

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

May 10, 2013

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

PSF No.:13MD-042

MAUI

Extension, Amendment and Restatement of Term of Non-Exclusive Grant of Easement S-5183 to The Harry and Jeanette Weinberg Foundation, Incorporated, for Seawall and Concrete Deck Purposes on Portion of Reclaimed (Filled) Land at Lahaina, Maui, Hawaii, Fronting Tax Map Key: (2) 4-5-001:Portion of 009

APPLICANT:

The Harry and Jeanette Wienberg Foundation, Incorporated, a Maryland Corporation.

LEGAL REFERENCE:

Section 171-13 and 53(c), Hawaii Revised Statues (HRS), as amended.

LOCATION:

Portion of Government submerged land situated at Lahaina, Maui, identified by Tax Map Key: (2) 4-5-001:Portion of 009, as shown in the attached map labeled Exhibit 1.

AREA:

324 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Maui CZO: Historic District 2, Special Management Area

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by Term, Grant of Non-Exclusive Easement S-5183, The Harry and Jeanette Weinberg Foundation, Inc., Grantee, for right, privilege, and authority to maintain and repair the existing seawall and concrete deck. The easement is to expire on October 31, 2014. The most recent rental reopening occurred on May 1, 2008, establishing the current rent of \$3,511.00 per annum.

A portion of the State Land at Tax Map Key (2) 4-5-001:Por. of 009 is also encumbered by a month-to-month Revocable Permit S-7783 to The Harry and Jeanette Weinberg Foundation. The permit is for commercial purposes and includes separate areas of approximately 992 and 291 square feet currently being utilized for a restaurant and restaurant bar operation.

CHARACTER OF USE:

Right, privilege, and authority to use, maintain and repair the existing seawall and concrete deck 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 EXTENDED TERM:

Twenty-eight (28) years and six (6) months, commencing November 1, 2014 and terminating April 30, 2043.

RENTAL REOPENINGS:

Not applicable.

EXHIBITS:

- Exhibit #1 - Tax Map of the subject property.
- Exhibit #2 - Conservation District Use Permit No. 3260E.
- Exhibit #3 - C.S.F. Map No. 20,763 - 20765, dated May 25, 1988.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

On April 22, 1988, the Board of Land & Natural Resources approved a Conservation District Use Application for restaurant renovations, maintenance of seawall and easement purposes at the subject property.

Conservation District Use Permit #3260E, dated April 29, 1988 (Exhibit #2) was issued to applicant Spencecliff Corporation for the previously stated uses.

The present request is for an extension of Grant of Easement S-5183, which is exempt from the preparation of an environmental assessment under Chapter 343, HRS. See attached Exemption Notification.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine one-time payment.

REMARKS:

The Land Board at its meeting of May 13, 1988, under agenda item F-20, approved a direct sale of a term, non-exclusive easement to the applicant, Spencecliff Corporation, doing business as The Lahaina Broiler restaurant over a 324 square feet area of land identified as fronting Tax Map Key: (2) 4-5-001:009. The applicant required the easement for maintenance of a seawall and concrete deck encroaching onto partially reclaimed (filled) State land. Spencecliff Corporation was leasing from the property fee owner, The Harry and Jeanette Weinberg Foundation, Inc. Expiration of the ground lease was for October 31, 2014 and the term easement's expiration was also set to coincide with this date.

Before the direct sale of the easement area was consummated, Spencecliff Corporation was dissolved, with its underlying corporate assets and liabilities transferred to the new party, Nittaku Investment, Inc. By means of an amend board action of April 14, 1989, under item F-4, the Land Board authorized the change of the easement purchaser from Spencecliff Corporation to Nittaku Investment, Inc. Grant of Easement S-5183 commenced on May 1, 1988, with a rent of \$700.00 per annum and requirement for reopenings at the 10th and 20th year of the term.

