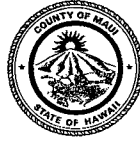


Council Chair  
Danny A. Mateo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch, Jr.  
G. Riki Hokama  
Michael P. Victorino  
Mike White



Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

February 9, 2012

Mr. Christopher Hart  
Chris Hart & Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (LU-25)**

By the enclosed correspondence dated August 5, 2011, you provided the Land Use Committee with an update on outstanding issues the Applicant has with the Department of Land and Natural Resources, and provided the requested right-of-entry permit dated May 20, 2011.

In the ensuing six months, the Committee has not received an update or any of the other requested information, notably the letter of authorization and the updated lease.

May I please request that you provide the Committee with a written response concerning the status of your obtaining the information requested, along with copies of any of the requested documents you may have since received. I look forward to receiving your response **by Friday, February 17, 2012**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Thank you for your attention to this matter. Should you have any questions, please contact me or the Committee staff (Kirstin Hamman at 270-7134 or Pauline Martins at 270-8039).

Sincerely,

A handwritten signature in cursive script that reads "Robert Carroll".

ROBERT CARROLL, Chair  
Land Use Committee

lu:ltr:025a03:knh

Enclosures

cc: Western Apartment Supply & Maintenance Co.  
Joseph Prutch, Planner, Department of Planning



**CHRIS  
HART**  
& PARTNERS, INC.

Landscape Architecture  
City & Regional Planning

August 5, 2011

RECEIVED

'11 AUG -5 P3:46

OFFICE OF THE  
COUNTY CLERK

Mr. Robert Carroll, Chairman  
Council Land Use Committee  
200 South High Street  
Wailuku, Maui, HI 96793

Dear Chairman Carroll, and Land Use Committee Members:

**Regarding:** Status of Settlement Agreement and Land Use Entitlement for the Maui Oceanfront Inn and Sarento's Restaurant (MOSR), located at 2980 South Kihei Road, Kihei, Maui, Hawaii; TMK Nos.: (2) 3-9-004:029 and 149. (EA 2006/0015) (CPA 2006/0005) (CP 2006/0012) (SM1 2006/0017) (SSV 2006/0004) (OSP 2006/0002)

I am pleased to respond to your request for a status update on the above referenced applications via letter dated July 20, 2011 (**See Attached:** "Letter from Council Land Use Committee Chair dated 2011-07-20").

Since our meeting with the County Council Land Use Committee on August 4, 2010, regarding the above referenced Settlement Agreement and Land Use Entitlement, the Applicant has been working on the issues identified by the previous Council Land Use Committee Chair. The Applicant's progress on these outstanding issues is described below:

**#1. Letter of Authorization:**

The Applicant has consulted with our Maui Department of Planning and sought input from Council Services to identify the requirements for the Letter of Authorization. Chris Hart & Partners (CH&P) then initiated communication with the State Department of Land and Natural Resources (DLNR) on the issue and provided a template Letter of Authorization to DLNR on October 19, 2010. The Applicant's representatives have continued to be in communication with the DLNR regarding the issue. The Maui Land Agent has stated that he is not opposed to issuing the letter, but to date, the Letter of Authorization has not been issued by DLNR. Therefore, the Applicant's legal representatives have proceeded to negotiate with senior DLNR staff on Oahu regarding a final resolution.

**#2. Area of Revocable Permit and Area of Parcel 149:**

The Applicant has requested a Conditional Use Permit for a portion of the parking lot Parcel No. 149. The Applicant proposes to use an area of 0.694 acres for the purpose of parking, consistent with the existing Revocable Permit for use of the parcel.

#2.a Area of Conditional Permit and area of Parcel 149:

The Applicant has been in negotiation with the State DLNR for some time. As proposed above, the Conditional Use Permit will not conflict with the area that is currently covered by a Revocable Permit because the size of the existing Revocable Permit is equal to the size of the requested Conditional Use Permit.

In the event that a lease for the use of the entire parcel is obtained, the Applicant will seek an amendment to any existing County permits, at that time.

#2.b. Status of Updated Lease for Parcel 149:

The Applicant has been in negotiation with the State DLNR, and is anticipating that an updated lease will be forthcoming.

