

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

August 26, 2016

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

Oahu

Amend Prior Board Action of December 12, 2003, Agenda Item D-34, Grant of Term, Non- Exclusive Easement to Sally Zukeron Trust for Masonry and Concrete Block Walls Purposes, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 3-1-035:023.

BACKGROUND:

The Board at its meeting of December 12, 2003, under agenda item D-34 (Exhibit A), approved the issuance of a term non-exclusive easement to Sally Zukeron Trust for Masonry and Concrete Block wall purposes. Subsequently, Bank of Hawaii as Successor Co-Trustees of the Revocable Trust of Sally Zukeron dated October 20, 1978 sold the privately-owned property and the term non-exclusive easement was transferred to William Huntington Reeves and Deborah Keiko Reeves Berger, husband and wife, by way of Land Office Deed (LOD) No. S-5818.

REMARKS:

The subject easement consisted of 68 square feet for a term of fifty-five (55) years was purchased at the consideration amount of \$3,400 (one-time payment) for the right, privilege, and authority to use, maintain, and repair a masonry and concrete block wall purposes.

By way of email dated July 28, 2016, Mr. William Reeves ,the present owner of the property located at 2932 Makalei Place, has requested that the existing easement area for the masonry and concrete block wall be increased from 68 square feet to 112 square feet as shown in Exhibit B and Exhibit B-1.

Mr. Reeves has hired a Surveyor to survey the additional easement area and is agreeable towards paying the cost for an appraisal to determine the one-time payment amount for the additional easement area.

Staff has no objection to this request and is recommending that the Board amend its prior action of December 12, 2003, Agenda Item D-34, by increasing the existing easement area from 68 square feet to to 112 square feet.

RECOMMENDATION: That the Board:

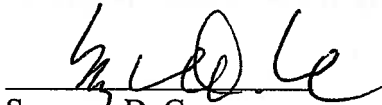
1. Amend its prior Board action of December 12, 2003, under agenda item D-34, by increasing the existing easement area from 68 square feet to to 112 square feet.
2. All terms and conditions listed in its December 12, 2003 Board action, under agenda item D-34 to remain the same.

Respectfully Submitted,



Curt A. Cottrell
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson

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

December 12, 2003

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

PSF No.: 03od-006

OAHU

Grant of Term, Non-Exclusive Easement to Sally Zukeron Trust
for Masonry and Concrete Block Walls Purposes, Waikiki,
Honolulu, Oahu, Tax Map Key: (1) 3-1-035:023.

APPLICANT:

Sally Zukeron Trust, c/o Choi International, whose mailing
address is American Savings Bank Building, 1215 Hunakai Street,
Suite 200, Honolulu, Hawaii 96816; or the current owner of the
private property identified by TMK (1) 3-1-035:021. See Remarks.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waikiki, Honolulu, Oahu,
identified by Tax Map Key: (1) 3-1-035:portion of 023, as shown
on the attached map labeled Exhibit A.

AREA:

29.3 feet x 2.3 feet and 6 feet x 1 feet, more or less, subject
to determination by DAGS Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu CZO: P-1 Restricted Preservation

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON 12/12
December 12, 2003

ITEM D-34
EXHIBIT A

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3743 setting aside to Division of State Parks for Diamond Head State Monument Purposes.

CHARACTER OF USE:

Right, privilege and authority to use, maintain and repair a masonry wall and concrete block wall 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.

LEASE TERM:

Fifty-five (55) years

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operation, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable, individual.

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; and
- 3) Process and obtain subdivision at Applicant's own cost.

REMARKS:

The applicant has sold the property identified by TMK (1) 3-1-035:021 early this year. A boundary survey revealed portions of a masonry wall and a concrete block wall are encroaching on the adjacent State lands, identified by TMK (1) 3-1-035:023. The State parcel has been set aside to the Division of State Parks (State Parks) for Diamond Head Monument Purposes. A copy of the survey map is attached as Exhibit B. The applicant agreed to resolve this Conservation District violation (Chapter 183C) and unauthorized use of State lands violation (Chapter 171) through the Hearing Officer/Administrative Penalty System (HOAPS). The applicant paid a fine of \$500 for each violation of Chapter 183C and Chapter 171 plus \$100 administrative costs. Office of Conservation and Coastal Lands does not have any objections to the issuance of the easement for the encroachment.

The same survey showed a portion of a fence owned by State Parks encroaching on the subject private property by 86.5 linear feet with the widest width being 0.7 feet. When State Parks was requested to comment on the encroachment, they responded that they have no objection to issue an easement for the encroachment on the Diamond Head Monument area provided the private owner grants an easement to the State for State Park's fence.