The Land Board at its meeting of February 18, 1997, under item D-16, approved an

assignment of Grant of Easement S-5183 from Nittaku Investment, Inc., as assignor, to The Harry and Jeanette Weinberg Foundation, Inc., assignee. Nitakku Investment, Inc. had decided to relinquish their ground lease. A Consent to the Assignment of Grant of Non-Exclusive Easement provided for this changeover in grantee effective November 15, 1996.

Current term easements for encroachments allow for the maximum of a 55-year period. The applicant's easement S-5183 was for a length 26-1/2 years and expires on October 31, 2014. The Harry and Jeanette Weinberg Foundation is therefore requesting an extension of the easement term for an additional 28-1/2 years. Because the applicant is the owner in fee simple of the property at Tax Map Key: (2) 4-5-001:009, they have requested the longest term possible in consideration for extension of the Grant of Easement S-5183.

The Applicant is not proposing to change the current use and is in compliance with all lease terms and conditions. Rent is paid up to date. Liability insurance expires on May 1, 2013. Bond is not a requirement. Also, in the past two (2) years, no Notice of Default letters were issued.

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.

Agency comments were not solicited as there is no change in use or grantee (lessee) of Grant of Easement S-5183.

The form of easement that the Department of the Attorney General uses has changed over the years since the issuance of Grant of Easement S-5183. For that reason, staff is including a recommendation below that in addition to the extension, the easement instrument be amended and restated to incorporate the current terms and conditions used by the Department of the Attorney General.

Pursuant to Section 171-53(c), HRS , "the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter." Staff will work with the applicant in obtaining the legislative concurrent resolution.

The State Land is encumbered also by a month-to-month Revocable Permit S-7783 to The Harry and Jeanette Weinberg Foundation for commercial restaurant purposes. By means of a Land Board action of January 23, 1997, under item D-7, the Land Board approved a cancellation of Revocable Permit S-6637 to Nittaku Investment, Inc. and issuance of new permit to The Harry and Jeanette Weinberg Foundation. Revocable Permit S-7066 to the Foundation commenced on November 15, 1996. Due to a requirement for updated contract language, this permit was replaced effective September 1, 2011 by Revocable Permit S-7783. According to past file information, the approximate 992 and 219 square feet areas included in

this permit are comprised of encroachments and/or filled land, but these were not discovered until the restaurant had been in operation for over twenty (20) years. Therefore, due to exclusive use of the area required for the restaurant and restaurant bar operations, it was deemed that issuance of a revocable permit was appropriate. Staff is in agreement that the continuation of Revocable Permit S-7783 serves the best interest of both State and the permittee. Staff will be bringing a request to the Board in the future for the issuance of a term easement over the area covered by Revocable Permit S-7783.

RECOMMENDATION: That the Board:

1. 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.
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) 4-5-001:009, 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 extension, amendment and restatement of Grant of Easement S-5183 to The Harry and Jeanette Weinberg Foundation, Inc. covering the subject area for seawall and concrete deck encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Grant of Easement S-5183 shall be extended for an additional twenty-eight (28) years and six (6) months, commencing on November 1, 2014, up to and including the 30th day of April, 2043.
 - B. Grant of Easement S-5183 shall be amended and restated to incorporate the standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-5-001:009, 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 Grantor of such transaction in writing, and shall notify Grantee's successors

or assigns of the insurance requirement in writing, separate and apart from the easement document;

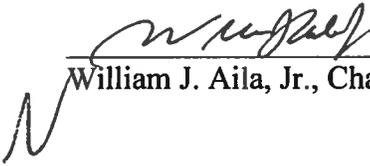
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



PLAT NO.	4501
SECTION	5
DISTRICT	4
ZONE	2
CONTAINING	2
TARGETS	1
SCALE	1" = 30'

ADVANCE SHEET
SUBJECT TO CHANGE

S E A



LIBERT K. LANDGRAF
DEPUTY

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES CONSERVATION AND ENVIRONMENTAL AFFAIRS
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

APR 29 1988

FILE NO.: MA-1/20/88-2104
180-Day Exp. Date: 7/18/88
DOCUMENT NO.: 3260E

RECEIVED

APR 29 9:52

DIRECTOR
DCEA

Spencecliff Corporation
2906 Kamehameha Highway
Honolulu, Hawaii 96818

Gentlemen:

