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ATTORNEYS AT LAW

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August 16, 2022

OFFICE OF THE
COUNTY CLERK

Alice L. Lee, Council Chair
County of Maui
Kalana O Maui Building
200 South High St., 8th Floor
Wailuku, Hawaii 96793

Re: Request for Council Action with respect to
Kahana Bay Erosion Mitigation Project

Dear Chair Lee:

On behalf of the Kahana Bay Steering Committee, I am resubmitting the Committee's request for Council action with respect to the proposed Kahana Bay Erosion Mitigation Project. We support the Committee's request and respectfully request that it be given appropriate consideration by the County Council.

Thank you for your consideration of this matter.

Very truly yours,

Brian T. Hirai

Cc: Kathy Kaohu, County Clerk
James G. Kreuger, Deputy County Clerk



BRIAN T. HIRAI
ATTORNEY

McCORRISTON MILLER MUKAI MACKINNON LLP

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March 21, 2022

Alice L. Lee, Council Chair
and Members of the County Council
County of Maui
Kalana O Maui Building, 8th floor
200 S. High St.
Wailuku, Hawaii 96793

RE: Request for Council Action with respect to
Kahana Bay Erosion Mitigation Project

Dear Chair Lee and Councilmembers:

We are serving as special counsel to the Kahana Bay Steering Committee with respect to the proposed Kahana Bay Erosion Mitigation Project. On behalf to the Committee, I am transmitting for consideration a letter from the Committee requesting Council action with respect to the Project, which we have approved as to form and content. We support the Committee's request.

Very truly yours,

BRIAN T. HIRAI

KAHANA BAY STEERING COMMITTEE

10 Hoohui Road, Suite 201
Lahaina, Hawaii 96761

March 4, 2022

Alice L. Lee, Council Chair
and Members of the County Council
County of Maui
Kalana O Maui Building, 8th floor
200 S. High St.
Wailuku, Hawaii 96793

RE: Request for Council Action with respect to
Kahana Bay Erosion Mitigation Project

Dear Chair Lee and Councilmembers:

On behalf of its constituent members, the Kahana Bay Steering Committee ("KBSC") respectfully requests that the County Council institute proceedings for the establishment of a Community Facilities District (the "District") to finance the costs of constructing the proposed Kahana Bay Erosion Mitigation Project (the "Project") pursuant to Chapter 3.75 of the Maui County Code. A boundary and parcel map of the proposed District is attached as Attachment A hereto.v

The taxable properties proposed to be included in the District consist of one individually-owned kuleana parcel and 961 units located in nine condominium properties. The members of KBSC, which are the condominium associations representing all nine condominium properties, unanimously support the Project and the financing of Project costs through the establishment of the District and the levy of special taxes (the "Special Taxes") on taxable properties in the District under Chapter 3.75. In December 2019, Mayor Victorino requested formal Resolutions from each of the boards of the KBSC members. See Attachment B for a copy of the Resolution adopted by each board, including a summary record of the votes on the Resolution by each board. The KBSC members' support for the Project is hereby reaffirmed. In addition, KBSC has consulted with the individual owner of the kuleana parcel proposed to be included in the District, and this individual has expressed his support for the Project by signing the statement of support below.

KBSC, on the recommendation of and upon consultation with the County, retained Oceanit to begin the preparation of an Environmental Impact Statement (EIS) to address the continuing shoreline erosion problem at Kahana Bay that is a major concern to area residents, businesses and visitors alike. The preferred alternative in the draft EIS is that beach restoration be undertaken, including the use of rock T-head groins, revegetation and the importation of beach sand from offshore sand fields. The useful life of the Project is expected to exceed 40 years. Past experience has demonstrated that short-term solutions and piecemeal efforts to deal with the problem have not had the desired effects. We believe that the Project represents the kind of long term, sustainable solution that is required to address the problem effectively.

