONALD A. SCHNEIDER, II  
Deputy Director



CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

October 30, 1998

Isaac Davis Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: Construction of Sidewalk Fronting The Whaler Condominium at  
Kaanapali Beach, TMK: 4-4-8:02, Kaanapali, Island of Maui,  
Hawaii

The Maui Planning Department (Department) has reviewed your letters of October 2, October 23, and October 27, 1998 and provides the following response:

On October 18, 1993, the Department issued a Special Management Area (SMA) Minor Permit (SM2 930219) and Shoreline Setback Approval (SSA 930010) to The Whaler Condominium for the installation of prefab concrete pavers similar to the Kaanapali Shores Walkway. The permit required that the pavers not be grouted or fastened together.

The Whaler Condominium, by letter dated October 22, 1993, referenced the above permits and requested that the prefab concrete pavers be grouted to avoid potential liability problems with the pavers shifting with the movement of the sand. By letter dated November 5, 1993, the Department confirmed that it would not object to grouting of the concrete pavers. The Department further indicated that because of impacts on the shoreline, it was still opposed to a solid concrete walkway. After the letter was issued, the applicant requested additional clarification on the sidewalk construction by telephone. After discussions, it was the understanding of the Department that the proposed walkway would be constructed with the "break-away slab joint" material.

Isaac Davis Hall, Esq.  
October 30, 1998  
Page 2

In any event, it was never specifically represented nor did the Department have any detailed discussions regarding the use of rebar and/or footings as part of the sidewalk construction. The condominium is representing that the sidewalk was constructed with a "slip-joint" design which contains rebar in twelve (12) foot sections. The Department did not inspect the project and is unable to verify if the "slip-joint" design meets the intent of "break-away slab joint" construction. A licensed professional engineer would be able to verify if the "slip-joint" design, which includes the installation of rebar, qualifies as "break-away slab joint" construction.

The Department has recently issued a Special Management Area (SMA) Minor Permit (SM2 980051) for the placement of sandbags, construction of three (3) temporary stairways to provide access to the beach and placement of a safety hand railing along the existing sidewalk at the Whaler Condominium. The Department has gone on record indicating that all redevelopment of the property including sidewalk repairs, landscaping and irrigation, shall require review and approval from the Department. At such time as permit applications are received by the Department, you will be notified of such applications.

The Department hopes this clarifies the actions and position of the Department to date relative to shoreline hardening and the Whaler Condominium. If further clarification is required, please contact Ms. Ann T. Cua or Mr. Daren Suzuki, Staff Planners, of this office at 243-7735.

Sincerely,



LISA M. NUYEN  
Director of Planning

Isaac Davis Hall, Esq.  
October 30, 1998  
Page 3

LMN:ATC:osy

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, PE, Planning Program Administrator  
Ann T. Cua, Staff Planner  
Daren Suzuki, Staff Planner  
Robert Roland, Esq. (Attorney for The Whaler Condominium)  
Project File  
General File  
(s:\all\ann\whaleris.aac)

8626

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

October 27, 1998

OF COUNSEL:  
G. RICHARD GESCH

'98 OCT 29 P4:04

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

Via Facsimile and U.S. Mail  
243-7634

Mr. Clayton Yoshida, Supervising Planner  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Any Application for a Special Management Area Permit and/or Shoreline  
Setback Approval for a Sidewalk at The Whaler Condominium, TMK:  
4-4-08:01, Lahaina, Hawaii

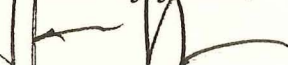
Dear Clayton Yoshida:

This letter is written on behalf of Mr. Charles Fox who is, with his wife, the owner of an apartment within The Whaler on Kaanapali Beach. It is our understanding that The Whaler will soon be submitting an application for a Special Management Area Permit and/or a Shoreline Setback Approval to replace a portion of its makai sidewalk and for other improvements in conjunction with the sidewalk.

We request prior notification of any such application which may be submitted or of any hearing which may be scheduled on the above-captioned permits. This prior notice is requested pursuant to the statutory authority found within HRS §205A-29(a). Kindly make sure that no action is taken on any such permit or approval requests before my client and I have had an opportunity to review any application which may be submitted.

Thank you for your consideration of these matters. Please contact me if you have any questions about any of the above. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox  
Ann Cua  
Darren Suzuki

8489

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

OF COUNSEL:  
G. RICHARD GESCH

'98 OCT 26 P12:58

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

October 23, 1998

Via Facsimile and U.S. Mail  
243-7634

Ms. Ann Cua, Staff Planner  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Mr. Darren Suzuki, Staff Planner  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Construction and Destruction of Sidewalk Fronting The Whaler at  
Kaanapali Beach

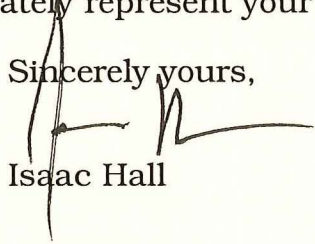
Dear Ann Cua and Darren Suzuki:

This letter will serve as a record of our conversations several days ago. You both confirmed that the 1993 SMA minor permit for the sidewalk at The Whaler on Kaanapali Beach did not permit the use of rebar or the construction of piers underneath the sidewalk and that if rebar was used or if any piers were constructed, they would have to be removed.

In addition, Darren Suzuki confirmed that one purpose of the 1998 SMA permit was to remove the remnants of the collapsed sidewalk which had originally been constructed in 1988 or 1993.

Please contact me about the above and, especially if the above does not accurately represent your statements. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox

7865

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

October 2, 1998

OF COUNSEL:  
G. RICHARD GESCH

'98 OCT -2 P4:08

DEPT OF PLANNING  
COUNTY OF MAUI

Via Hand Delivery

Ms. Ann Cua, Staff Planner  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Mr. Darren Suzuki, Staff Planner  
Planning Department  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Construction and Destruction of Sidewalk Fronting The Whaler at  
Kaanapali Beach; TMK No.

Dear Ann Cua and Darren Suzuki:

This letter is written on behalf of Charles D. Fox, III, who, with his wife, owns an apartment at The Whaler on Kaanapali Beach. He is concerned that the sidewalk fronting The Whaler has been constructed and/or demolished in 1988, in 1993 and again currently in violation of the permit requirements established by the Coastal Zone Management Act and the Rules of the Maui Planning Commission. His concerns are based upon (1) the integrity of the permit process (which must be maintained to assure that the objectives, policies and guidelines of HRS 205A are met), (2) the persisting problems which occur when fixed structures are constructed within the shoreline area and coastal erosion and sand migration occur, (3) the physical harm which may result to members of the public and Whaler apartment owners and their guests when previously undermined portions of the sidewalk are not removed and are left immediately below the surface of the sand and (4) the cost and potential liability to Whaler homeowners which occurs when there has been no compliance with the Coastal Zone Management Act and the Rules of the Maui Planning Commission and the Planning Department does not take responsibility for enforcement.

Mr. Fox initiated a good faith inquiry to determine the facts and circumstances surrounding the construction and demolition of the sidewalk in 1988, in 1993 and currently. The attorney for The Whaler, Mr. Robert Rowland, has represented that all necessary permits were obtained and that the sidewalk has been constructed in 1988, in 1993 and currently in compliance with permits which were obtained. Our investigation shows that this is not true.

