

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

January 8, 2010

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

MAUI

Consent to Mortgage with Estoppel Certificate, Lease of Non-Exclusive Easement
S-5252, Meri-Jo Abrams Manuel, as Successor Trustee of the Lakala Trust, Lessee,
Lahaina, Maui, Tax Map Key: (2) 4-5-1:seaward of 55.

APPLICANT AND REQUEST:

Meri-Jo Abrams Manuel, as Successor Trustee of the Lakala Trust, requesting consent to mortgage from American Savings Bank, F.S.B., Mortgagee, in an amount not to exceed \$2,375,000.00.

LEGAL REFERENCE:

Section 171-22, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of government submerged land situated at Lapaakea, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-1:seaward of 55, as shown on the attached map labeled Exhibit A.

AREA:

1,310 square feet, more or less.

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

CHARACTER OF USE:

Right, privilege, and authority to maintain and repair the existing concrete piers and to use, repair, maintain and renovate the wooden decks covering said concrete piers.

TERM OF EASEMENT:

Easement to expire on May 24, 2012. Last rental reopening occurred on May 25, 2002. Rent is currently \$13,703 per annum.

ANNUAL RENTAL:

\$13,703.

USE OF LOAN PROCEEDS:

Loan proceeds will be used to refinance existing mortgage with American Savings Bank, F.S.B., funding the acquisition of a new 65 year nonexclusive easement from the State and miscellaneous anticipated future expenses.

BACKGROUND:

The Land Board at its meeting of January 26, 1990, under agenda Item H-5, approved an after-the-fact conservation district use permit for a deck extension over submerged lands. The Applicant (Hanson Art Galleries) was seeking approval for the existing structure consisting of a two-story extended deck. The deck is part of the Applicant's retail art establishment and encroaches on State submerged lands. A \$1,000 fine was assessed for violation of Chapters 171-6 and 183-41, HRS.

The Land Board at its meeting of May 11, 1990, under agenda Item F-6, approved staff's recommendation to authorize the direct sale of a 20 year, term, non-exclusive easement to Hanson Galleries, Inc. for maintenance and repair of existing concrete piers and for the use, repair, maintenance and renovation of the wooden deck. The open deck portions and the supporting concrete piers were initially constructed probably in the 1920's. However, there are no records on file indicating that approval was given either by the County of Maui or the Territory of Hawaii for construction of these improvements.

Subsequently, the Land Board at its meeting of January 22, 1993, under agenda Item F-4, staff recommended an amendment of the Board's prior approval to change the name of the Applicant from Hanson Galleries, Inc. to Elizabeth D. Wilson, as Trustee of the Lakala Trust. Lease of Non-Exclusive Easement S-5252 commended on May 25, 1992. The rent for the first 10 years was \$5,160 per annum.

The Land Board at its meeting of May 23, 2003, under agenda Item D-8, approved and amended staff's recommendation to change the easement area from 1,147 square feet to 1,310 square and amend the rent based on additional area. The Board deleted the imposition of a \$500 fine. During the refinancing of an existing loan, a field survey revealed that the existing two-story deck extended six feet beyond the easement area. A review of the Department files indicate the deck renovation plans were approved by the Conservation District planners on December 10, 1998. These plans appear to be consistent with the existing easement and do not highlight any extension beyond the easement area. The Applicant claims that removal of the encroachment (approximately 163 square feet) would be structurally, functionally, and legally problematic. Leases were entered into with retail and restaurant operators based on the existing improvements. Therefore, Applicant requested the easement be amended to rectify the problem. The amendment document was executed on April 16, 2004. The annual rent was revised to \$13,703.

The Land Board at its meeting of August 28, 2009, under agenda Item D-15, authorized the mutual cancellation of Lease of Non-Exclusive Easement S-5252 and the issuance of a new, sixty-five (65) year, term easement to Meri-Jo Abrams Manuel. Briefly, on July 8, 2009, Mr. Thomas Cole, attorney for Lakala Trust requested the mutual cancellation of Lease of Non-Exclusive Easement S-5252 and the re-issuance of a new term, non-exclusive easement. The Trust is considering financing the property and a long-term easement is needed.

Staff has not issued the new easement. Still pending is the appraisal report and Legislature concurrent resolution.

REMARKS:

The Lessee is in compliance with all lease terms and conditions. Rent is paid up to May 24, 2010. Liability insurance expires on July 24, 2010. Bond is not a requirement. In the past two (2) years, no Notice of Default letters were issued.

There is no outstanding rental reopening issues.

No agency or community comments were solicited, as there will be no change in disposition or use of the land.