As a follow-up to Board action on your application this is to inform you that your Conservation District Use Application for restaurant renovations, maintenance of seawall and easement at Lahaina, Maui (TMK: 4-5-01: 09) was approved on April 22, 1988. Please be informed that this approval authorizes a right-of-entry of State lands to carry out activities pursuant to this permit and that these approvals be subject to the following conditions:

A. Violation

1. That portions of the existing Lahaina Broiler Restaurant building and seawall structure have been constructed on State-owned lands without authorization from this Department.
2. That portions of the existing structures are not in compliance with Chapter 171-6, HRS, as amended.
3. That Chapter 171-6, HRS, as amended, provides for a fine of up to \$500.00 per infraction.
4. That the applicant be assessed a fine up to \$500.00 as provided in Chapter 171-6, HRS, as amended.
5. That failure to comply with this section within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of Attorney General for disposition to include all administrative costs.

B. Land Use

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;

APR 29 1988

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Since this approval is for use of conservation lands only, the applicant shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources for the occupancy of State lands;
4. If historic remains such as artifacts, shell or charcoal deposits and burials are found during construction, the applicant will stop work and contact the Historic Sites Section at 548-7460 immediately;
5. The applicant shall comply with all applicable Department of Health Administrative Rules;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;
7. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
8. The applicant receive plan approval from the Maui Historic Commission on the construction plans for the seawall and building structure prior to submission of the construction plans for approval from this Department;
9. That this approval may be reconsidered in light of the Board's future policy decision on encroachment along Front Street;

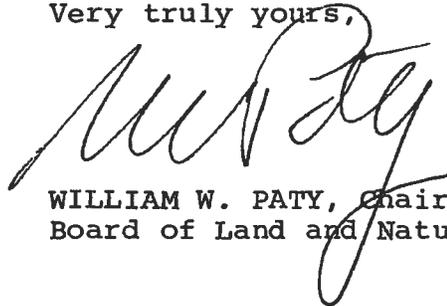
APR 29 1988

10. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
11. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other.

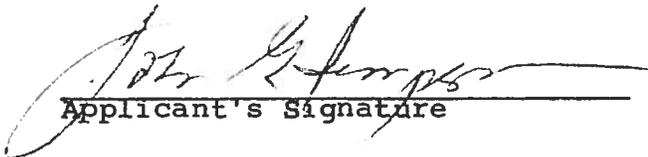
Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,



WILLIAM W. PATY, Chairperson
Board of Land and Natural Resources

Receipt acknowledged:



Applicant's Signature

cc: Maui Board Member
Maui District Land Agent
Maui Planning Dept.
DOH/OEQC/EC/OHA/DBED