Mr. Rowland recently sent us a letter which is enclosed for your review. The construction plans and necessary permits (or amended permits) were not enclosed. Mr. Rowland represents that various events took place during meetings with Ann Cua, Brian Miskae and others which are not supported by the documents which he has produced. In addition, we have reason to believe that what actually took place in meetings with Planning Department representatives was different in critical ways from what Mr. Rowland has represented. Other attendees of these meetings with the Planning Department recollect that no amendment to the 1988 permit was agreed upon and this is substantiated by the fact that the Planning Director never issued any amended permit which is required by Planning Commission Rules and by standard practice.

We provide you with this opportunity to review and comment upon the representations made about the Planning Department in his letter.

Please contact me at your earliest convenience to discuss the foregoing. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp  
cc: Whaler Owners Group  
Encl.

PAUL R. MANCINI\*  
ROBERT E. ROWLAND\*  
THOMAS D. WELCH, JR.  
MATTHEW V. PIETSCH

COUNSEL  
ROBERT A. RICHARDSON  
ROSALYN LOOMIS

\*A LAW CORPORATION

## MANCINI, ROWLAND & WELCH

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

THE KAHULUI BUILDING  
33 LONO AVENUE  
SUITE 470  
KAHULUI, HAWAII  
96732-1681

TELEPHONE:  
(808) 871-8351

FACSIMILE:  
(808) 871-0732

September 15, 1998

### HAND DELIVERED

Isaac Davis Hall, Esq.  
2087 Wells Street  
Wailuku, HI 96793

RE: Potential Members' Derivative Action  
Response to Your Letter of September 8, 1998

Dear Mr. Hall:

In your letter of September 8, 1998, following up on your letter dated July 30, 1998, you requested the Association substantiate its position that the 1993 repair and reconstruction of a portion of The Whaler oceanfront walkway was undertaken pursuant to all required and issued governmental approvals. In your correspondence you have threatened a derivative legal action against the Association. As a result, the contents of this letter are submitted pursuant to Rule 408 of the Hawaii Rules of Evidence in an effort to resolve your client's concerns short of litigation. Our client reserves the right to modify or supplement the statements in this letter as our client deems appropriate based upon any other information or evidence discovered after the date of this letter.

In any event, the Association through its Board would offer the following:

1. After significant damage and destruction to the existing oceanfront walkway, the Association constructed a new walkway in 1988 pursuant to plans and specifications drafted by Gholkar & Associates, which plans included a "slip joint" design which provided for the walkway to be constructed in twelve foot sections (containing rebar) six feet in width with expansion joints between each of the twelve foot sections. The walkway installed in 1988 with the slip joint design construction was reviewed and approved by the appropriate governmental departments. (See attached Exhibit A) Prior to the walkway constructed in 1988, the oceanfront walkway had been constructed as a continuous concrete structure containing rebar with no slip joints which resulted in the loss of the entire sidewalk when exposed to heavy wave action in 1987. The purpose of the slip joint design implemented in 1988 was to prevent the entire loss of the walkway in the event of future catastrophic wave



action. When the 1988 walkway was subjected to the Hurricane Iniki wave action in 1993, the slip joint design did exactly what it was intended to do. That is, the wave action only resulted in a loss of less than 20% of the entire length of the walkway rather than the potential loss of the entire walkway. As a result of the damage sustained to a portion of the walkway in 1993 from Hurricane Iniki, the Association applied to the County of Maui for an SMA Permit to repair the damaged portion of the walkway.

2. On October 18, 1993 an SMA Permit was issued for the repair and reconstruction of the damaged portion of the walkway. (See attached Exhibit 1)

3. The Association was not in favor of undertaking the repair in the manner prescribed by the SMA Permit letter, that is, the use of "prefab concrete pavers". (See Exhibit 2 letter of Janis Casco to Brian Miskae, Planning Director, dated October 22, 1993) After discussing the Association's concerns with representatives of the Maui County Planning Department, it was determined that a meeting should occur between representatives of the Association and the Maui County Planning Department to resolve the issue.

4. At the Association Board meeting held on November 19, 1993 then directors Bill Shears, Jerry Baker, and Director of Engineering Chuck Philips, were instructed to meet with representatives of the Planning Department. (See Exhibit 3 Minutes of 11/19/93)

5. On November 30, 1993 a meeting was held with Ann Cua, (who was then a planner within the Planning Department), Planning Director, Brian Miskae, together with Bill Shears, Jerry Baker, Chuck Philips, and Association director Jim Kelly. At that meeting, discussions ensued over what type of construction would be acceptable to the County other than the prefab concrete pavers. The Association representatives requested that the same type of walkway design installed pursuant to the plans and construction of 1988 (i.e., the slip joint construction design) be allowed instead of the prefab concrete pavers. The County through Mr. Miskae and Ms. Cua agreed that the walkway could be reconstructed pursuant to the manner of construction and design utilized in 1988, which design and construction was described by Mr. Miskae and Ms. Cua as a "break-away slab joint construction". In other words, the slip joint design and construction devised by Gholkar & Associates in 1988 was synonymous with the term "break-away slab joint construction" used by the County officials.

6. Upon returning from the meeting and realizing that the Association had nothing in writing from the County to document and confirm the understandings reached at the meeting, Director of Engineering Chuck Philips drafted a letter to the County Planning Department confirming the substitution of the "break-away slab joint construction" for the prefab concrete pavers. (See Exhibit 4 letter of Chuck Philips to Ms. Cua of 11/30/93) Although in his letter to Ms. Cua Chuck Philips utilized the term "break-away slab joint construction", it was understood by all parties who attended the November 30th meeting that such term was synonymous with the slip joint construction design implemented in the construction of the 1988 Whaler walkway.

7. Thereafter the walkway was constructed in conformance with the slip joint design methodology with the exception of three footings installed underneath that portion of the walkway in need of repair which footings were recommended and requested by Director Bill Shears, in consultation with then Association President Jerry Baker) as it was their opinion that such footings might prevent the future collapse in the area of the walkway to be repaired, since that area had given way during heavy wave action and therefore most probably needed additional support to potentially prevent another collapse in the event of further wave action.

8. Because it was understood the repair of the walkway would be undertaken pursuant to the same type of construction approved and implemented in 1988, no construction plans were required by or submitted to the County in connection with the repair work, and because the construction was repair of an existing structure, no building permit was required by the County of Maui. (See Exhibit 5 letter of Brian Miskae to Janis Casco dated 11/5/93 and her confirming notation of a conversation with a representative of the Land Use & Codes Division of the Department of Public Works (LUCA) who indicated "no permit required for this repair.")

9. Association Director of Engineering Chuck Philips recalls that a representative of the County did inspect the walkway reconstruction but cannot recall whether that inspection occurred during or after the completion of the reconstruction.

10. Although rebar was utilized in the repair of the walkway, (as was done in 1988 throughout the walkway) it is the Association's position that the use of rebar in the construction of concrete slabs is a standard and necessary part of constructing such slabs, and did not mean the construction failed to comply with the "break-away slab joint construction". In fact, as stated above, the slip joint design utilized in 1993

Isaac Hall, Esq.  
September 15, 1998  
Page 4

in the repair of the walkway was indeed the "break-away slab joint construction" required and expected by the County of Maui.

11. During the most recent partial damage to the walkway the slip joint construction in fact accomplished its purpose as approximately only 30% of the walkway was lost and damaged as opposed to the potential for 100% of the walkway if the slip joint construction had not been utilized.