RECOMMENDATION: That the Board:

- A. Consent to the mortgage between Meri-Jo Abrams Manuel, as Successor Trustee of the Lakala Trust, Mortgagor, and American Savings Bank, F.S.B., Mortgagee, subject to the following:

1. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department;
 2. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the execution of an Estoppel Certificate subject to the following:
1. Review and approval by the Department of the Attorney General; and
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



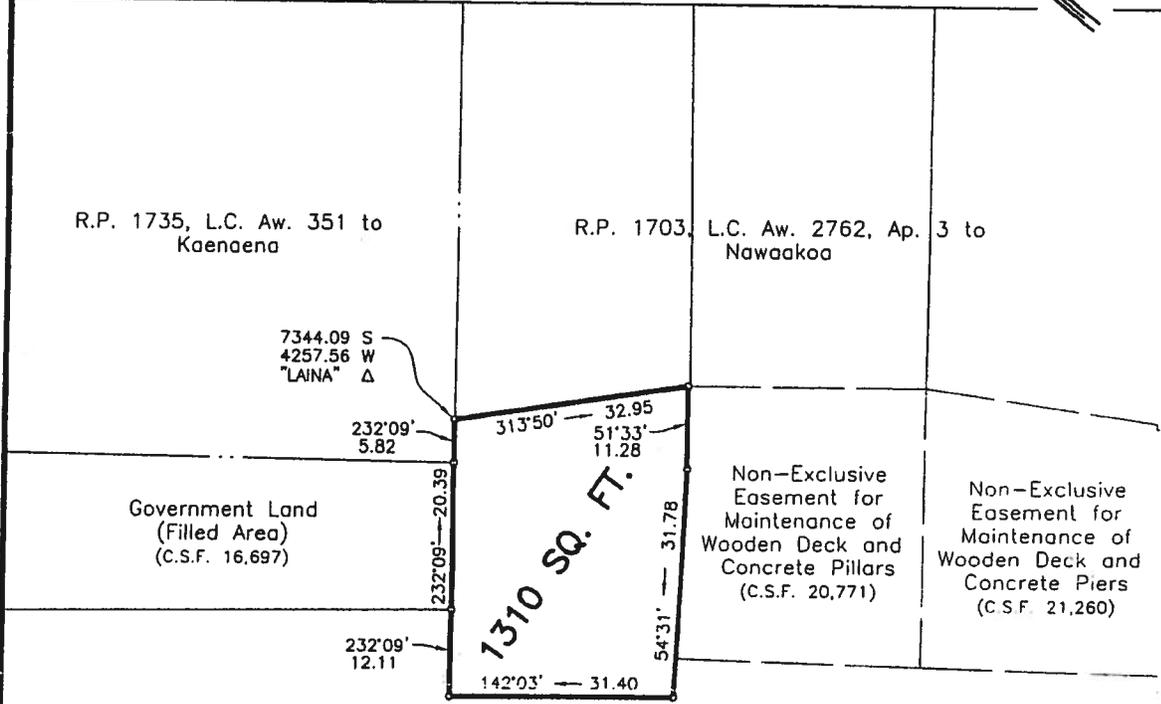
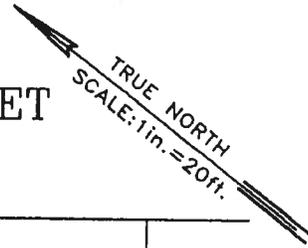
Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

FRONT STREET



S E A



(REVISED - AUGUST 2003)

PORTION OF THE UNDERWATER AREA FRONTING
R.P. 1703, L.C. AWARD 2762, APANA 3 TO NAWAAKOA

Lapaakea, Lahaina, Maui, Hawaii

JOB Ma-143(03)
C. BK.

Scale: 1 inch = 20 feet REDUCED NOT TO SCALE

TAX MAP. 4-5-01

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C.S.F. NO. 23,597

STATE OF HAWAII

JGL August 4, 2003

EXHIBIT A

Thomas R. Cole

Attorney at Law

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Waituku, Maui, Hawaii 96793
Phone: (808) 242-6854
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E-Mail: tcolelaw@maui.net

December 21 2009

Via Email: Charlene.E.Unoki@hawaii.gov

And US Mail

Charlene Unoki
Department of Land & Natural Resources
Land Division
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Honolulu, HI 96813

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LAND DIVISION
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DEPT. OF LAND &
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STATE OF HAWAII

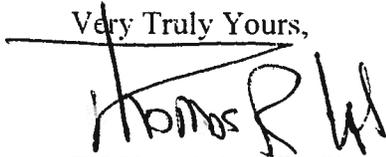
Re: Lakala Trust Non Exclusive Easement S-5252; TMK (2) 4-5-001-055; 839 Front Street, Lahaina, Maui, Hawaii

Dear Charlene:

Enclosed is the Lessor's Estoppel Certificate requested by American Savings Bank. The bank is the current mortgage holder on the property and is refinancing the current outstanding loan. American Savings Bank has requested the Board's consent to the mortgage and approval of the Estoppel Certificate. I have drafted a proposed consent although I recognize that the Attorney General's may modify it however hopefully will speed things along. In addition, I am enclosing a copy of the mortgage for your information. Please process these requests at your convenience.

I appreciate your assistance in this matter. If you have any questions, do not hesitate to give me a call. Merry Christmas.

Very Truly Yours,



THOMAS R. COLE
Attorney at Law

TRC/mb

Encl: Lessor's Estoppel Certificate
Consent to Mortgage
Mortgage
cc: Lakala Trust w/o enc!

EXHIBIT "B"

Street Address – 233A S. Market Street, Wailuku, Maui, Hawai'i 96793