KBSC is requesting that the County form the District to provide a means to obtain the financing for the Project. The Project cost is expected to be up to \$40 million, including

completion of the EIS. KBSC has investigated other means of financing and believes that the establishment of the District is not only the best, but also the only viable, means of financing the costs of the Project. We understand and are fully prepared to accept our financial responsibilities with respect to the District and the financing of the Project costs, including the following:

- We understand that the County will incur certain costs in connection with the establishment of the District and the financing of the Project, including the costs of retaining its bond counsel, special tax consultant, financial advisor and property appraiser. KBSC members have authorized the making of an initial deposit of \$75,000 with the County for its use in defraying such costs under an agreement with the County that requires KBSC members to replenish the deposit from time to time as needed to assure the availability of sufficient funds to cover such costs pursuant to a Deposit Agreement to be executed with the County. The County would have the right to terminate the proceedings should we fail to replenish the deposit on a timely basis.
- We understand that the County does not want to be responsible for or to manage the design, construction, and completion of the Project. Therefore, KBSC will, upon formation of the District, enter into an agreement with an independent contractor to undertake the work needed to complete the Project. The County will be requested to accept the Project as County property only upon its completion and satisfactory inspection by the County.
- It is anticipated that the costs of the Project will be financed through the issuance of special tax revenue bonds (the "District Bonds"). The District Bonds will be secured solely by the Special Taxes to be levied on properties in the District. We understand and agree that there will be no recourse to the County's real property tax collections or any other County funds in the event of any deficiencies in Special Tax collections. KBSC also supports a bond debt service reserve fund to additionally secure the District Bonds and cover any future property owner delinquencies.
- We also understand that the County will incur ongoing administrative expenses with respect to the District over the life of the District Bonds, including the fees and expenses of a third-party administrator or consultant with respect to the Special Tax levies, fees and expenses of the trustee bank for the District Bonds, collection and foreclosure expenses with respect to delinquent Special Taxes, and expenses relating to compliance with continuing disclosure and arbitrage rebate requirements for the District Bonds. The annual levy of Special Taxes will include amounts needed to cover such administrative expenses as well as debt service on the District Bonds.
- Additionally, concerns about long term maintenance have been raised. KBSC proposes to enter into a long term maintenance agreement with the County and agrees to fund a maintenance reserve to address maintenance needs. Future replenishment of beach sand, if needed, can be covered by the District as can capital repairs so our understanding is that actual maintenance are expected to be low.

Alice L. Lee, Council Chair
Members of the County Council
March 4, 2022
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The Maui County Code authorizes the Council to initiate proceedings to establish a community facilities district either (i) on its own initiative under Section 3.75.100(a), or (ii) upon petition signed by the owners of at least 25% of the land in the proposed district under Section 3.75.100(b). Due to the number of condominium units proposed to be included in the District, the process of obtaining the required signatures for a petition would necessarily be both costly and time consuming. In view of the urgent need to address the ongoing shoreline erosion problem, we are requesting that the Council initiate the necessary proceedings on its own initiative in order to avoid unnecessary costs and delays.

We sincerely hope that the County Council will join us in support of the Project and the District. We respectfully request that the County Council accept this letter of request, agree to allow KBSC to make the initial deposit to cover costs as discussed above and institute proceedings for the establishment of the District on its own initiative as authorized under Section 3.75.100(a) of the Maui County Code.

Thank you for your consideration of our request. If you have any questions, please contact me via e-mail at sterlinghonea@gmail.com. If you have any scientific or engineering questions, please contact Dr. Michael Foley at Oceanit via e-mail at mfoley@oceanit.com.

Very truly yours,

Kahana Bay Steering Committee, on behalf of its members:

Association of Apartment Owners of Kahana Bay Beach
Resort Condominium

Association of Apartment Owners of Valley Isle Resort

Association of Apartment Owners of Royal Kahana

Association of Apartment Owners of Hololani

The Association of Apartment Owners of Pohailani Maui

Association of Apartment Owners of Kahana Reef

Association of Apartment Owners of Kahana Outrigger

Association of Apartment Owners of Kahana Village

Association of Apartment Owners of Sands of Kahana

By:


Sterling Honea, Chair

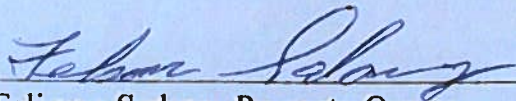
Kuleana Parcel Owner's Statement of Support

As owner of the kuleana parcel referred to in the foregoing letter of request, I support the Project and the establishment of the proposed District to obtain financing for the Project as described in the letter of request.

I'm signing this document with reservations and in support of a managed retreat plan.

How much do I have to pay and why do I have to pay?

Thank you!

A handwritten signature in dark ink, appearing to read 'Felimon Sadang', is written over a horizontal line.

