

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

September 9, 2010

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

PSF No.: 08MD-090

Maui

Grant of Term, Non-Exclusive Easement to Koolau Properties, LLC for Seawall Purposes,
Spreckelsville Beach Lots, Wailuku, Maui, Seaward of Tax Map Key: (2) 3-8-002:051.

APPLICANT:

Koolau Properties, LLC, a limited liability corporation.

LEGAL REFERENCE:

Section 171-13, 53(b), 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Spreckelsville Beach Lots, Wailuku, Maui,
Tax Map Key: (2) 3-8-002:051, as shown on the attached map labeled Exhibit A.

AREA:

2,030 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to Hawaii State Constitution: YES ___ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall 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:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject property is considered exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 4, which states: "Minor alterations in the conditions of land, water or vegetation."

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 initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The encroachment in question includes a large seawall located seaward of recorded private property boundaries. The total area of encroachment is estimated to be 2,030 square feet.

DLNR Office of Conservation and Coastal Lands (OCCL) staff was unable to locate any construction permits or other land use authorizations for the subject improvements. The applicant has stated that improvements were constructed in 1924. This statement was substantiated with a signed affidavit by Doris Voss (deceased) which explained the history of the area and when the seawall was constructed with the approval of the Kahului Harbormaster. OCCL staff reviewed the letter and found it credible. OCCL staff has also downloaded an aerial photograph from 1960 that provides further evidence of the pre-existence of the wall.

The abutting property contains four (4) residential buildings. All surrounding properties are developed residential properties. Public access is available to the shoreline at Sugar Cove; eighty (80) feet to the west.

It is the opinion of the OCCL that the removal of the encroachment would not have a beneficial impact on beach resources and processes. Furthermore, OCCL states that removal would result in erosion of the bank and cause possible loss of one structure.

Please note that the proposed action was circulated for comments to OCCL, the State DLNR Aquatic Resources Division, The County of Maui Planning Department, the United States Army Corps of Engineers and the State Office of Hawaiian Affairs. Other than the input received from OCCL that is noted above, no other comments were received.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

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.

RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. 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) 3-8-002:051, 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.

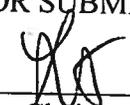
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Koolau Properties, LLC covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated 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) 3-8-002:051, 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,



 Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

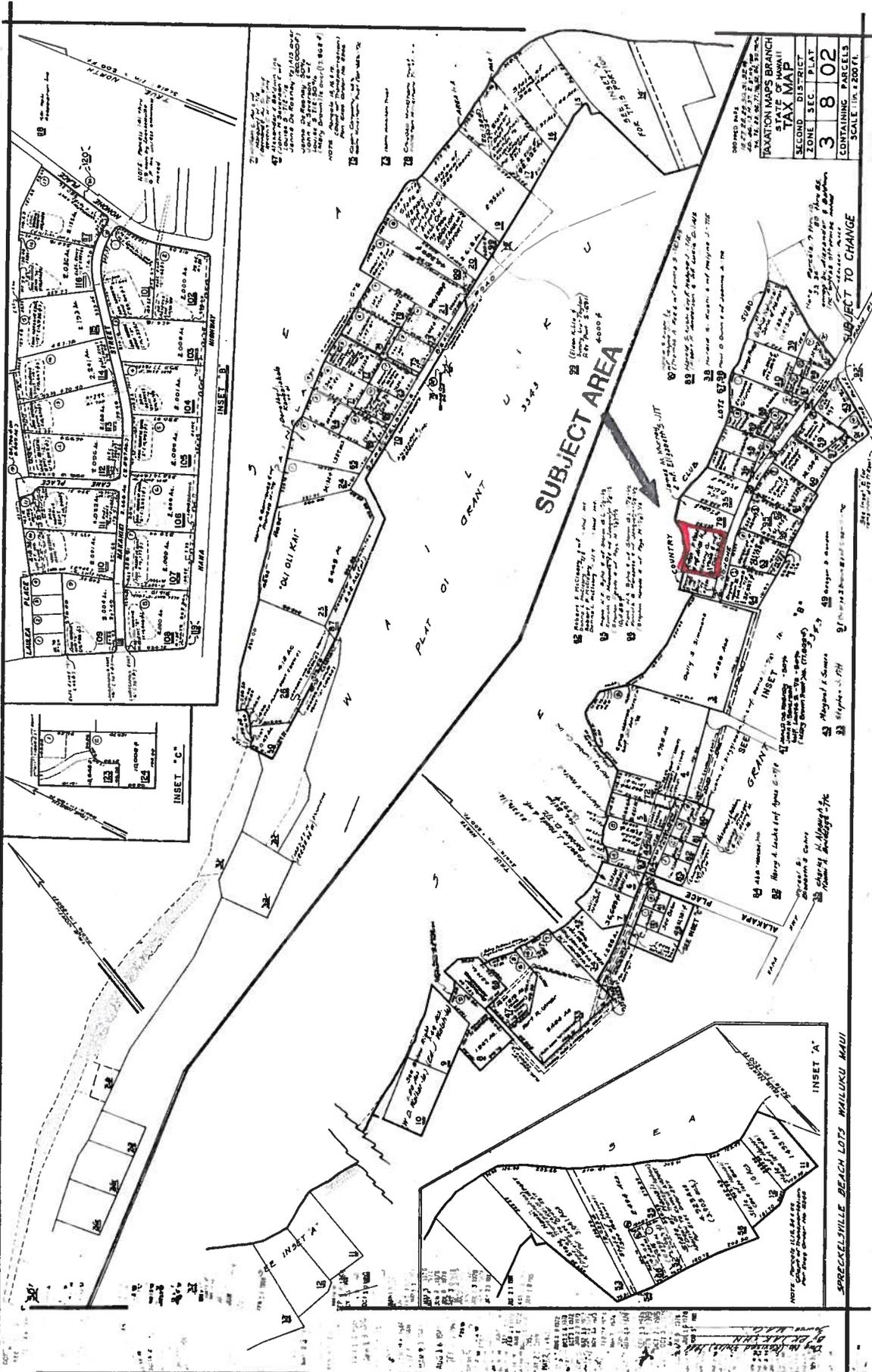
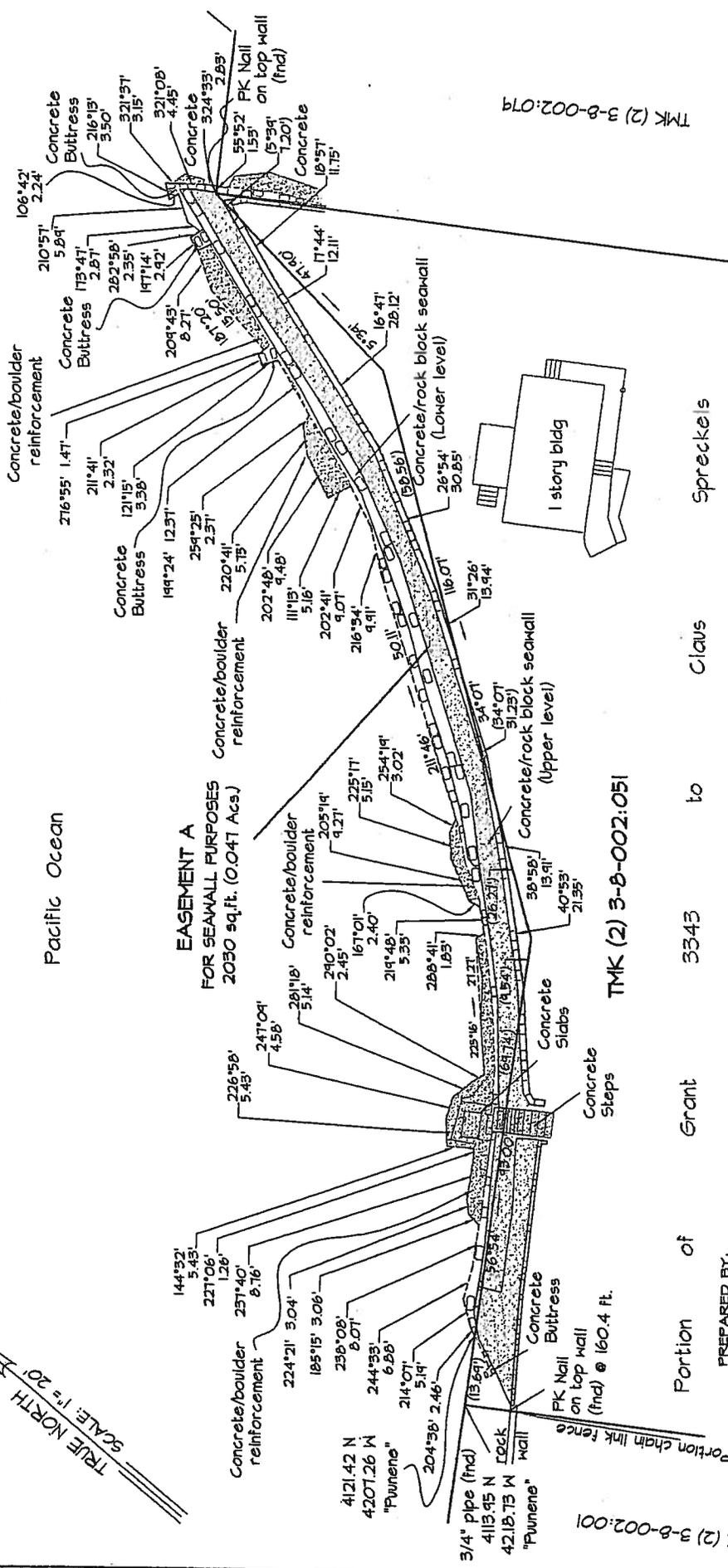
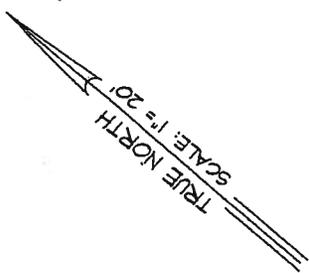


