

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

December 9, 2010

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

MAUI

Consent to Mortgage with Estoppel Certificate, 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
\$150,000.00.

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:

\$92,430 will be used to pay the State of Hawaii for a new 65-year nonexclusive easement and \$57,570 will be used for general operating expenses/repairs/improvements.

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.

The Land Board at its meeting of January 8, 2010, under agenda Item D-20, consented to the \$2,375,000 mortgage from American Savings Bank and issuance of an estoppel certificate. The loan proceeds were to be used to refinance the existing mortgage with American Savings Bank, fund the acquisition of a new 65-year non-exclusive easement from the State and miscellaneous anticipated future expenses.

Senator Rosalyn H. Baker submitted Senate Concurrent Resolution S.C.R. 202 authorizing the mutual cancellation of the Lease of Non-Exclusive Easement S-5252 and issuance of a term, non-exclusive easement covering a portion of the State submerged lands situated at Lapaakea, Lahaina, Maui. Senate Concurrent Resolution 202 was adopted by the Senate and the House of Representatives of the 25th Legislature of the State of Hawaii, Regular Session of 2010. (Exhibit B)

After a period of painful delays by the appraiser hired by Land Division, Ms. Manuel was notified by letter dated November 12, 2010, the one-time consideration for the new 65-year, non-exclusive easement is \$92,430. Ms. Manuel has accepted that offer.

REMARKS:

Mr. Thomas Cole, attorney for Ms. Manuel notified the Department Ms. Manuel has obtained financing from American Savings Bank FSB to pay for the new 65-year, non-exclusive easement. American Savings Bank FSB requires a mortgage on the new 65-year, non-exclusive easement as collateral for the loan.

Staff identified Lease of Non-Exclusive Easement S-5252 (pending) because the new 65-year, non-exclusive easement has not been issued because we normally request payment before executing the land document. Documents prepared by the Attorney General's office will be turned over to Title Guaranty Escrow & Title Services (TG). They will handle the signing and recordation of the cancellation, issuance of the new 65-year, non-exclusive easement and consent to mortgage with estoppel certificate, payment to the State, recordation, etc.

Staff has no objections to the request.

REMARKS:

The Lessee is in compliance with all lease terms and conditions. Rent is paid up to May 24, 2011. Liability insurance expires on July 24, 2011. 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

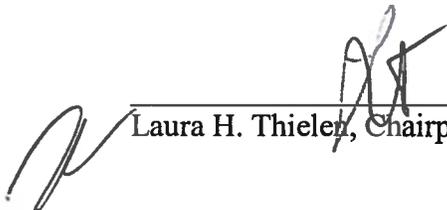
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



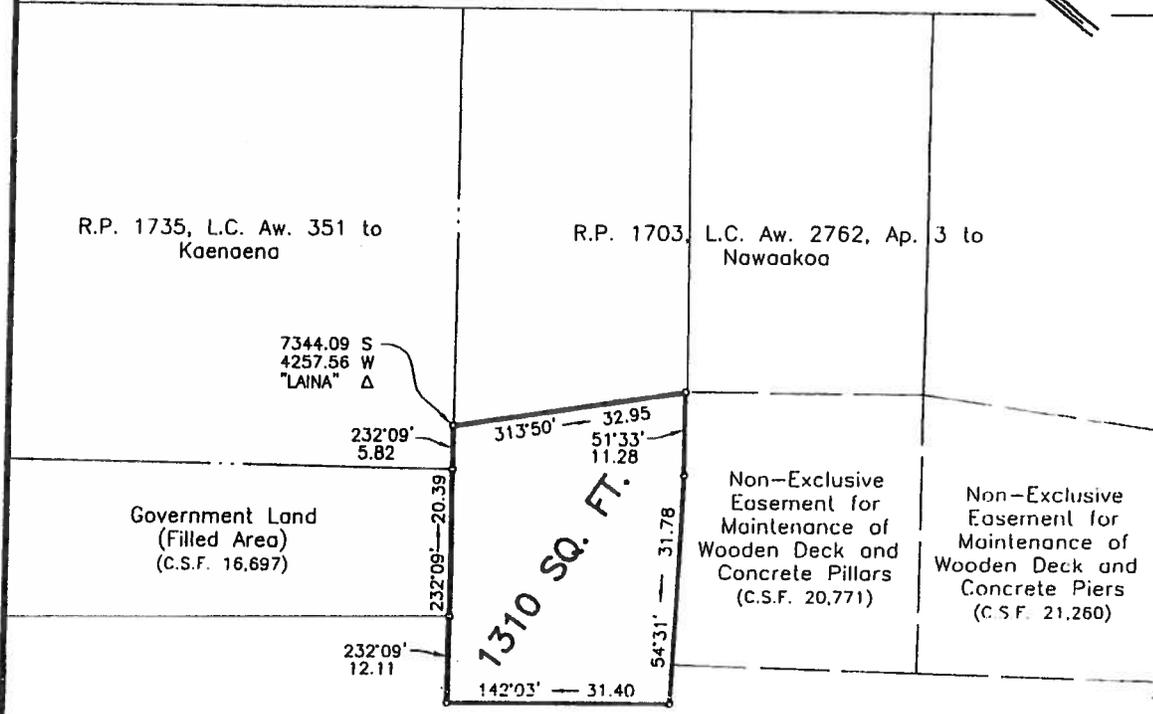
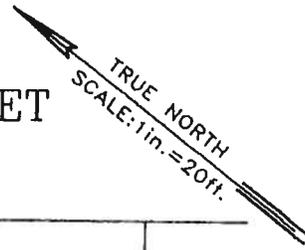
Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielert, 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 No-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