Felimon Sadang, Property Owner

Date: March 18, 2022

Attachment A

Proposed Community Facilities District



Courtesy of Kahana Bay Steering Committee and Deanit

Attachment B

RESOLUTION REQUESTING THE FORMATION OF A COMMUNITY FACILITIES DISTRICT TO FINANCE BEACH RESTORATION IN KAHANA BAY

WHEREAS, the properties and structures on Kahana Bay in West Maui have been threatened and negatively impacted by the long-term trend of coastal erosion and beach loss; and

WHEREAS, seawalls and other shoreline armoring aggravate erosion along the West Maui coastline, have the potential to damage coastal ecosystems and increase erosion along other areas of the coast; and

WHEREAS, certain property owners in Kahana Bay including Kahana Village, Kahana Outrigger, Kahana Reef, Pohailani, Hololani, Royal Kahana, Valley Isle Resort, Sands at Kahana, Kahana Beach Resort and one residential property, formed and funded the Kahana Bay Steering Committee (KBSC) in 2018 to develop a sustainable and resilient solution to mitigate the chronic and seasonal erosion along the Kahana Bay shoreline; and

WHEREAS, the KBSC is committed, in partnership with the Maui community, the County of Maui and the State of Hawaii, to explore, develop, and establish a cost-effective, regional erosion mitigation solution for Kahana Bay that will minimize impacts to the sensitive coastal environment and restore, stabilize, and preserve the sandy beach and offshore resources for long term community wide recreational and cultural uses, including surfing, fishing, and gathering; and

WHEREAS, KBSC has work in cooperation with the County of Maui Department of Planning since 2018 and retained and funded at significant expense the environmental engineer firm OCEANIT to prepare a Draft Environmental Impact Statement (DEIS) to explore beach restoration alternatives; and

WHEREAS, The Environmental Impact Statement Preparation Notice (EISPN) was published by Office of Environmental Quality Control (OEQC) on July 23, 2019. The DEIS is currently in the final stage of preparation; and

WHEREAS, the estimated cost of the beach restoration project may cost as much as \$40 million, including up to \$30 million in initial design and construction costs for the initial beach nourishment and groins structure and up to \$10 million in future capital costs for future beach nourishment, if needed, and maintenance; and

WHEREAS, the County of Maui is considering forming a Community Facilities District to provide long term financing for the beach nourishment and groins improvement project but has not agreed to be responsible for the project design, management and construction or the long term maintenance of the improvements thereof and,

WHEREAS, the nine homeowner associations represented by the KBSC do not have the organizational capacity, financial resources, or expertise to manage and fund a beach restoration project of the likely scope and complexity under consideration; and

WHEREAS, the County of Maui adopted Ordinance 4947 on December 24, 2018 allowing for the formation of Community Facilities Districts to fund among other things, public infrastructure including shoreline restoration and beach nourishment projects; and,

WHEREAS, each of the nine homeowner association Board of Directors have discussed the proposed CFD project and as Boards of Directors; now, therefore

BE IT RESOLVED:

1. The County of Maui is hereby requested to assist the KBSC and its property owner association members in the design, permitting, construction and financing of the beach nourishment and beach groins improvement project by formation of a Community Facilities District, acceptance of the project as a public project upon completion and agree to enter into a development agreement or public private partnership with KBSC and a third party project manager and financial partner to complete the project ; and
2. KBSC and its property owner association boards of directors support a County formed Community Facilities District including the levy of annual special parcel taxes on each residential unit for up to 30 years in amounts sufficient for the repayment of up to \$40 million in bonded debt for project design, project management, financing and construction including County annual bond administrative costs.
3. KBSC and its property owner association boards of directors support special annual HOA levies and reserves for on-going maintenance for the beach nourishment and groin improvement project.

KBSC Member	Number of Units	Board of Directors Vote in Support
<i>Kahana Village</i>	42	4-1
<i>Kahana Outrigger</i>	16	5-0
<i>Kahana Reef,</i>	88	8-0
<i>Polhailani,</i>	114	5-0
<i>Hololani,</i>	65	6-0 (1 abstain)
<i>Royal Kahana,</i>	236	7-0 (1 absent)
<i>Valley Isle Resort,</i>	120	7-0
<i>Sands at Kahana,</i>	196	unanimous
<i>Kahana Beach Resort</i>	84	5-0
TOTAL	961	

Expected Scope of the Project