12. The Association does not believe the cost of removing the various pieces of the walkway remaining after the most recent storm was in any way increased by the construction utilized in 1993. The cutting of the concrete portions of the walkway damaged from the wave action into smaller pieces was necessary to facilitate the removal of the damaged concrete from The Whaler property. It was not economically viable nor did time permit the Association utilizing a crane to lift the large concrete sections from the property. In addition, even if a crane had been used to initially remove the large sections from the ocean site, those sections still would have needed to be reduced in size in order to be hauled away. A second reason for cutting and essentially pulverizing the concrete sections was to remove the rebar from the concrete. Removal of the rebar was required to allow the concrete to be dumped at the Puu Hele landfill by Shifting Sands Excavation Inc. pursuant to its grading permit no. 96-G20 (see Exhibit 6). Apparently the State Department of Health regulations mandate that concrete material cannot be deposited in landfills without first removing the rebar and in addition, the pieces of concrete cannot be of a diameter exceeding twelve inches. Finally, the walkway was removed to the satisfaction of governmental officials.

We trust the foregoing will satisfy your client that the Association acted properly and responsibly in the 1993 repair of the walkway, and the 1993 repair did not increase the removal costs in 1998.

Very truly yours,

**MANCINI, ROWLAND & WELCH**

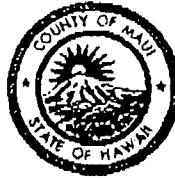


Robert E. Rowland

RER:ktf

cc: AOA The Whaler on Kaanapali Beach

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  
June 9, 1988

Ms. Sharon R. Antes  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, HI 96761

Dear Ms. Antes:

Re: Amendment to a Special Management Area Minor Permit and Shoreline Setback approval for the reconstruction of the Shoreline sidewalk within the 40 ft. shoreline area at The Whaler on Kaanapali Beach, TMK 4-4-08:2, Kaanapali, Maui.

In response to your letter dated May 25, 1988, requesting an amendment to the width of the beach walk from 5 ft. to 6 ft., please be advised that approval is hereby granted as amended to reconstruct the shoreline sidewalk within the Special Management Area and 40 ft. Shoreline Setback Area, subject to the following conditions:

1. That sidewalk reconstruction shall be in accordance with plans dated March 29, 1988, as prepared by Gholkar and Associates, Inc., with exception to the amended width from 5 ft. to 6 ft.
2. That the uses of the sidewalk and seaward landscaped area shall be open to the general public.
3. That full compliance with all Federal, State and County requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Mr. Philip Ohta of my office.

Very truly yours,

CHRISTOPHER L. HART  
Planning Director

PO:sc  
cc: LUCA  
DLNR  
P. Ohta

**EXHIBIT A**



LINDA LINGLE  
Mayor

DAVID W. BLANE  
Director

LISA M. NUYEN  
Deputy Director

CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

June 22, 1998

Mr. Chuck Philips,  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761-1994

Dear Mr. Philips:

**RE: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval (SSA) -- For the Placement of Sandbags, Construction of Three Temporary Stairways to Provide Access to the Beach, and Placement of a Safety Handrailing Along the Existing Sidewalk at the Whaler Condominium, TMK: 4-4-08:01 Lahaina, Hawaii (SM2 980051) (SSA 980011)**

In response to your application received on June 19, 1998, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above project that:

1. The project is a development;
2. The project has a valuation not in excess of \$125,000.00;
3. The project has no significant adverse environmental or ecological effect, taking into account potential cumulative effects; and
4. The project is consistent with the objectives, policies, and Special Management Area guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A, and is consistent with the County General Plan and Zoning.
5. The project is required to prevent substantial harm to the public health safety and welfare.

EXHIBIT A

Page 2 of 4

Mr. Chuck Philips  
June 22, 1998  
Page 2

Pursuant to Section 12-5-11 of the Rules of the Maui Planning Commission relating to the Shoreline Area of Maui, it is determined that your request is a minor structure necessary to provide public access to and from the beach area.

In consideration of the above determinations, you are hereby granted a Special Management Area Minor Permit and Shoreline Setback Approval, subject to the following conditions:

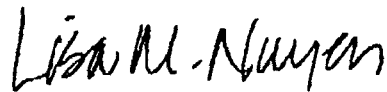
1. That construction shall be in accordance with plans submitted on June 12, 1998, June 15, 1998, June 17, 1998, June 19, 1998, and June 22, 1998.
2. That a building permit shall be obtained prior to the initiation of construction, if necessary.
3. That appropriate measures shall be taken to mitigate the short-term impact of the project relative to soil erosion from wind, rain, and noise levels.
4. That stairway construction shall be temporary and portable and shall be removed no later than August 31, 1998.
5. That all vegetation within the upper reaches of the waves shall be removed within two (2) weeks from the date of this permit.
6. That all sidewalk debris, including the fallen sidewalk from Hurricane Iniki that is exposed shall be removed from the beach area within two (2) weeks from the date of this permit.
7. That appropriate permits shall be obtained from the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, prior to initiation of construction.
8. That this permit is an after-the-fact approval for the placement of the sandbags. All sandbags shall be removed after the construction of the stairway.
9. That any backfill shall consist of beach quality sand.

Mr. Chuck Philips  
June 22, 1998  
Page 3

10. That any topsoil or sod clumps within the upper reaches of the waves shall be removed immediately along the entire length of the eroding property frontage.
11. That full compliance with all other applicable governmental requirements shall be rendered prior to initiation of construction.

Thank you for your cooperation. If additional clarification is required, please contact Daren Suzuki, Staff Planner, of this office at 243-7735.

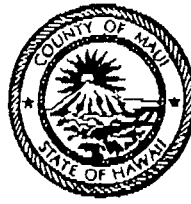
Sincerely,



LISA M. NUYEN  
Director of Planning

LMN:DMS:cmh

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, Planning Program Administrator  
Lloyd Yonenaka, Mayor's Office  
Chuck Penque, DLNR, DOBOR  
Randy Draper  
Michelle Anderson  
LUCA (3)  
98/CZM File  
98/SM2 Minor Permit File  
(S:\ALL\DAREN\WHALE.SMA)



**COUNTY OF MAUI  
PLANNING DEPARTMENT**

230 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96783

October 18, 1993

Mr. James T. Kelley  
Treasurer, Board of Directors  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, HI 96761

Dear Mr. Kelley:

SUBJECT: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval to replace a concrete side walk for public and guest use fronting The Whaler, TMK: 4-4-8:02, (93/SM2-219 and 93/SSA-010).

We have reviewed your request and find that pursuant to the Environmental Impact Statement Rules of the Department of Health, the installation of a concrete sidewalk would not have significant long term adverse effects provided that the outlined below conditions are met. Under such conditions, the installation of a sidewalk would qualify as "minor topographic alterations" which is exempt from said rules.

Said action would occur within the "shoreline area" and thus has been reviewed pursuant to the rules of the Maui Planning Commission relating to the Shoreline Area. It is hereby determined that, subject to the conditions outlined below, the above referenced sidewalk does not constitute a "structure", and, thus administrative approval of said installation is appropriate.

Pursuant to Section 2-9 of the Special Management Area (SMA) Rules and Regulations of the County of Maui, an SMA Minor Permit is required for the following reasons:

1. Said project is a development;
2. Said project has a valuation not in excess of \$125,000;
3. Said project will not have a significant long term adverse environmental or ecological effects; and
4. Said project is consistent with the objectives, policies, and Special Management Area guidelines set forth in Chapter 205A, Hawaii Revised Statutes, and is consistent with the County General Plan and Zoning.

