

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

February 26, 2016

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

PSF No.:10MD-184

Maui

Grant of a 55 Year Term, Non-Exclusive Easement to Theresa Marie Kealoha, Trustee of the Theresa Marie Kealoha Revocable Trust established under unrecorded Trust Agreement dated August 7, 2007, for Deck/Patio and Roof Encroachment Purposes, Kawela, Molokai, Hawaii; Tax Map Key: (2) 5-4-013: Seaward of 004.

APPLICANT:

Theresa Marie Kealoha, Trustee of the Theresa Marie Kealoha Revocable Trust established under unrecorded Trust Agreement dated August 7, 2007.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kawela situated at Molokai, Hawaii, identified by Tax Map Key: (2) 5-4-013: seaward of 004, as shown on the attached map labeled Exhibit C.

AREA:

332 Square feet, more or less.

ZONING:

State Land Use District: Urban

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove portions of an existing structure, consisting of wooden deck and roof, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years.

ANNUAL RENT:

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

RENTAL REOPENINGS:

Not applicable.

EXHIBITS:

- Exhibit – A, Letter from the Office of Conservation and Coastal Lands.
- Exhibit – B, Survey Map dated May 27, 2010, prepared by Randall Sherman.
- Exhibit – C, Tax Map of the subject property.
- Exhibit – D, Photo report identifying the encroachment areas of Ms. Kealoha's dwelling.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 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 June 5, 2015, 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. 46, that states "Creation or termination of an easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Recently Ms. Kealoha decided that she would look into the possibility of selling her home and relocating to the island of Hawaii. During this process she had her property surveyed in an attempt to clearly identify its boundaries. It was at this time that Ms. Kealoha learned that a portion of her wooden patio/deck, support post, and roof consisting of 332 square feet had been constructed outside of her private property boundary.

Ms. Kealoha stated that she inherited the property and home from a long-time friend in 2007. At that time, she had no knowledge that portions of the home were constructed seaward of the property boundary. Upon learning of the encroachments she immediately contacted both the County of Maui and the State of Hawaii for guidance on how to address the newly discovered encroachments. She further added that the home was constructed by the previous owners in 1969 and did not know how inspectors at the time allowed portions of the dwelling to be constructed outside of the private property on government land.

The 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 COMMENT:

The Office of Conservation and Coastal Lands was consulted with regards to this request and

provided the attached written assessment (Exhibit - A) of Ms. Kealoha's property and the surrounding areas.

Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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) 5-4-013:004, 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 Theresa Marie Kealoha, Trustee of the Theresa Marie Kealoha Revocable Trust established under unrecorded Trust Agreement dated August 7, 2007, covering the subject area for deck and roof encroachment 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 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) 5-4-013:004, 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;
 - 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.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

2010 SEP 14 A 9:13

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
ACTING FIRST DEPUTY

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AQUATIC RESOURCES
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SEP 14 2010

REF:DLNR:.CC

File Number Encroachment: MO-10-05

TO: Barry Cheung, Oahu District Land Agent
Land Division

FROM: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

2010 SEP 20 PM 12:18
REC'D MAIL ROOM
MAUI DISTRICT
LAND DIVISION

SUBJECT: Request to Resolve State Land Encroachment Tax Map Key (2) 5-4-013:004, Kawela, Molokai, Hawaii, owner Theresa M. Kealoha.

This is in response to the June 2010 submission of Shoreline Encroachment Information Sheet to resolve the encroachments at Tax Map Key (2) 5-4-013:004, Kawela, Molokai, Hawaii.

According to information and maps contained with your request, you have identified approximately 332 square feet of encroachments onto State lands, comprising the footprint of a portion of the house and lanai beyond the makai private property boundary. The three encroachments onto the abutting neighbors on the east and west sides of the property do not appear to be on State land. The chain link fence extending makai of the parcel onto State land does not appear to be denoted as an encroachment makai of the parcel.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State for the subject improvements. After review of historic aerial photographs of the region (1964) that were provided by the applicant, the structure appears to be in place prior to the inception of the Conservation District rules on October 1, 1964. No evidence of the eastern side, chain link fence was present in the photograph.

