

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

January 25, 2008

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

PSF No.:08Md-008

MAUI

Authorize a One-Year Holdover for Grant of Easement No. S-5182, Lahaina Yacht Club and Grant of Term, Non-Exclusive Easement to Lahaina Yacht Club for Maintenance and Repair of Existing Concrete Pillars and Improvements Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-1:seaward of 5.

APPLICANT:

Lahaina Yacht Club, a non-profit, whose business and mailing address is 835 Front Street, Lahaina, Hawaii 96761.

LEGAL REFERENCE:

Sections 171-40, 53(c) and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of 5, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-1, as shown on the attached map labeled Exhibit A.

AREA:

1,258 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Maui CZO: Urban/Historic District II

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Grant of Easement No. S-5182, Lahaina Yacht Club, Grantee, for right, privilege, and authority to maintain and repair existing concrete pillars and improvements constructed thereon, including the roof proposed for construction over the clubhouse wooden deck purposes. Lease to expire on February 11, 2008.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing concrete pillars and improvements over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Sixty-five (65) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

The Land Board at its meeting held on September 25, 1987 (H-5) approved a conservation district use application for after-the-fact clubhouse deck and proposed roof constructed over submerged State lands (MA-5/1/87-1997).

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment.

BACKGROUND:

The original decks makai of Lahaina Front Street were constructed in the 1920s. Sometime in 1966 or 1967 when Lahaina Yacht Club acquired the Front Street property (tmk: 4-5-1:5), the building was restored, and the open deck and some of the piers were replaced. In 1982 or 1983, Lahaina Yacht Club replaced some piers.

In 1987, Lahaina Yacht Club filed a conservation district use application with the Department to bring the existing deck into conformance with the law.

On September 25, 1987, under agenda item H-5, the Board of Land and Natural Resources (Board) granted an after-the-fact conservation district use permit for the clubhouse deck and proposed roof construction over state submerged lands. The Board assessed Lahaina Yacht Club a \$1,000 fine for unauthorized use and occupancy of State submerged lands. The fine was paid in October 1987.

On February 12, 1988, under agenda item F-7, the Board approved the direct issuance of a term, non-exclusive easement to Lahaina Yacht Club for the maintenance and repair of existing concrete pillars and for the use and maintenance of the roof construction over the clubhouse wood deck subject to certain terms and conditions.

On August 2, 1989, the Department issued Grant of Easement No. S-5182 to Lahaina Yacht Club for a term of twenty (20) years, commencing February 12, 1988 and expiring on February 11, 2008. The annual rent for the first ten (10) years was \$3,000 and for the remaining ten (10) years was/is \$5,661.

REMARKS:

The Office of Conservation and Coastal Lands has no objections. There will be no change in the use of State submerged lands.

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

Staff is requesting the Land Board's favorable consideration, authorizing a one-year holdover. Our Maui staff did not process a new disposition in a timely manner, therefore, staff is now trying to obtain Governor's approval and concurrent resolutions to allow for the issuance of a non-exclusive easement for the continued use of State submerged lands as required under Section 171-53, HRS. Without this one-year holdover, Lahaina Yacht Club will be without a land disposition on February 12, 2008. Maybe subject to fines by

the Department for unauthorized use of State submerged lands. Maybe required to comply with Chapter 343 laws all over again. In the worst possible situation, maybe forced to remove the pillars and improvements.

Staff estimates the commencement date for the new term, non-exclusive easement will be February 12, 2009 or sooner.

RECOMMENDATION: That the Board:

1. Authorize a one-year holdover for Grant of Easement No. S-5182, Lahaina Yacht Club, subject to the following:
 - A. Comply with all terms and conditions of Grant of Easement No. S-5182 during this one-year holdover period.
 - B. Rent shall be \$5,661 per year.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-5-1:5, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Lahaina Yacht Club covering the subject area for maintenance and repair of existing concrete pillars and improvements purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-5-1:5 provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the

Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

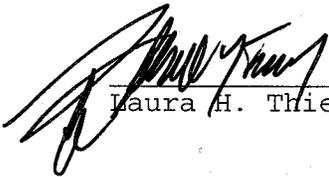
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



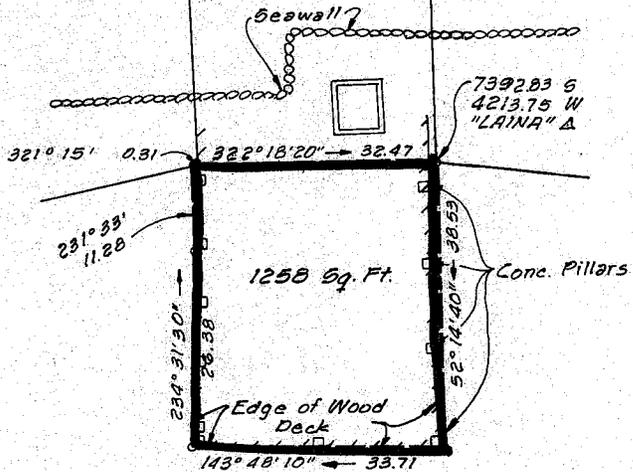
Laura H. Thielen, Chairperson



TRUE NORTH
Scale: 1 inch = 20 feet

To Kaanapali ← FRONT STREET → To Wailuku

R. P. 1703, L. C. AW. 2762
Ap. 3 to Nawaakoa



S E A

**NON-EXCLUSIVE EASEMENT FOR
MAINTENANCE OF WOODEN DECK AND CONCRETE PILLARS**
Situatē in the offshore waters of Lapaakea
Lapaakea, Lahaina, Maui, Hawaii
Scale: 1 inch = 20 feet

EXHIBIT "A"

JOB Ma-56(BB)
C. BK 12, Masuda

TAX MAP 4-5-01

C. S. F. No. 20771

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

W.R. Jr. June 6, 1988

