

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

October 9, 2015

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

PSF No.:15MD-123

Maui

Grant of a 55-Year Term, Non-Exclusive Easement to the Association of Apartment Owners of (AOAO) Milowai-Maalaea for Seawall Purposes, Maalaea Beach Lots, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-014: Seaward 022.

APPLICANT:

Association of Apartment Owners of Milowai-Maalaea, a Domestic Nonprofit Corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Maalaea Beach Lots, Waikapu, Wailuku, Maui, identified by Tax Map Key: (2) 3-8-014: seaward of 022, as shown on the attached map labeled Exhibit A.

AREA:

2152 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Maui CZO: SMA – A-2 Apartment & M-1 Light Industrial

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:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove an 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 appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 1, 2014 with a finding of no significant impact (FONSI).

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

REMARKS:

Recently, management of the Milowai-Maalaea initiated the process of obtaining a certified shoreline for their private property at 50 Hauoli Street, Maalaea, which is further identified by Tax Map Key number (2) 3-8-014:022. Upon having the seaward side of the property surveyed, it was discovered that portions of their existing seawall were located within the shoreline, on public land. The estimated area of the encroachment has been determined to be 2,152 square feet.

The Milowai-Maalaea seawall runs parallel along the shoreline for approximately 180 feet and ranges in height from 4 to 6 feet. The surface of the seawall is mostly covered by concrete with very little rock being exposed. The west end of the wall ties into the Maalaea Small Boat Harbor's break wall. The opposite northeast end connects to the adjacent property's seawall which is part of approximately 1,800 feet of continuous shoreline hardening consisting of a series of seawalls and rock revetments.

The subject property was originally purchased by Wendell and Myrtle Crockett in the 1940's. At the time, the property had no seawall and a sand beach existed where the Small Boat Harbor facility is now located. In 1952 the Small Boat Harbor facility was built by officials of the Territory of Hawaii. In 1955 and 1959, improvements to the harbor facility were made which included the construction of break walls. Through the Environmental Assessment process, it was determined that the Milowai-Maalaea seawall was built in the early 1950's around the same time as the harbor break wall therefore, classifying the seawall a non-conforming shoreline structure.

The makai area fronting the Milowai-Maalaea property is devoid of beach material. There is no significant sandy beach present in the immediate area. The majority of the shoreline appears to be hardened over by a continuous series of seawalls and rock revetments. Based on the previous stated findings, beach resources in the area are considered poor.

The effect of removing the encroachment will cause erosion of the lawn that could ultimately threaten the Milowai-Maalaea Condominium building and underground parking garage. The Average Erosion Hazard Rate along the property varies from 0.5 feet to 1 feet and it is anticipated that removal of the encroachment at the Milowai-Maalaea could cause (flank) erosion problems to the adjacent properties causing instability and possible failure of neighboring seawall. Additionally, the erosion of clay soil sediments will negatively affect water quality of the ocean.

According to the Final Environmental Assessment, it states that due to the adjacent Small Boat Harbor facility and the neighboring properties' seawalls and revetments, it is believed that the removal of this encroachment would not improve the natural beach processes in the area. The issuance of an easement for the existing seawall would allow for the repair plans to be implemented and in turn will improve the structural integrity of the wall so that it can continue to protect the structures on the Milowai-Maalaea property as well as those on the neighboring properties.

EXHIBITS:

- Exhibit – 1: Tax Map of the Milowai-Maalaea.
- Exhibit – 2: Topographical photo of the subject area.
- Exhibit – 3: Survey Map of the subject encroachment area.
- Exhibit – 4: Photos of the subject seawall and shoreline.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

Agency	Comments
Office of Conservation & Coastal Lands	No objections.
County of Maui – Planning Dept.	No comment.
Office of Hawaiian Affairs	No comment or objections.
DOBOR - Maalaea	No comment.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending that no fine be assessed for the subject seawall. This wall was constructed prior to the establishment of conservation district and special management area rules.

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.

RECOMMENDATION: That the Board:

1. 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) 3-8-014:022,

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.