#3. Status of Mitigation Measures:

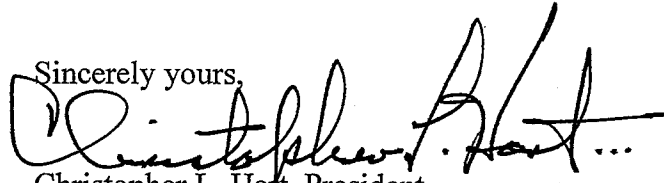
**Section 2.5.2:** The Applicant has received the Right of Entry Permit (ROE) for Naupaka trimming from DLNR (See Attached: "ROE Permit from DLNR dated May 20, 2011"). The document is in the process of being executed, at which time the work scope will be completed.

**Section 2.5.3:** The Applicant has posted and maintained beach reserve signage as referenced in the Settlement Agreement. On September 19, 2010 the Applicant's attorney requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for beach signage has been received from the Interested Parties.

**Section 2.5.4:** The Applicant has posted and maintained public parking signage as referenced in the Settlement Agreement. On September 19, 2010 the Applicant's attorney requested written comment from the Interested Parties, and has followed up via telephone. To date there is no written reply or documentation of an agreement or of any negative comment on the particular words used for parking signage has been received from the Interested Parties.

**Section 2.5.5:** The Applicant has completed portions of 2.5.3 & 4 of the Settlement Agreement and has initiated completion of all other mitigation measures. The Applicant has been granted the referenced variances, contingent on completion of the Settlement Agreement. The Applicant will continue to pursue the completion of all portions of the Settlement Agreement.

Thank you for your consideration. Please contact Jordan Hart at 270-1563 or Jhart@CHPMaui.com for further information.

Sincerely yours,  
  
Christopher L. Hart, President  
ASLA Landscape Architect & Planner

Enclosures (2):

- Letter from Council Land Use Committee Chair dated 2011-07-20
- ROE Permit from DLNR dated May 20, 2011

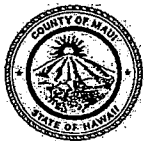
Cc:

Western Apartment Supply & Maintenance Co.  
Mr. Joseph Prutch, County of Maui, Department of Planning  
CH&P File (05-112)

Council Chair  
Danny A. Mafeo

Vice-Chair  
Joseph Pontanilla

Council Members  
Gladys C. Baisa  
Robert Carroll  
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Director of Council Services  
Ken Fukuoka

RECEIVED

JUL 27 2011

CHRIS HART & PARTNERS, INC.  
Landscape Architecture and Planning

*CC: Jordan*  
05/11/2

July 20, 2011

Mr. Christopher Hart  
Chris Hart & Partners, Inc.  
115 N. Market Street  
Wailuku, Hawaii 96793

Dear Mr. Hart:

**SUBJECT: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHIE) (LU-25)**

By the enclosed correspondence dated January 21, 2011, I requested information relating to the subject applications. Your enclosed response dated February 18, 2011, detailed the applicant's progress on outstanding issues with the Department of Land and Natural Resources, including the required letter of authorization, updated lease, and right-of-entry agreement.

In the ensuing five months, the Committee has not received an update or any of the requested information.

May I please request that you provide the Committee with a written response concerning the status of your obtaining the information requested, along with copies of any of the requested documents you may have since received. I look forward to receiving your response **by Friday, August 5, 2011**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. Christopher Hart  
Chris Hart & Partners, Inc.  
July 20, 2011  
Page 2

Thank you for your attention to this matter. Should you have any questions, please contact me or the Committee staff (Kirstin Hamman at 270-7134 or Pauline Martins at 270-8039).

Sincerely,

*Robert Carroll*  
ROBERT CARROLL, Chair  
Land Use Committee

lu:ltr:025a02:kmh

Enclosures

cc: Western Apartment Supply & Maintenance Co.  
Joseph Prutch, Planner, Department of Planning

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 20, 2011

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

GUY H. KAULUKUKUI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ref:GL S-4212

Mr. Thomas R. Cole  
P.O. Box 284  
Wailuku, HI 96793

Dear Mr. Cole:

**SUBJECT: Right-of-Entry Permit to Western Apartment Supply & Maintenance Company for Landscaping Purposes at Kamaole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:Portion of 001**

Thank you for your letter dated April 28, 2011 requesting on behalf of your client Western Apartment Supply & Maintenance Company, a right-of-entry permit to trim the naupaka from the area in front of the Maui Oceanfront Inn and restaurant so that the growth will not interfere with the beach users use of the beach area.