As a consequence, DLNR cannot prove the house and lanai encroachments are Conservation District violations and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that the wall was built without a permit, within the Conservation District after 1964, the OCCL may reconsider this finding. The OCCL does consider the eastern side, chain link fence, extending beyond the private property boundary to be unpermitted.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In

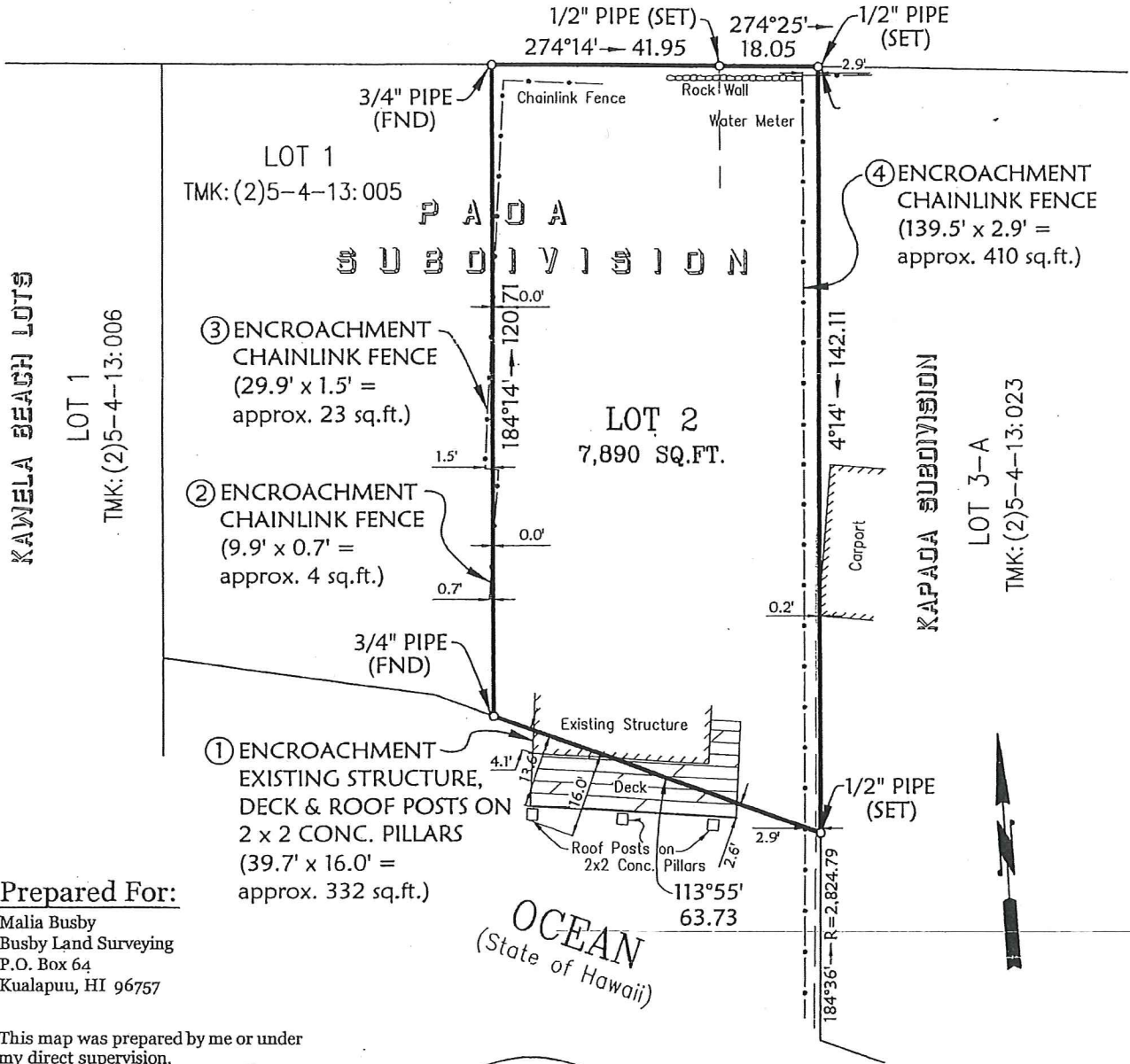
EXHIBIT " A "

evaluation criteria would support a disposition request being processed for the house and lanai encroachments. The OCCL suggests that proper signage be placed identifying that that the State land is open to the public. The OCCL suggests that any disposition require the land uses remain unimproved. However, if improvements are allowed the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

In regard to the eastern side chain link fence, after careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would not support a disposition request being processed. The OCCL suggests that the fence be removed and proper signage be placed identifying that that the State land is open to the public. Additionally, staff recommend that the applicant be required to obtain some form of disposition for the landscaping activity they are conducting on State land, makai of their private property boundary.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at 587-0049.