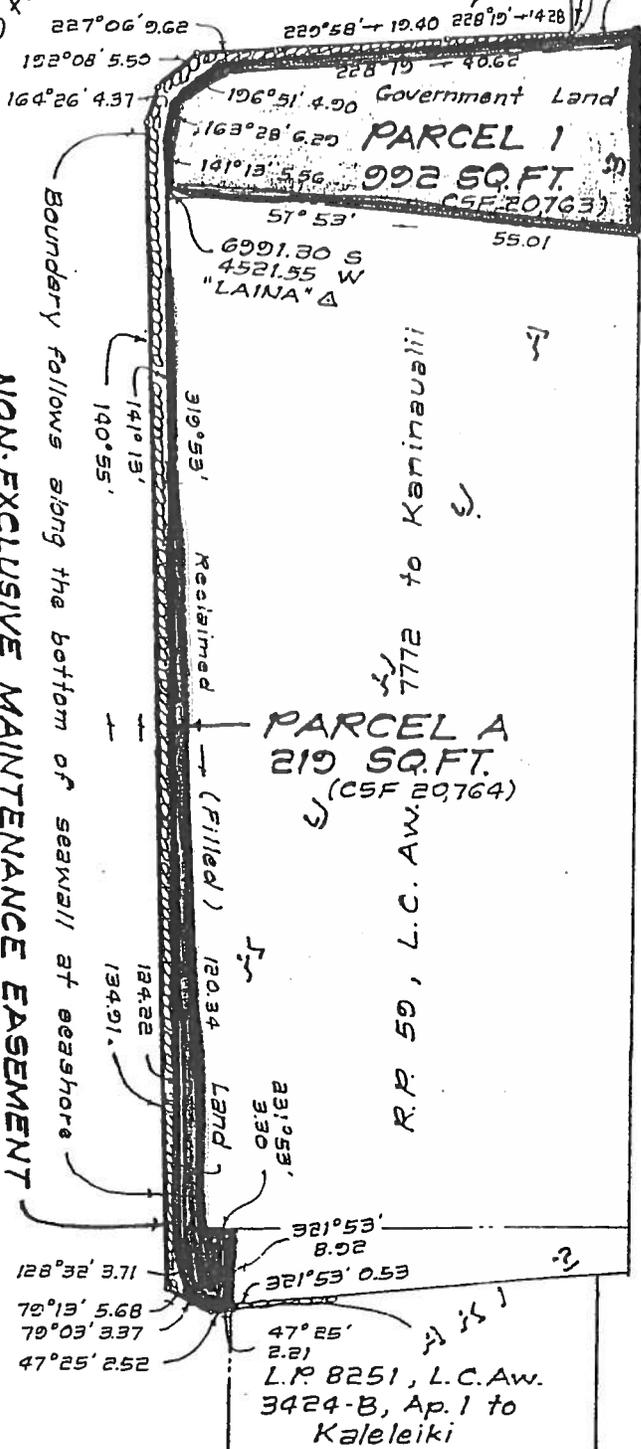
5/16/88 Received \$500 check.

6098.67 S
4495.52 W
"LAINA" Δ

17'
U.I.D.
228°19'
8.12

6043.84 S
4489.00 W
"LAINA" Δ

TRUE NORTH
Scale: 1 inch = 20 feet



Boundary follows along the bottom of seawall at seashore
NON-EXCLUSIVE MAINTENANCE EASEMENT
324 SQ. FT.
(CSF 20,765)

PARCEL A
219 SQ. FT.
(CSF 20,764)

Government Land
PARCEL 1
992 SQ. FT.
(CSF 20,763)

R.R. 59, L.C. Aw. 7772 to Kaninaualii

STREET
FRONT

S
E
2

PORTION OF THE GOVERNMENT LAND OF KUHUA 3
PARCEL 1
PORTION OF THE RECLAIMED (FILLED) LAND FRONTING
ROYAL PATENT 59, LAND COMMISSION AWARD 7772 TO
KANINAUALII AND LAND PATENT 8251, LAND COMMISSION
AWARD 3424-B, APANA 1 TO KALELEIKI
PARCEL A

NON-EXCLUSIVE MAINTENANCE EASEMENT
Kuhua 3 and Aki 2, Lahaina, Maui, Hawaii
Scale: 1 inch = 20 feet

EXHIBIT " 3 "

JOB Ma-147(88)
C. BK 7, J. Matsuno

TAX MAP 4-5-01: por. 9

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. No. 20,763 - 20,765

IMM May 25, 1988



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 10, 2013

EXEMPTION NOTIFICATION

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

Project Title: Extension of Lease Term for Non-Exclusive S-5183 to Harry and Jeanette Weinberg Foundation, Incorporated, for Seawall and Concrete Deck Purposes.

Project / Reference No.: 13MD-042

Project Location: Lahaina, Maui, Hawaii, TMK: (2) 4-5-001: Portion of 009.

Project Description: Lease Term Extension for Non-Exclusive Easement S-5183.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

Consulted Parties: The subject seawall was authorized by the Office of Conservation and Coastal Lands and Conservation District Use Permit Number 3260E.

Recommendation: The present request is for an extension of an existing term easement for seawall and concrete deck purposes. It is

anticipated 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.



William J. Aila Jr., Chairperson



Date