**EXHIBIT** |



Mr. Kelley  
October 18, 1993  
Page 2

In consideration of the above determination, you are hereby granted an SMA Minor Permit and Shoreline Setback Approval subject to the following conditions:

1. That the walkway shall be constructed of prefab concrete pavers similar to the Kaanapali Shores walkway.
2. That said pavers shall not be grouted or fastened together.
3. That a building permit shall be obtained prior to the initiation of construction.
4. That appropriate measures shall be taken to mitigate the short term impact of the project relative to soil erosion from wind, rain, and ambient noise levels.
5. That construction shall be initiated with six (6) months and completed within one (1) year from said initiation.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact this office.

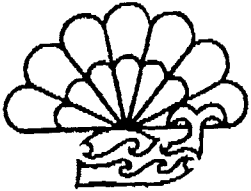
Very truly yours,



BRIAN MISKAE  
Planning Director

AC/sc  
xc: LUCA  
J. DuPonte  
CZM File  
A. Cua

a:kelley.ltr



**The Whaler**  
On Kaanapali Beach

Association of Apartment Owners

October 22, 1993

Brian Miskae  
Planning Director  
Ann Cua  
Deputy Planning Director  
250 S. High Street  
Wailuku, HI 96793

Dear Ann:

Thank you for helping me with my questions regarding our Minor SMA permit dated October 18, 1993 from Mr. Miskae.

Our first concern was with item 3, on page two of the approval which indicated a building permit was required. We understand these guidelines are from a form letter type of permit, and that technically a building permit is not required for this repair. It would be most helpful if you would indicate this to be so in your next correspondence to us.

We visited the Kaanapali Shores property to gain an understanding of the type of prefab concrete pavers required in item 1, on page two of this permit.

We took several pictures, copies of which we are sharing with you in this mailing, which outline our concerns regarding safety. Kaanapali Shores is unique from the Whaler in that there is no heavy foot traffic passing makai of the property. In fact, there is a high fence at one end of the walkway preventing foot traffic.

The Whaler is in the heart of Kaanapali Beach and hundreds, if not thousands of visitors pass on our beach walkway daily visiting the Whalers Village, other hotel properties and restaurants, and using the beach areas. Our own owner and guest use of our walkway is minimal by comparison to that of the traffic from all the other properties. Therefore, we are certain you can understand our deep concern for optimum safety of such a highly used walkway.

While visiting Kaanapali Shores, I caught the heel of one of my pumps between two ungrouted paver bricks, and it was easy to see how one could stumble, also. The Embassy Suites, on the other hand, has a brand new sidewalk at its beach front which is wide and allows people to walk side-by-side, or to pass by one another with ease, and has no cracks or uneven surfaces which might be unsafe.

**EXHIBIT 2**

**WHALER BEACH WALKWAY**

Our board may want to choose paver bricks for economic reasons. However, our neighbors and the Kaanapali Beach Resort Association want the famous uninterrupted Kaanapali Beach Walkway restored in a uniform manner, which our board might opt to do primarily for safety reasons.

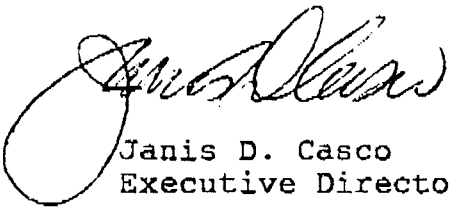
We trust you can understand why we feel it is important our own Board of Directors should be given the latitude to make the decision on type of materials to complete these repairs.

We would find it most helpful in preparing for our November board meeting, if we could have one last letter of clarification which would confirm a building permit is not required for this repair, and allowing the Board of Directors their own choice of materials based on economics or concern for public safety, thereby relieving the county from this responsibility.

Again, our objective is to complete repairs on the beach walkway (assuming board approval) between their meeting on November 19, and before peak visitor season begins on December 16, 1993. It is important there are no more delays or issues to be addressed in order to achieve this objective before the busy tourist season begins.

We appreciate the assistance we have received from your department thus far, and trust you will be able to help us with these two requests.

Mahalo a nui loa,



Janis D. Casco  
Executive Director/Managing Agent


cc: Board of Directors

**The Whaler on Kaanapali Beach  
Board of Directors Meeting Minutes  
November 19, 1993 - Page 3**

**COMMITTEE REPORTS:**

**BUILDING COMMITTEE:**

Bill Shears stated the building committee met on November 18 and had the following recommendations:

 Problems relative to the fire sprinkler retrofit have existed since the completion of the work done by the Grinnell company. We have not been able to satisfactorily resolve these problems and our association attorney is now involved.

With respect to the difficulties we are experiencing in getting the county to allow us to restore the beach walk to its original condition, it was decided to act on the Deputy Planning Directors recommendation to have a small group of Whaler and Kaanapali resort representatives request a special meeting with the Planning Director. It was recommended Bill Shears, Jerry Baker, Chuck Philips and Don Reaser from Whaler's Village should be the delegates.

A substantial part of the building committee's meeting related to the repair of the garage roof structure. Mr. Shears read letters he and Larry Kelley had written in 1990 and 1991, and one letter from Gary Baugh from the same time period (all on file in association office) on this topic. He gave a presentation and overview on the issue to all present.

**MOTION:** To authorize the chairman of the building committee to work with the Director of Engineering and the Managing Agent to develop a plan to proceed on the repairs on column "C" in the garage roof and report to the board at the 1/28/94 Board of Directors meeting. (Young/Oppenheimer)



**VOTE:** Unanimously carried.

**DECORATING COMMITTEE:**

Joanne Baker read a letter she submitted to the board regarding incorrect information that had been circulated among owners on the work being done by the decorating committee.

It was concluded their work had been appropriately approved by the board and is in conformance with property documents.

Mrs. Baker reported the installation of the carpet has been completed in all hallways, meeting room, gym and AOA office. The gym, gym restrooms and the main lobby have been wallpapered. The four existing McGuire chairs in the lobby are being refinished, and

*11/30/93  
meeting  
Conn. Co.  
Planning Dept.*

**EXHIBIT 3**



November 30, 1993

Ann Cua, Deputy Planning Director  
250 S. High St.  
Wailuku, HI 96793

RE: SMA - 93/SMA2-219 and 93/SSA-010

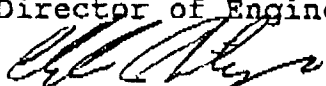
Dear Ms. Cua:

Pursuant to our meeting this date, please be advised our beach front sidewalk repair will be of break-away slab joint construction.

Thank you for your time and assistance on this project!

Most sincerely,

Charles Philips  
Director of Engineering

  
cc: President, Board of Directors  
AOAO

**EXHIBIT 4**

Page 1 of 1

LINDA CROCKETT LINGLE  
Mayor



BRIAN W. MCKAE  
Director

GIVEN Y. CHANG  
Deputy Director

COUNTY OF MAUI  
PLANNING DEPARTMENT

200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

November 5, 1993

Ms. Janis D. Casco  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1994

69-1033

Dear Ms. Casco,

RE: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval to replace a damaged concrete sidewalk and landscape planting at the Whaler, TMK 4-4-8:02, (93/SM2-219 and 93/SSA-010).