— To Kaunakakai KAMEHAMEHA V HIGHWAY To Kamalo —



KAWELA BEACH LOTS

LOT 1
TMK: (2)5-4-13:006

LOT 1
TMK: (2)5-4-13:005

PAOA
SUBDIVISION

LOT 2
7,890 SQ.FT.

KAPADA SUBDIVISION

LOT 3-A
TMK: (2)5-4-13:023

Prepared For:
Malia Busby
Busby Land Surveying
P.O. Box 64
Kualapuu, HI 96757

This map was prepared by me or under
my direct supervision.

Randall Sherman
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS4187
License Expiration Date: April 30, 2012
Land Court Certificate Number 189

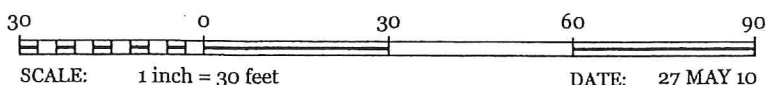


Exhibit Showing
LOT 2
of the
PAOA SUBDIVISION

Situated at
Kawela, Molokai, Hawaii

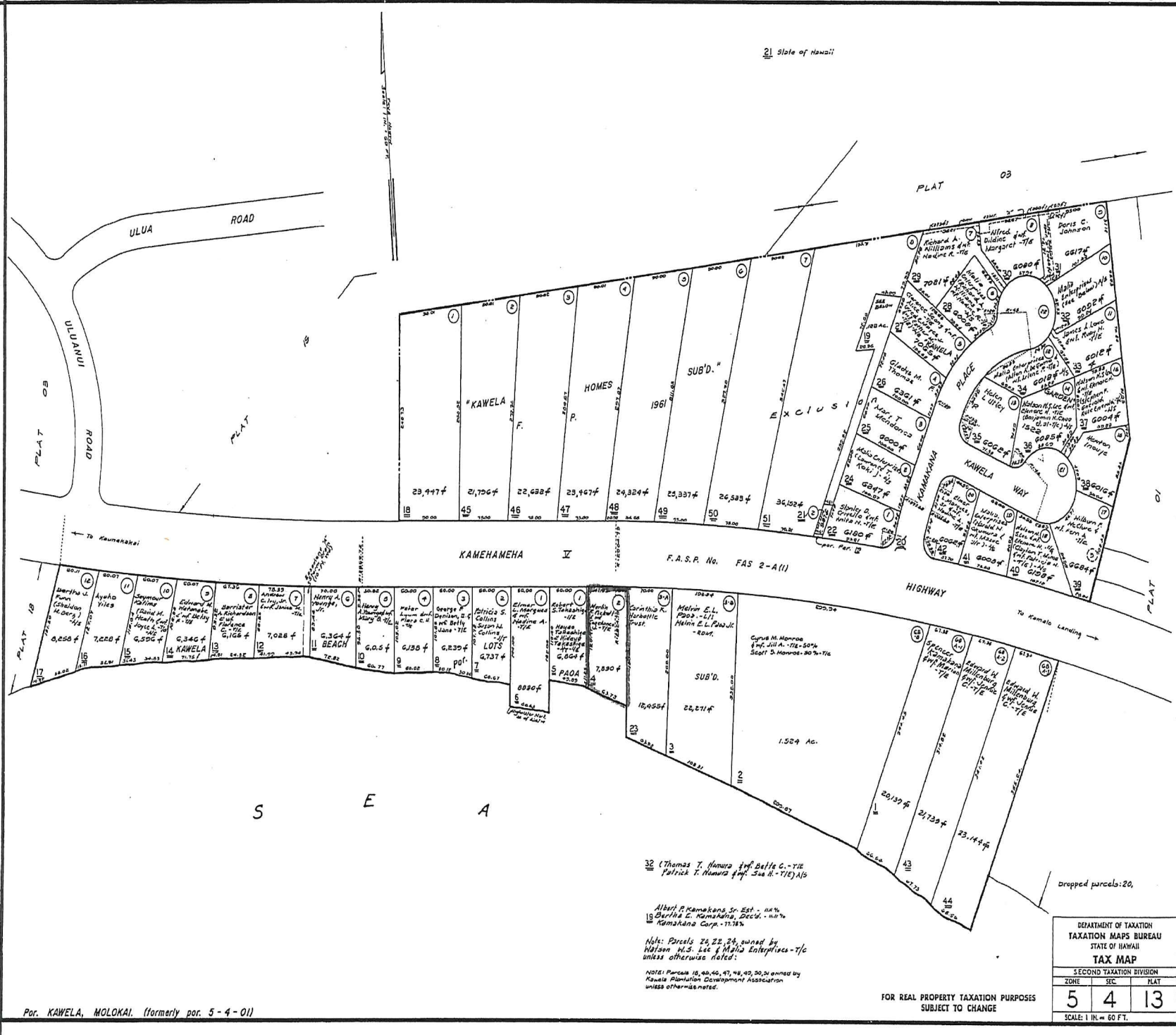
NOTES:

1. This map is based on an actual field
survey performed on May 5 & 13, 2010.



DATE: 27 MAY 10

EXHIBIT "C"



DWG NO. 1000
 SOURCE: T.M. & B.
 BY: D.L./P.S.
 DATE: April, 1982, PER...

Por. KAWELA, MOLOKAI. (formerly por. 5-4-01)

32 (Thomas I. Anura & Betty C. - 71%
 Patrick T. Anura & Sue H. - 71%) A/S

Albert P. Kamekaha, Sr. Est. - 100%
 18 Bertha C. Kamekaha, Dec'd. - 100%
 Kamekaha Corp. - 71.7%

Note: Parcels 26, 22, 24, owned by
 Nelson M.S. Lee & Maha Enterprises - 71%
 unless otherwise noted.

NOTE: Parcels 18, 40, 46, 47, 48, 49, 50, 51 owned by
 Kawela Plantation Development Association
 unless otherwise noted.

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
SECOND TAXATION DIVISION		
ZONE	SEC	PLAT
5	4	13
SCALE: 1 IN. = 60 FT.		

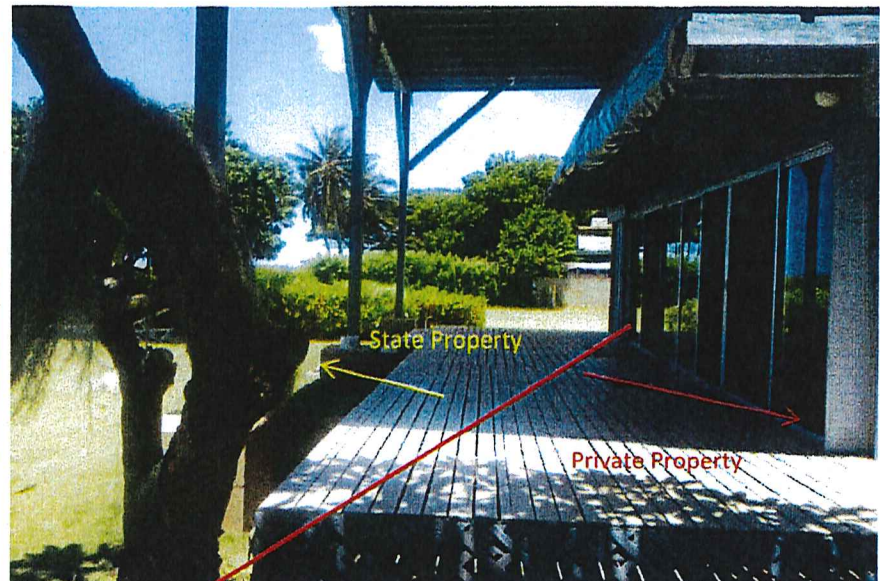
FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

Photos taken: 7/31/2014

Theresa Kealoha, TMK: (2) 4-5-013:004



Photos of Ms. Kealoha's backside of her home where a portion of her deck, main structure and roof was constructed beyond her property line on the adjacent government land. Red line indicates approximate seaward property boundary.



DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

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LAND
STATE PARKS

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 26, 2016

EXEMPTION NOTIFICATION

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

Project Title: Grant of a 55 Year Term, Non-Exclusive Easement to Theresa Marie Kealoha for Deck/Patio, and Roof Encroachment Purposes.

Project / Reference No.: 10MD-184

Project Location: Kawela, Molokai, Hawaii; Tax Map Key: (2) 5-4-013: Seaward of 004.

Project Description: Non-Exclusive easement for portions of an encroaching deck, patio and roof from the dwelling situate on the adjacent private property.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Sections 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 June 5, 2015, 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. 46, that states "Creation or termination of an easement, covenants, or other rights in structures or land."

Recommendation: It is anticipated the proposed use will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne D. Case, Chairperson

2/8/16
Date