Pursuant to the authority granted by the Board of Land and Natural Resources at its meeting on September 28, 2001 (Item D-4), Western Apartment Supply & Maintenance Company (hereinafter referenced as WAS&MC), are hereby granted a right-of-entry onto State unencumbered land, known as Kamaole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:Portion of 001, that is further identified on the attached map labeled Exhibit "A", subject to the following terms and conditions:

1. This right-of-entry shall be effective upon the date of acceptance and shall be for a term of three (3) months, or the completion of the landscaping work, whichever is sooner.
2. WAS&MC shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii,

Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of WAS&MC. WAS&MC shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or non-renewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require WAS&MC to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks, which exist at the time a change in insurance is required. The Department shall notify WAS&MC in writing of changes in the insurance requirements and WAS&MC shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit WAS&MC's liability under this right-of-entry nor to release or relieve WAS&MC of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, WAS&MC shall be obligated for the full and total amount of any damage, injury, or loss caused by WAS&MC's negligence or neglect connected with this right-of-entry.

3. At all times herein, WAS&MC shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
4. WAS&MC shall be responsible for cleaning and restoring the area or premises to its original condition or a condition satisfactory to the Department of Land and Natural Resources upon completion of the work. All trash shall be removed from the area or premises.
5. WAS&MC shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. WAS&MC shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of WAS&MC relating to WAS&MC use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of WAS&MC to maintain the right-of-entry area or premises and areas adjacent thereto in WAS&MC use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of WAS&MC to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of WAS&MC non-observance or non-performance of any of the terms, covenants, and



conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. WAS&MC shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. WAS&MC shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of WAS&MC business, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by WAS&MC, then the WAS&MC shall be responsible for the cost thereof. In addition, WAS&MC shall execute affidavits, representations and the like from time to time at the Department's request concerning WAS&MC best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by WAS&MC.
8. WAS&MC agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while WAS&MC is/are in possession, or elsewhere if caused by WAS&MC. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

9. WAS&MC in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
10. All costs associated with the landscaping work within the right-of-entry area or premises shall be the sole responsibility of the WAS&MC.
11. WAS&MC shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from WAS&MC use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the

State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at WAS&MC own cost and expense.

12. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered WAS&MC shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
13. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
14. This right-of-entry is revocable and terminable at anytime for any reason in the sole and absolute discretion of the Chairperson.
15. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
16. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions, as it deems necessary while this right-of-entry is in force.

Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry where no entity involved intends to profit monetarily from its use. As your project meets this requirement, I hereby waive the rent. Should you have no objections to the above-mentioned items, kindly sign in the space provided below and submit the following to the Land Division:

1. Copy of signed concurrence; and
2. Copy of your liability insurance policy.

Should you have any questions, please call Daniel Ornellas at the Maui District Land Office at (808) 984-8103. Thank you.

Sincerely,



William J. Aila, Jr.  
Chairperson

ROE Western Apartment Supply  
& Maintenance Co.

5

ACCEPTED:

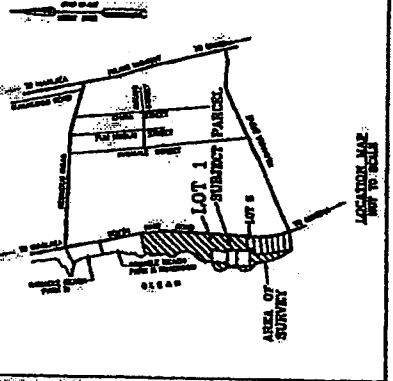
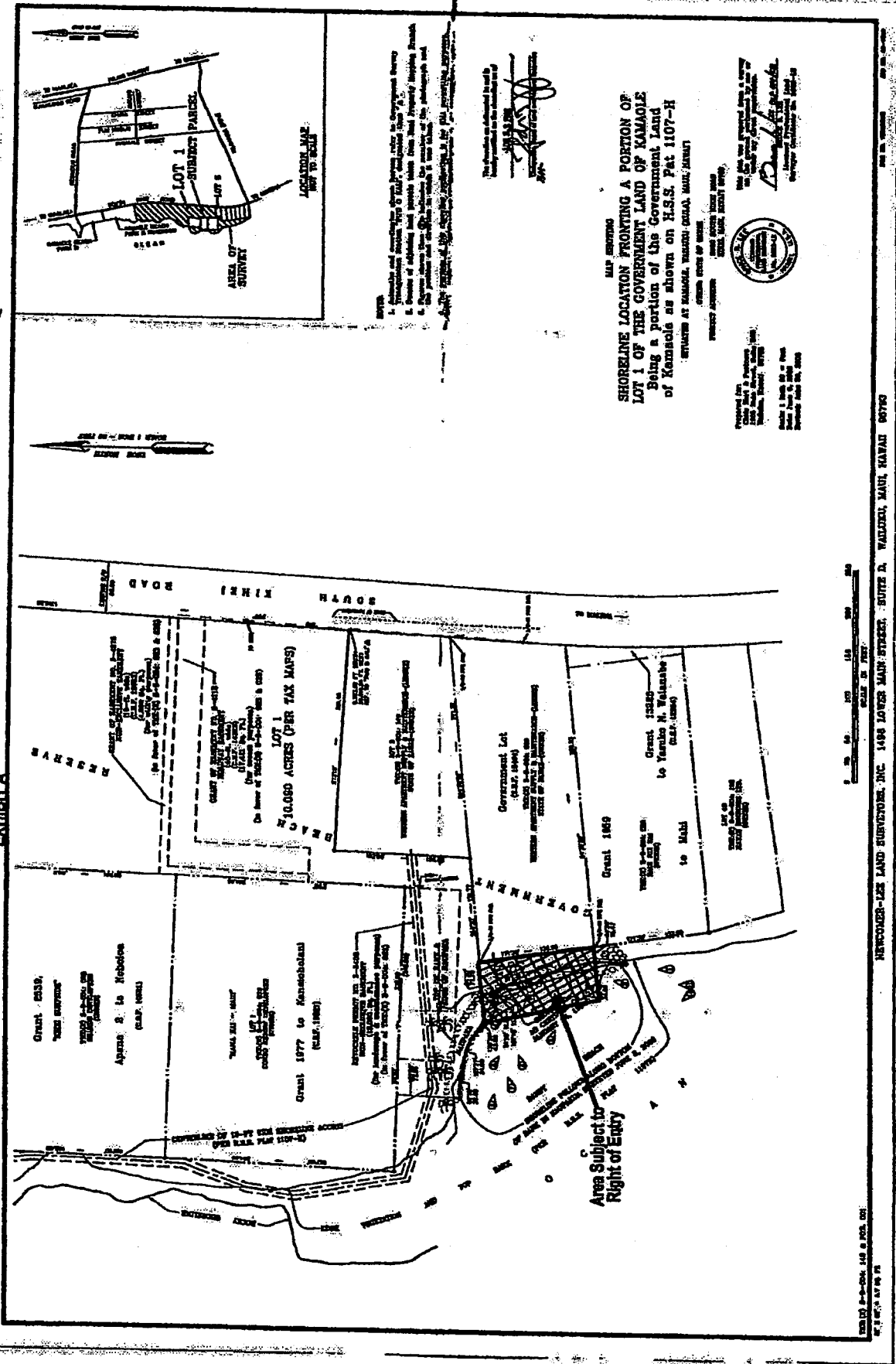
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Western Supply Apartment & Maintenance Company

Dated: \_\_\_\_\_, 2011

Cc: District Office  
OCCL  
DOCARE

EXHIBIT A



NOTES:  
 1. The location of the proposed easement is shown on the map.  
 2. The location of the proposed easement is shown on the map.  
 3. The location of the proposed easement is shown on the map.  
 4. The location of the proposed easement is shown on the map.

MAP SHOWING  
 SHORELINE LOCATION FRONTING A PORTION OF  
 LOT 1 OF THE GOVERNMENT LAND OF KAMAOLE  
 Being a portion of the Government Land  
 of Kamaole as shown on H.S.S. Pat 1107-H  
 situated at KAMAOLE, WAHAIKI, ISLAND, HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES  
 HAWAII

APPROVED FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES  
 BY: [Signature]  
 TITLE: [Title]

APPROVED FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES  
 BY: [Signature]  
 TITLE: [Title]

SCALE OF FEET  
 0 25 50 75 100

HENNINGER-LEE LAND SURVEYING, INC. 1408 LOWER MAIN STREET, SUITE A, WAHAIKI, MAUI, HAWAII 96790

Wetland boundary	12
Wetland boundary	11
Wetland boundary	10