Thank you for your letter of October 22, 1993. Relative to condition number 3 of our SMA approval dated October 18, 1993, the Land Use and Codes Division of the Department of Public Works will determine if a building permit is required for the proposed action.

We have also reviewed the photographs of the recently installed concrete sidewalk at the Embassy Suites. The sidewalk was not constructed in accordance with the SMA Minor Permit approval and we will be taking appropriate action.

Relative to the sidewalk at the Whaler, we would not object to prefab concrete pavers being grouted to avoid potential liability problems with the pavers shifting with the movement of the sand. Because of impacts on the shoreline as we know them today, we do still have problems, however, with a solid concrete walkway.

We hope this provides you the clarification you need. If further clarification is required, please contact Ms. Ann Cua of this office.

Very truly yours,

*[Signature]*  
BRIAN W. MCKAE  
Director of Planning

cc: LUCA  
C. Suyama  
J. Alueta  
A. Cua  
Project file

11/9/93 called Bert Ralle at LUCA, no permit required for this repair. &

EXHIBIT 5

SENT BY: COUNTY MAUI PLANNING : 9-15-98 : 8:13AM ;

8082437834-

# 1

LINDA LINGLE  
Mayor

DAVID W. BLANE  
Director

LISA M. NUYEN  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

September 15, 1998

Dave Atkins Owner / Operator  
Shifting Sands Excavating Inc.  
Central Maui Baseyard,  
Mokulele Highway, Maui, HI.

Dear Mr. Atkins,

Re: Permitted landfill waste allowed at Puu Hele Landfill. Grading Permit No. 96-G20

Attached is a copy of original permit to extend grading permit for Puu Hele Landfill. Said landfill is designated to receive and dispose of landfill waste limited to soil, rock, gravel, or concrete rubble (12" diameter or less without rebar). Dated May 13, 1998. If there are any further questions please feel free to call this Inspector Charles Villalon at 243-7735.

Very Truly Yours,

Charles Villalon  
Planning Inspector

cc: Whalers Condo Board

SENT BY: COUNTY MAUI PLANNING : 8-15-98 : 8:14AM :

8082437634-

:# 2

LES JENCKS  
Director

DAVID C. GOODE  
Deputy Director

AARON SHIMMOTO, P.E.  
Chief Staff Engineer



COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
AND WASTE MANAGEMENT  
LAND USE AND CODES ADMINISTRATION  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

EASSIE MILLER, P.E.  
Wastewater Reclamation Division

LLOYD P.C.W. LEE, P.E.  
Engineering Division

Solid Waste Division

BRIAN HASHRO, P.E.  
Highways Division

May 13, 1998

MAUI DEMOLITION & CONSTRUCTION LANDFILL, INC.  
P.O. Box 3  
Pukalani, Hawaii 96788-0003

SUBJECT: GRADING PERMIT NO. 98-G-20  
CONSTRUCTION AND DEMOLITION LANDFILL AT PUU HELE

Dear Mr. De Colte:

This is in response to your April 21, 1998 request for extension of the subject grading permit.

Your request is hereby approved subject to the fill material being limited to soil, rocks, sand, gravel, or concrete rubble (12" diameter or less without rebar). The new expiration date is May 20, 1998.

Organic material, and solid waste material as defined under Title 11, Chapter 58.1, "Solid Waste Management Control", which is administered by the Department of Health, will not be allowed at this time. These materials may be allowed at a later date upon approval of a valid Special Use Permit.

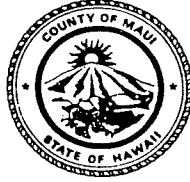
Please call me at 243-7973, should you have any questions regarding this matter.

Very Truly Yours,

Howard Hanzawa  
Civil Engineer

xc: Planning Department





LINDA LINGLE  
Mayor

DAVID W. BLANE  
Director

LISA M. NUYEN  
Deputy Director

COUNTY OF MAUI  
DEPARTMENT OF PLANNING

CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

July 1, 1998

Mr. Chuck Philips  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761-1994

Dear Mr. Philips:

RE: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval (SSA) -- For the Placement of Sandbags, Construction of Three Temporary Stairways to Provide Access to the Beach, and Placement of a Safety Handrailing Along the Existing Sidewalk at the Whaler Condominium, TMK: 4-4-08:01 Lahaina, Hawaii (SM2 980051) (SSA 980011)

This letter will supplement our previous letter dated June 22, 1998 on the above-referenced permits.

Please be advised that all redevelopment of the property shall require review and approval from the Maui Planning Department. These activities shall include sidewalk repairs, landscaping, and irrigation.

Thank you for your cooperation. Should you have any questions, please contact Daren Suzuki, Staff Planner, of this office at 243-7735.

Sincerely,

LISA M. NUYEN  
Director of Planning

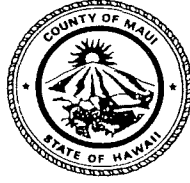
Mr. Chuck Philips

July 1, 1998

Page 2

LMN:DMS:cmh

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, Planning Program Administrator  
Lloyd Yonenaka, Mayor's Office  
Chuck Penque, DLNR, DOBOR  
Randy Draper  
Michelle Anderson  
LUCA (3)  
98/CZM File  
98/SM2 Minor Permit File  
General File  
(S:\ALL\DAREN\WHALER.LTR)



LINDA LINGLE  
Mayor

DAVID W. BLANE  
Director

LISA M. NUYEN  
Deputy Director

COUNTY OF MAUI  
DEPARTMENT OF PLANNING

CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

August 4, 1998

Ms. Janis D. Casco  
Executive Director/Managing Agent  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761-1994

Dear Ms. Casco:

RE: Clarification of Approved Construction Materials in  
November, 1993 for a Sidewalk at the Whaler, TMK: 4-4-8:02,  
Kaanapali, Maui (93/SM2-219) (93/SSA-010)

The Maui Planning Department has received your request dated July 24, 1998 regarding construction materials which were approved by the Planning Department in November of 1993.

A letter was issued on November 5, 1993 by the Planning Department confirming that we would not object to prefab concrete pavers being grouted to avoid potential liability problems with the pavers shifting with movement of the sand. After the letter was issued, the applicant requested further clarification by telephone where we advised that construction associated with repair of the sidewalk should be of break-away slab joint construction.

Please be advised, that currently, the Planning Department does not support concrete walkways along the shoreline, and we have been in communication with the Whaler on this issue.

This letter simply serves to clarify the understanding back in 1993 with regard to the sidewalk repair.

Ms. Janis D. Casco  
August 4, 1998  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann Cua, Staff Planner, of this office at 243-7735.

Sincerely,

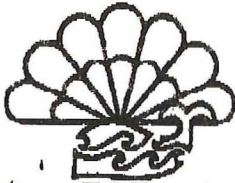


*for:* LISA M. NUYEN  
Director of Planning

LMN:ATC:cmh

Enclosures

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, Planning Program Administrator  
Ann T. Cua, Staff Planner  
Project File  
General File  
(s:\all\ann\casco.ltr)



**The Whaler**  
On Kaanapali Beach  
Association of Apartment Owners

'98 JUL 24 P2:55

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

The contents accompanying this transmission contain confidential information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited.