STATE OF HAWAII

C.S.F. NO. 23,597

JGL August 4, 2003

EXHIBIT A

SENATE CONCURRENT RESOLUTION

AUTHORIZING THE MUTUAL CANCELLATION OF LEASE OF NON-EXCLUSIVE EASEMENT S-5252 AND ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS SITUATED AT LAPAAKEA, LAHAINA, MAUI, IDENTIFIED BY TAX MAP KEY: (2) 4-5-001:055: SEAWARD OF TAX MAP KEY: (2) 4-5-001:006.

1 WHEREAS, Lakala Trust owns property located at 839 Front
2 Street, Lahaina, Maui which includes two wooden decks and
3 concrete piers that extend over submerged land owned by the
4 State of Hawaii and were constructed sometime in the 1920s; and
5

6 WHEREAS, on January 26, 1990, the Board of Land and Natural
7 Resources (Land Board) approved a Conservation District Use
8 Permit for the decks over the submerged land; and
9

10 WHEREAS, on May 11, 1990, the Land Board authorized the
11 issuance of Non-Exclusive Easement S-5252 commencing on May 25,
12 1992 and running through May 24, 2012 to the property for
13 maintenance and repair of the wooden decks and concrete piers;
14 and
15

16 WHEREAS, the property is currently subject to a mortgage,
17 which Lakala Trust and its trustee are seeking to refinance; and
18

19 WHEREAS, because of the existence of Non-Exclusive Easement
20 S-5252 over State-owned submerged lands, refinancing of the
21 mortgage requires the mutual cancellation of Non-Exclusive
22 Easement S-5252 and the issuance of a new non-exclusive
23 easement; and
24

25 WHEREAS, as part of its submittal to the Land Board on
26 August 28, 2009, under agenda item D-15, the Department of Land
27 and Natural Resources recommended and the Land Board approved
28 Lakala Trust and its trustee's request for the mutual



1 cancellation of Non-Exclusive Easement S-5252 and the issuance
2 of a new sixty-five year non-exclusive easement; and
3

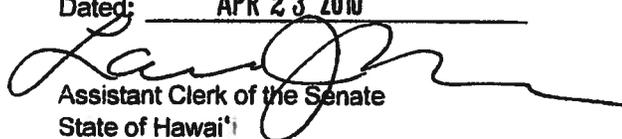
4 WHEREAS, section 171-53, Hawaii Revised Statutes, requires
5 the prior approval of the Governor and prior authorization of
6 the Legislature by concurrent resolution to lease state
7 submerged lands; now, therefore,
8

9 BE IT RESOLVED by the Senate of the Twenty-fifth
10 Legislature of the State of Hawaii, Regular Session of 2010, the
11 House of Representatives concurring, that the Board of Land and
12 Natural Resources is hereby authorized to cancel Non-Exclusive
13 Easement S-5252 and to issue a term, non-exclusive easement
14 covering a portion of state submerged lands identified as tax
15 map key (2) 4-5-001:055: seaward of tax map key (2)
16 4-5-001:006, comprising 1,310 square feet, more or less; and
17

18 BE IT FURTHER RESOLVED that certified copies of this
19 Concurrent Resolution be transmitted to the Chairperson of the
20 Board of Land and Natural Resources.

I hereby certify that this is a full, true, and
correct copy of the original filed in this office.

Dated: APR 23 2010


Assistant Clerk of the Senate
State of Hawaii