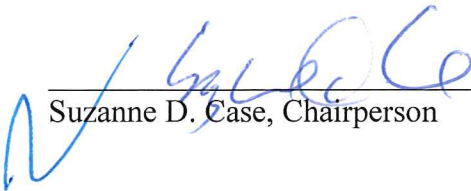
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to AOA Milowai-Maalaea covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein 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) 3-8-014:022, 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.
 - 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:



Suzanne D. Case, Chairperson

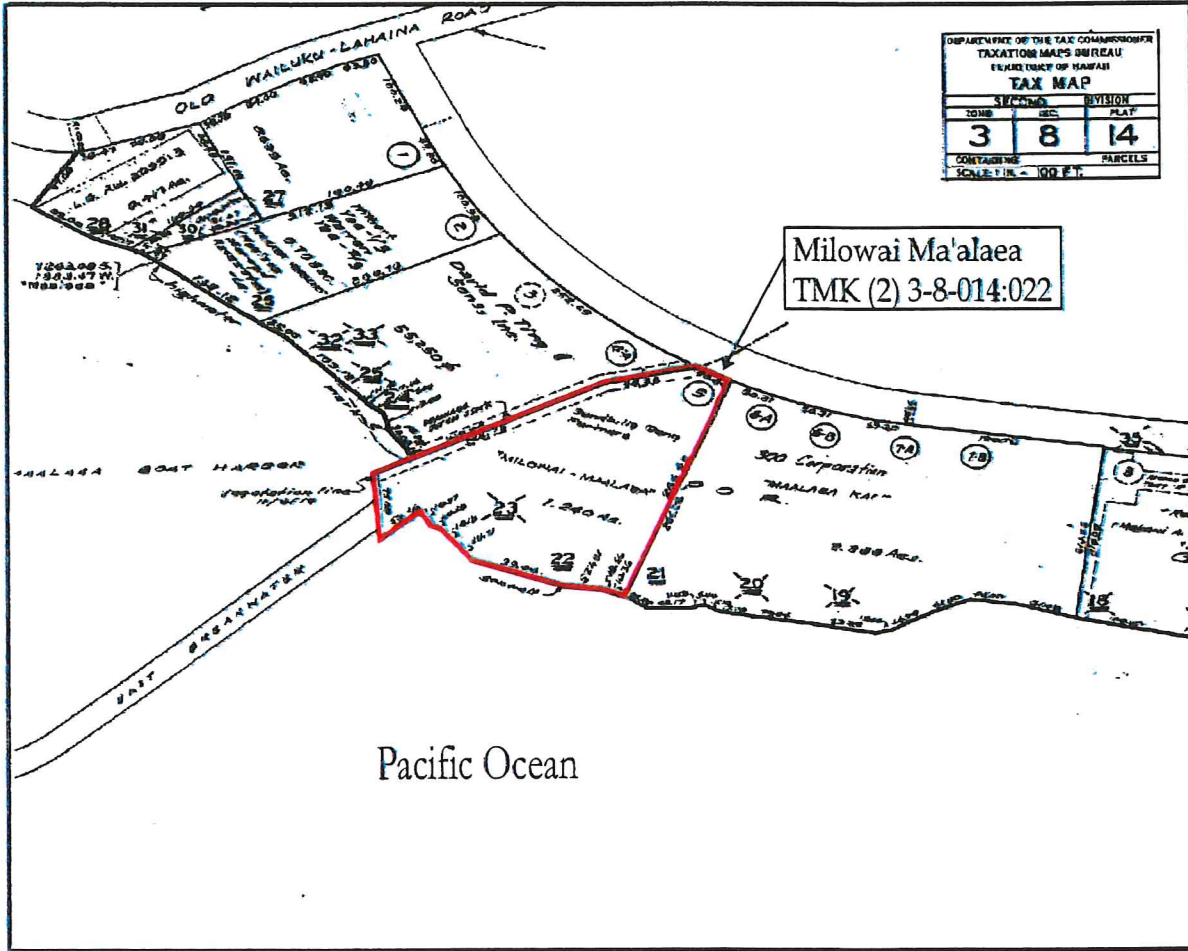
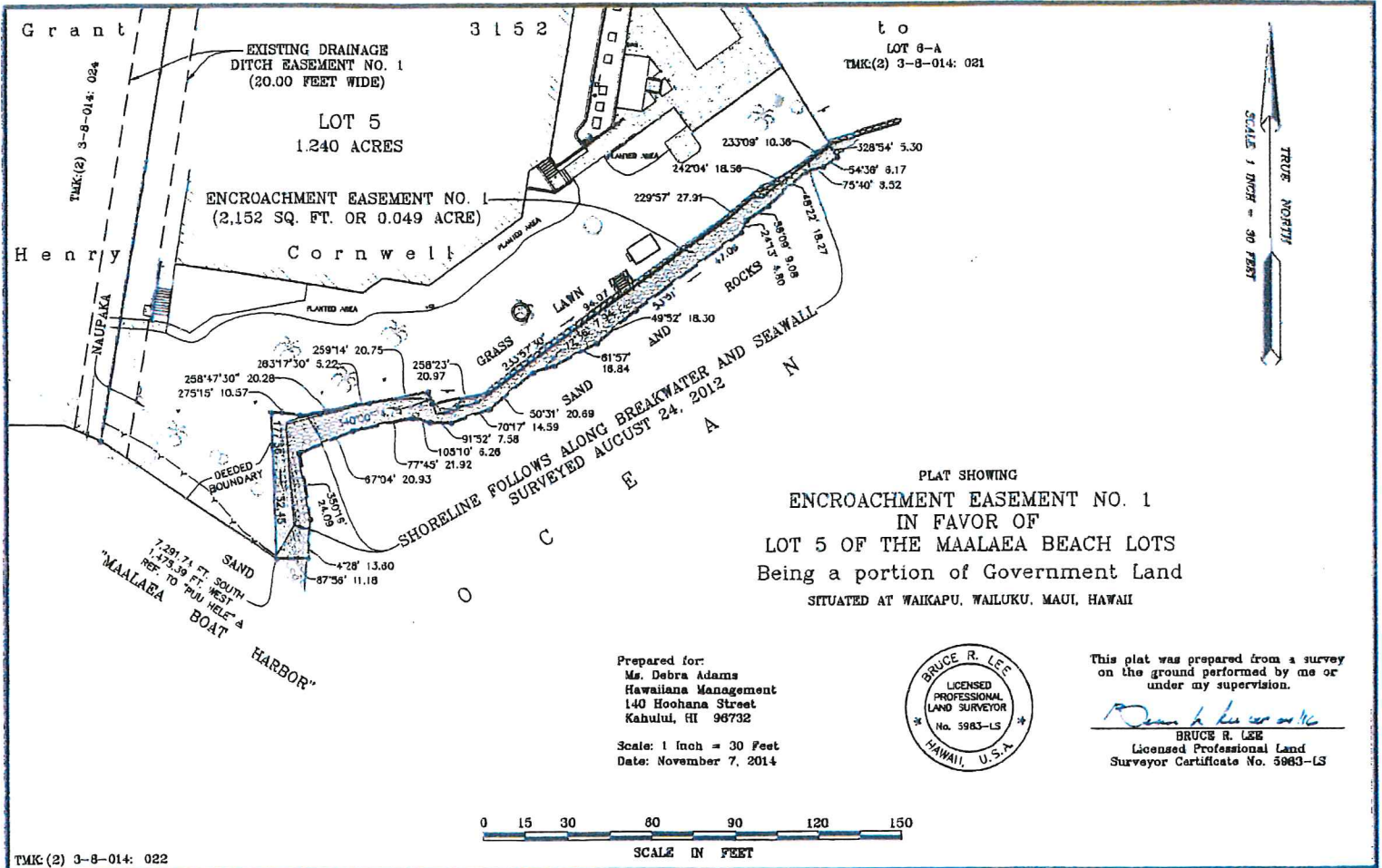




EXHIBIT " 2 "



TMK(2) 3-8-014: 022

11" X 17" = 1.3 30. FT.

NEWCOMER - LEE LAND SURVEYORS, INC. 1498 LOWER MAIN STREET, SUITE 6, WAILUKU, MAUI, HAWAII 96793

JOB NO. 9322-6458 OING NO. 14-9322

EXHIBIT " 3 "



View of the Milowai and the existing seawall. Photo taken from the Ma'alaea breakwall.



View of the sink hole behind the top of the existing seawall. Note small sand beach and base of Ma'alaea breakwall in the background.



View of the Milowai rear lawn and sandy beach on the west side of Ma'alaea breakwall, with Ma'alaea small boat harbor in the background.



View of the Milowai seawall and rear lawn.



View of the Milowai rear lawn facing west with the Ma'alaea breakwall and small boat harbor in the background.



Photo of Ma'alaea breakwall.