Confidentiality Notice

**FAX TRANSMISSION**

To: Ann Cua, Planning Department Date: 7/24/98  
From: Janis D. Casco, Executive Director/Managing Agent

Total Number of Pages Included this cover sheet: 2

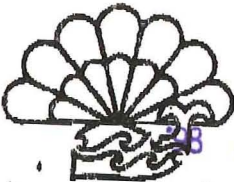
**Additional Message:**

Ann, in reviewing our files this date, we could not find supporting documentation from the County regarding the modifications to our SMA permit issued 10/93 for the replacement of our sidewalk. On November 30, 1998, Chuck Philips, our Director of Engineering, and three other board members, Jerry Baker, Bill Shears and Jim Kelly met with you in your office. We need documentation on your letterhead which supports the agreement to install break-away slab joint construction for our sidewalk. Thank you so much for assisting us in this matter!

Acknowledgement Required: YES NO

If all pages are not received, please contact: 808-661-6000 (voice)  
808-661-6033 (fax)

5643



**The Whaler**  
On Kaanapali Beach  
Association of Apartment Owners

JUL 24 P2:55

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

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**FAX TRANSMISSION**

To: Ann Cua, Planning Department Date: 7/24/98

From: Janis D. Casco, Executive Director/Managing Agent

Total Number of Pages Included this cover sheet: 2

**Additional Message:**

Ann, in reviewing our files this date, we could not find supporting documentation from the County regarding the modifications to our SMA permit issued 10/93 for the replacement of our sidewalk. On November 30, 1993; Chuck Philips, our Director of Engineering, and three other board members, Jerry Baker, Bill Shears and Jim Kelly met with you in your office. We need documentation on your letterhead which supports the agreement to install break-away slab joint construction for our sidewalk. Thank you so much for assisting us in this matter!

Acknowledgement Required: YES NO

If all pages are not received, please contact: 808-661-6000 (voice)  
808-661-6033 (fax)



November 30, 1993

Ann Cua, Deputy Planning Director  
250 S. High St.  
Wailuku, HI 96793

RE: SMA - 93/SMA2-219 and 93/SSA-010

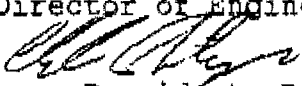
Dear Ms. Cua:

Pursuant to our meeting this date, please be advised our beach front sidewalk repair will be of break-away slab joint construction.

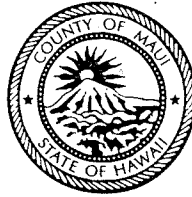
Thank you for your time and assistance on this project!

Most sincerely,

Charles Philips  
Director of Engineering

  
cc: President, Board of Directors  
AOAO

LILIDA CROCKETT LINGLE  
Mayor



BRIAN W. MISKAE  
Director

GWEN Y. OHASHI  
Deputy Director

**COUNTY OF MAUI  
PLANNING DEPARTMENT**

250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

November 5, 1993

Ms. Janis D. Casco  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Maui, Hawaii 96761-1994

Dear Ms. Casco,

RE: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval to replace a damaged concrete sidewalk and landscape planting at the Whaler, TMK 4-4-8:02, (93/SM2-219 and 93/SSA-010).

Thank you for your letter of October 22, 1993. Relative to condition number 3 of our SMA approval dated October 18, 1993, the Land Use and Codes Division of the Department of Public Works will determine if a building permit is required for the proposed action.

We have also reviewed the photographs of the recently installed concrete sidewalk at the Embassy Suites. The sidewalk was not constructed in accordance with the SMA Minor Permit approval and we will be taking appropriate action.

Relative to the sidewalk at the Whaler, we would not object to prefab concrete pavers being grouted to avoid potential liability problems with the pavers shifting with the movement of the sand. Because of impacts on the shoreline as we know them today, we do still have problems, however, with a solid concrete walkway.

We hope this provides you the clarification you need. If further clarification is required, please contact Ms. Ann Cua of this office.

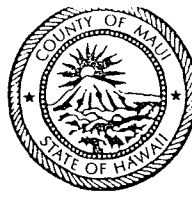
Very truly yours,

A handwritten signature in black ink, appearing to read "B. Miskae", is written over the typed name and title.

BRIAN MISKAE  
Director of Planning

cc: LUCA  
C. Suyama  
J. Alueta  
A. Cua  
Project file





**COUNTY OF MAUI**  
**PLANNING DEPARTMENT**  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

October 18, 1993

Mr. James T. Kelley  
Treasurer, Board of Directors  
The Whaler on Kaanapali Beach  
2481 Kaanapali Parkway  
Lahaina, HI 96761

Dear Mr. Kelley:

SUBJECT: Special Management Area (SMA) Minor Permit and Shoreline Setback Approval to replace a concrete side walk for public and guest use fronting The Whaler, TMK: 4-4-8:02, (93/SM2-219 and 93/SSA-010).

We have reviewed your request and find that pursuant to the Environmental Impact Statement Rules of the Department of Health, the installation of a concrete sidewalk would not have significant long term adverse effects provided that the outlined below conditions are met. Under such conditions, the installation of a sidewalk would qualify as "minor topographic alterations" which is exempt from said rules.

Said action would occur within the "shoreline area" and thus has been reviewed pursuant to the rules of the Maui Planning Commission relating to the Shoreline Area. It is hereby determined that, subject to the conditions outlined below, the above referenced sidewalk does not constitute a "structure", and, thus administrative approval of said installation is appropriate.

Pursuant to Section 2-9 of the Special Management Area (SMA) Rules and Regulations of the County of Maui, an SMA Minor Permit is required for the following reasons:

1. Said project is a development;
2. Said project has a valuation not in excess of \$125,000;
3. Said project will not have a significant long term adverse environmental or ecological effects; and
4. Said project is consistent with the objectives, policies, and Special Management Area guidelines set forth in Chapter 205A, Hawaii Revised Statutes, and is consistent with the County General Plan and Zoning.

Mr. Kelley  
October 18, 1993  
Page 2

In consideration of the above determination, you are hereby granted an SMA Minor Permit and Shoreline Setback Approval subject to the following conditions:

1. That the walkway shall be constructed of prefab concrete pavers similar to the Kaanapali Shores walkway.
2. That said pavers shall not be grouted or fastened together.
3. That a building permit shall be obtained prior to the initiation of construction.
4. That appropriate measures shall be taken to mitigate the short term impact of the project relative to soil erosion from wind, rain, and ambient noise levels.
5. That construction shall be initiated with six (6) months and completed within one (1) year from said initiation.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact this office.

Very truly yours,



BRIAN MISKAE  
Planning Director

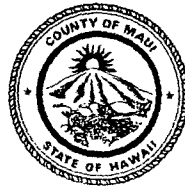
AC/sc  
xc: LUCA  
J. DuPonte  
CZM File  
A. Cua

a:kelley.ltr

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

July 23, 1999

Mr. Charles Philips  
The Whaler  
2481 Kaanapali Parkway  
Lahaina, Hawaii 96761-1994

Dear Mr. Philips:

RE: Whaler Condominium, TMK: 4-4-8:2, Kaanapali, Maui

Enclosed is a letter to Mr. Isaac Hall from the Maui Planning Department, addressing alleged Special Management Area (SMA) violations on the beach walkway for the above-mentioned property.