EXHIBIT A



Pacific Ocean

EASEMENT A
FOR SEAWALL PURPOSES
2030 sq.ft. (0.047 Acs.)

TMK (2) 3-8-002:051

Portion of Grant 3343 to Claus Spreckels

EXHIBIT MAP SHOWING EASEMENT A

AN EASEMENT FOR SEAWALL PURPOSES
IN FAVOR OF TMK 3-8-002:051
BEING A PORTION OF GRANT 3343 TO CLAUD SPRECKELS
AT SPRECKELSVILLE, MAUI, HAWAII

PREPARED BY:
ANA AINA LAND SURVEYORS
114 KAHIAFO PLACE
HAIKU, MAUI, HI 96708

This work was prepared by me
or under my direct supervision
Martina W. Jale Lic. Exp. 04/08
Martina W. Jale
Licensed Professional Land Surveyor
Certificate Number 4511



TMK (2) 3-8-002:001

TMK (2) 3-8-002:019

NOTES:
1. This map is based on a field survey performed on May 11, 2007.

Bendonesm1_r.dwg

May 30, 2007
Rev. June 10, 2007

Exhibit B



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 9, 2010

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Term, Non-Exclusive Easement to Koolau Properties, LLC for Seawall Purposes, Spreckelsville Beach Lots, Wailuku, Maui Seaward of TMK: (2) 3-8-002:051.

Project / Reference No.: 08MD-090

Project Location: Spreckelsville, Wailuku, Maui

Project Description: Grant of term, non-exclusive seawall easement

Chap. 343 Trigger(s): Use of State Lands

Exemption Class No.: In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 4, that states: "Minor alterations in the conditions of land, water or vegetation."

Consulted Parties: Office of Conservation and Coastal Lands

This exemption applies since issuing an easement for to allow the structure to remain in place will result in no change to the conditions of land, water and vegetation. As the structure has been in place for a significant amount of time (at least fifty years), its continued existence through the issuance of an easement should not have any further cumulative impact on the surrounding environment.

Exemption Notification for Seawall Easement, Spreckelsville, Wailuku, Maui

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Recommendation:

The Board is recommended to find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date