As stated in our letter, we need the following items in order to complete our investigation:

1. Evidence where the 1988 sidewalk still exists;
2. Copies of breakaway slab joint construction plans dated March 29, 1988;
3. As-built plans or a notarized affidavit that the sidewalk was constructed in accordance with plans dated March 29, 1988;
4. Notarized affidavit that the piers were removed from under the sidewalk. Also, please submit photographs and receipts of the pier removal as additional verification that these activities did take place.
5. Notarized affidavit that all exposed sidewalk materials were removed, in compliance with Condition No. 6 of the 1998 SMA Permit. Also, please submit photographs and receipts of the remnant removal as additional verification that these activities did take place.

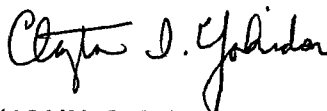
Mr. Charles Philips  
July 23, 1999  
Page 2

Since no inspections were made when these activities took place, we need this information to bring this matter to a close.

It is our understanding that you will be out of town until mid-August. We look forward to your continued cooperation upon your return.

Should you have any questions, please contact Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,

  
for JOHN E. MIN  
Planning Director

JEM:DMS:cmb

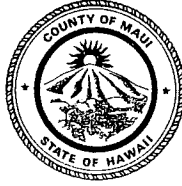
Enclosure

c: Clayton Yoshida, AICP, Deputy Director of Planning  
Aaron Shinmoto, Planning Program Administrator (2)  
Daren Suzuki, Staff Planner  
Charles Villalon, Zoning Inspector  
Project File  
General File  
S:\ALL\DAREN\WHALER.EN2

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

July 23, 1999

Isaac Davis Hall, Esq.  
2087 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Hall:

RE: Whaler Condominium, TMK: 4-4-8:2, Kaanapali, Maui

This letter is in response to your letter dated June 2, 1999, regarding alleged Special Management Area (SMA) violations on the beach walkway for the above-mentioned property.

Enforcement issues are reiterated and addressed as follows:

- a. The only type of construction approved in the 1993 SMA was for pavers. No proper amendment to this condition was ever sought or obtained.

Response: Upon further review of our records, the Whaler did request documentation from the Planning Department dated July 24, 1998, which supports the agreement to install break-away slab joint construction for the walkway repair permit issued in October 1993. Although this request for an amendment was after-the-fact, the Planning Department did acknowledge this agreement on August 4, 1998, which would modify the permit condition pertaining to the method of walkway construction. As such, there has been compliance with said permit and compliance with Section 12-202-17 relating to amendments of the SMA Rules. No enforcement action will be taken on this issue at this time.

- b. The construction which did take place in 1988 was not "breakaway slab joint."

Isaac Davis Hall, Esq.  
July 23, 1999  
Page 2

Response: As mentioned in our letter dated February 4, 1999, we have no record of an inspection being conducted after the project was complete, nor can we locate plans dated March 29, 1988. Therefore, prior to taking any enforcement action, we need the following: 1) evidence on where the 1988 sidewalk still exists; 2) copies of plans dated March 29, 1988; and 3) verification on how the walkway was constructed. We will request that the Whaler provide us this documentation.

- c. Piers were constructed underneath the sidewalk which were not permitted through any plans properly approved through an SMA permit. These piers were exposed in 1998.

Response: Piers were not approved as part of the SMA permit. However, the applicant has made representations that the piers were removed, therefore, the violation no longer exists. Prior to any enforcement action taking place, we will request the Whaler to submit applicable documentation that this activity did in fact take place.

- d. One condition of the 1998 SMA permit was that the older, undermined sidewalks which were then appearing were to be removed by the Whaler.

Response: Condition No. 6 of the 1998 SMA permit states that all sidewalk debris, including the fallen sidewalk from Hurricane Iniki that is exposed, shall be removed from the beach area. The applicant has made representations that all "exposed" portions of the sidewalk were jack hammered, and removed. Photographic documentation from the *Maui News*, dated June 25, 1998, also supports this claim. Since no inspection was done at that time, we will request the Whaler to submit applicable documentation that this activity did, in fact, take place prior to taking any enforcement action.

Although it was the intent of the Planning Department to have the Whaler remove the entire sidewalk structure (similar to the requirements of the Sheraton), upon further review of this condition, it is recognized that the wording of this condition is somewhat ambiguous. In other words, it could be taken that only the "exposed"

Isaac Davis Hall, Esq.  
July 23, 1999  
Page 3

portions had to be removed. Nonetheless, we do not feel that removing all buried sidewalk remnants is warranted nor feasible at this time. All failed sidewalks are now buried, the beach is nearly back to normal, and serious physical harm to beach users no longer exists. In addition, probing the beach system with heavy machinery at least five feet in depth to remove these remnants today, could pose additional environmental impacts on the beach system. It should be noted that we have been in communication with the Whaler on this issue and that any future erosion events which expose the sidewalk may be subject to such requirements in subsequent SMA approvals.

In conclusion, we will keep you apprised of our investigation on the alleged violations with the Whaler. Should you have any questions, please contact Daren Suzuki, Staff Planner, of this office at 270-7735.

Very truly yours,

  
for JOHN E. MIN  
Planning Director

JEM:DMS:cmb

c: Clayton Yoshida, AICP, Deputy Director of Planning  
Charles Philips, The Whaler  
Daren Suzuki, Staff Planner  
Project File  
General File  
S:\ALL\DAREN\WHALER.ENF

Dms

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-8017

FAX (808) 244-6775

June 2, 1999

'99 JUN -2 P3:41

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

OF COUNSEL:  
G. RICHARD GESCH

Via Facsimile and U.S. Mail  
243-7634

Mr. Darren Suzuki, Staff Planner  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

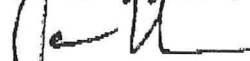
Re: Amendments to SMA Permits

Dear Darren Suzuki:

When I spoke with you by telephone, you indicated that the Planning Department would not allow the Whaler to undertake activities within the shoreline setback area without first applying for and receiving a special management area permit and a shoreline setback variance. This will restate my earlier request, in writing, to be notified of the filing of such an SMA/SSV application pursuant to HRS §205A-29(a). Mr. Fox and I want the opportunity to review this application and to submit our comments before any action is taken upon it. The Rules plainly state that a current certified shoreline survey must accompany the application. In addition, if the application is for "temporary" structures, only a short time can be given for any approval. An Environmental Assessment ("EA") is required for all uses of the shoreline setback area. See HRS 343-5(a)(3).

Please contact me at your earliest convenience to discuss the foregoing. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox



**ISAAC DAVIS HALL**

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-6017

FAX (808) 244-6775

June 2, 1999

OF COUNSEL:  
G. RICHARD GESCHVia Facsimile, Hand Delivery and U.S. Mail  
243-7634

Mr. Darren Suzuki, Staff Planner  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Amendments to SMA Permits

Dear Darren Suzuki:

This letter is written on behalf of Charles D. Fox who, with his wife, is an owner of an apartment at the Whaler at Kaanapali Beach. Mr. Fox is concerned with the preservation of our beaches, the proper uses of the shoreline setback area and the management of beachfront properties on the north and south portions of Kaanapali Beach. These same more general concerns are equally applicable to the Whaler.

In letters and discussions that we have had with you about the 1988, 1993 and 1998 SMA permits issued to the Whaler, it has been plain to all of us that various violations have occurred whereby (a) proper permits and amended permits have not been obtained, (b) the Whaler has not constructed its sidewalks in conformity with plans approved by the Planning Department through SMA permits and (c) permit conditions have been violated. We had assumed that upon your acknowledgment that all of these had occurred, appropriate enforcement actions would be taken. You have informed us, however, that no action will be taken on all of these violations unless and until a request for enforcement is submitted. Since you have made this a precondition of any investigation, please accept this letter as Mr. Fox's request for enforcement. We believe that through earlier correspondence we have already identified those issues or facts which require enforcement. We reiterate these below.

a. The only type of construction approved in the 1993 SMA was for pavers. No proper amendment to this condition was ever sought or obtained.

b. The construction which did take place in 1988 was not "breakaway slab joint."

c. Piers were constructed underneath the sidewalk which were not permitted through any plans properly approved through an SMA permit. These piers were exposed in 1998. Pictures of these piers are enclosed.

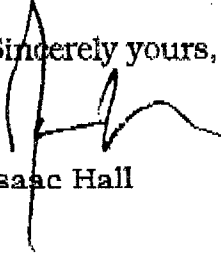
d. One condition of the 1998 SMA permit was that the older, undermined sidewalks which were then appearing were to be removed by the Whaler. We enclose pictures of the sidewalk remnants which were exposed.

Instead of removing these exposed portions of the sidewalk, employees of the Whaler were directed to bury them. This constitutes a serious, intentional violation of the terms of the 1998 SMA permit and could result in serious physical harm to those using the beach in front of the Whaler.

We have been informed that the Whaler wishes to "replenish" the beach with sand. One effect of this replenishment will be to make the buried sidewalk less accessible and more costly to remove. Before any "replenishment" is approved, the remnants of the undermined sidewalk should be removed.

Please contact me at your earliest convenience to discuss the foregoing. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox

4851

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

June 2, 1999

'99 JUN -4 P12:27

DEPT OF PLANNING  
COUNTY OF MAUI

OF COUNSEL:  
G. RICHARD GESCH

Via Facsimile and U.S. Mail  
243-7634

Mr. Darren Suzuki, Staff Planner  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

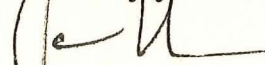
Re: Amendments to SMA Permits

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Please contact me at your earliest convenience to discuss the foregoing. I look forward to hearing from you.

Sincerely yours,



Isaac Hall

IH/jp

cc: Charles Fox

ISAAC DAVIS HALL

ATTORNEY AT LAW

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

OF COUNSEL:  
G. RICHARD GESCH

June 2, 1999

Via Facsimile, Hand Delivery and U.S. Mail  
243-7634

Mr. Darren Suzuki, Staff Planner  
Planning Department, County of Maui  
250 S. High St.  
Wailuku HI 96793

Re: Amendments to SMA Permits

Dear Darren Suzuki:

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In letters and discussions that we have had with you about the 1988, 1993 and 1998 SMA permits issued to the Whaler, it has been plain to all of us that various violations have occurred whereby (a) proper permits and amended permits have not been obtained, (b) the Whaler has not constructed its sidewalks in conformity with plans approved by the Planning Department through SMA permits and (c) permit conditions have been violated. We had assumed that upon your acknowledgment that all of these had occurred, appropriate enforcement actions would be taken. You have informed us, however, that no action will be taken on all of these violations unless and until a request for enforcement is submitted. Since you have made this a precondition of any investigation, please accept this letter as Mr. Fox's request for enforcement. We believe that through earlier correspondence we have already identified those issues or facts which require enforcement. We reiterate these below.

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c. Piers were constructed underneath the sidewalk which were not permitted through any plans properly approved through an SMA permit. These piers were exposed in 1998. Pictures of these piers are enclosed.

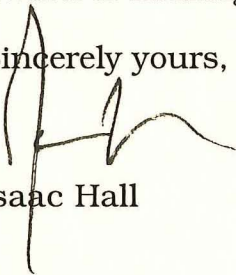
d. One condition of the 1998 SMA permit was that the older, undermined sidewalks which were then appearing were to be removed by the Whaler. We enclose pictures of the sidewalk remnants which were exposed.

Instead of removing these exposed portions of the sidewalk, employees of the Whaler were directed to bury them. This constitutes a serious, intentional violation of the terms of the 1998 SMA permit and could result in serious physical harm to those using the beach in front of the Whaler.

We have been informed that the Whaler wishes to "replenish" the beach with sand. One effect of this replenishment will be to make the buried sidewalk less accessible and more costly to remove. Before any "replenishment" is approved, the remnants of the undermined sidewalk should be removed.

Please contact me at your earliest convenience to discuss the foregoing. I look forward to hearing from you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Isaac Hall', with a stylized flourish extending to the right.

Isaac Hall

IH/jp

cc: Charles Fox

The Maui News 6/25/98







THE HAWAIIAN NEWS / MATTHEW THAYER PH

Workers from Shifting Sands Construction Co. used a jackhammer and steel rods to bust up a sidewalk in front of the Whaler Condominium that was undermined and collapsed onto Kaanapali Beach. Shifting Sands owner Dave Atkinson said the portion of side-

walk was first undermined during Hurricane Iniki and its removal part of the overall project his company is doing to help the Whaler improve its eroding beachfront.

# Surf endangers Whaler walk

## Official approves emergency sandbags after their placement

By TIMOTHY HURLEY  
Staff Writer

**KAANAPALI** — A few months after the Sheraton Maui installed a barrier to protect its property from high surf, a Kaanapali Beach neighbor, the Whaler Condominium, has moved to prevent beach erosion with the emergency installation of sandbags.

The Whaler installed the sandbags last week after rising ocean waves undercut a sidewalk and caused it to collapse. A crew was still removing the remains of the sidewalk on Wednesday.

County Planning Director Lisa Nuyea issued an after-the-fact minor special management area permit and shoreline setback approval Monday afternoon that will allow the placement of a temporary stairway over

the sandbags.

The stairway will allow beach visitors to climb over the sandbag structure.

"We're doing everything in accordance with the law to make conditions safe," said Chuck Phillips, the Whaler's director of engineering.

The state Department of Land and Natural Resources is expected to grant a right-of-entry onto the state beach for the stairway.

County spokesman Lloyd Yononaka said the minor SMA permit requires that the temporary structure be removed no later than Aug. 31. The permit also requires any sidewalk debris and vegetation to be removed within two weeks.

In addition, any backfill used in the project must be beach-quality sand, Yononaka said.

Phillips said the sidewalk is the only structure in jeopardy at the Whaler, which sits on Kaanapali Beach two properties south of the Sheraton Maui.

"We're hoping that nature brings the sand back," he said.

Meanwhile, at the Sheraton Maui, the beach sand has returned in great quantities.

"We're surprised and very happy," said Angela Kaufman, director of sales and marketing at the Sheraton Maui. "The beach is almost as big as it's ever been at this point."

Yononaka said there is no evidence to suggest any direct correlation between the beach erosion experiences of the two resorts, though officials will continue to monitor the situation.

After three failed attempts to block

erosion during high surf this winter the Sheraton Maui installed into locking steel sheet pilings in late May in front of its property.

Large waves plagued the hotel from the beginning of the year, causing the loss of more than 20 feet of property and claiming a sidewalk landscaping and some concrete planter boxes. The waves came close as 9 feet from the edge of million-dollar pool.

Robert Mullane, Maui County regional coastal processes extension agent, had predicted the impact would be temporary.

Kaanapali Beach is a self-contained cell that holds its sand well, said, adding that the sand migrates a southerly direction during the winter months and in a northerly direction in the summer.

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