The realtor representing the applicant has submitted a letter (attached as Exhibit C) requesting the Board consider the unique circumstances of this case. He suggested that the value of both the State's and the applicant's easement should be appraised. The applicant would be charged the difference in the value. Alternatively, he proposed the Board issue a reciprocal easement. Staff cannot find any provision in the law authorizing the Board to enter such reciprocal easement. Further, any easement issued by the Board is required by the law to be charged at fair market value with revenues deposited to the appropriate funds (in this case, 20% to OHA and 80% to general fund). Therefore, we do not believe the alternatives presented by the realtor are legally possible and the subject submittal requests the Board's authorization to issue an easement for the encroachment found on State's property.

Staff did not solicit comment from other agencies since the area involved is relatively small.

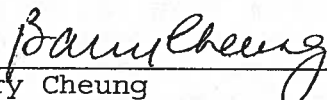
It is agreed between the applicant (the seller) and the current owner (the buyer) that the applicant is responsible to resolve the encroachment issue with the State. To minimize the administrative work, staff is recommending the Board authorize the easement to be issued to the current owner of the private property while the applicant is responsible for the Applicant's requirements.

The current owner 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:

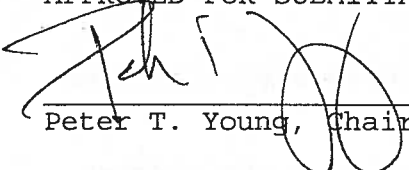
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to the applicant covering the subject area for masonry wall and concrete block wall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Governor's concurrence to the subject request;
 - B. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - 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,



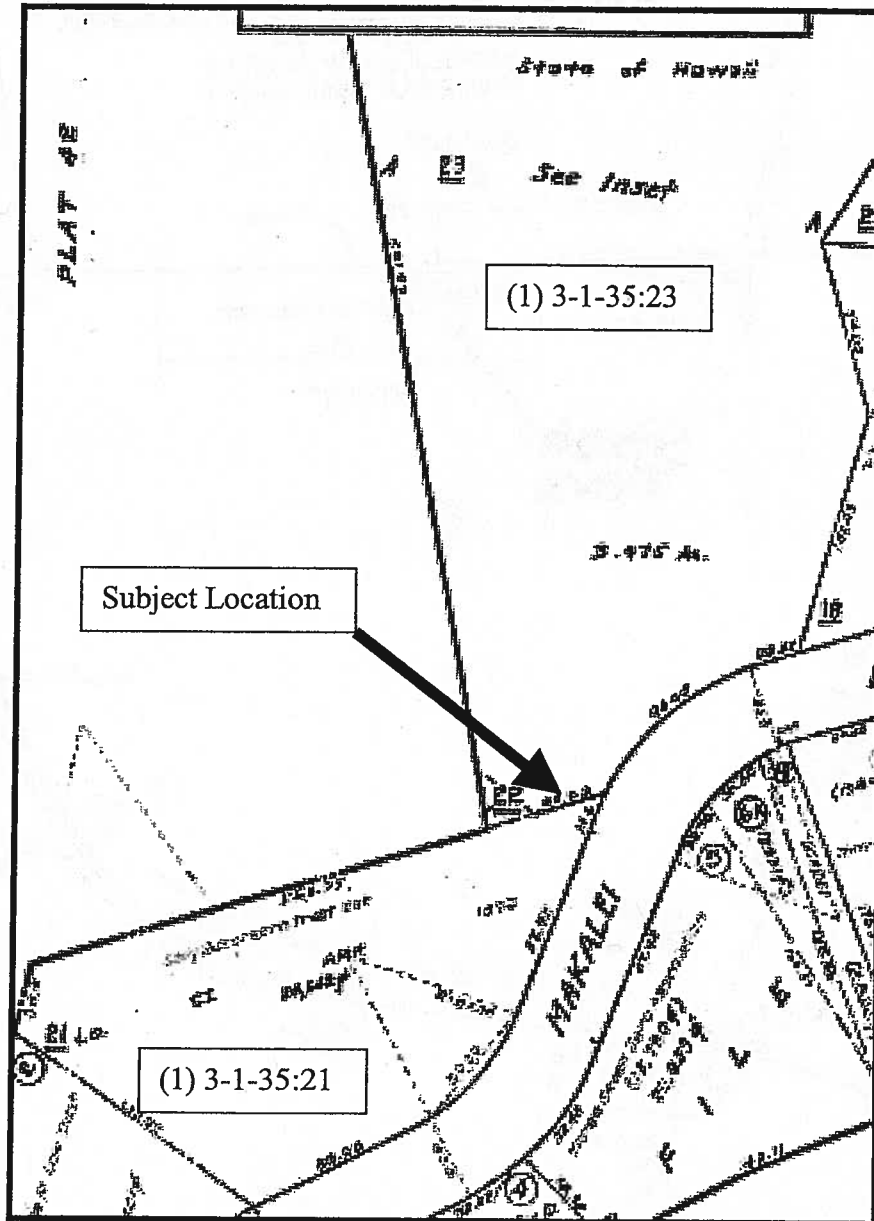
Barry Cheung
Acting Supervising Land Agent

APPROVED FOR SUBMITTAL:



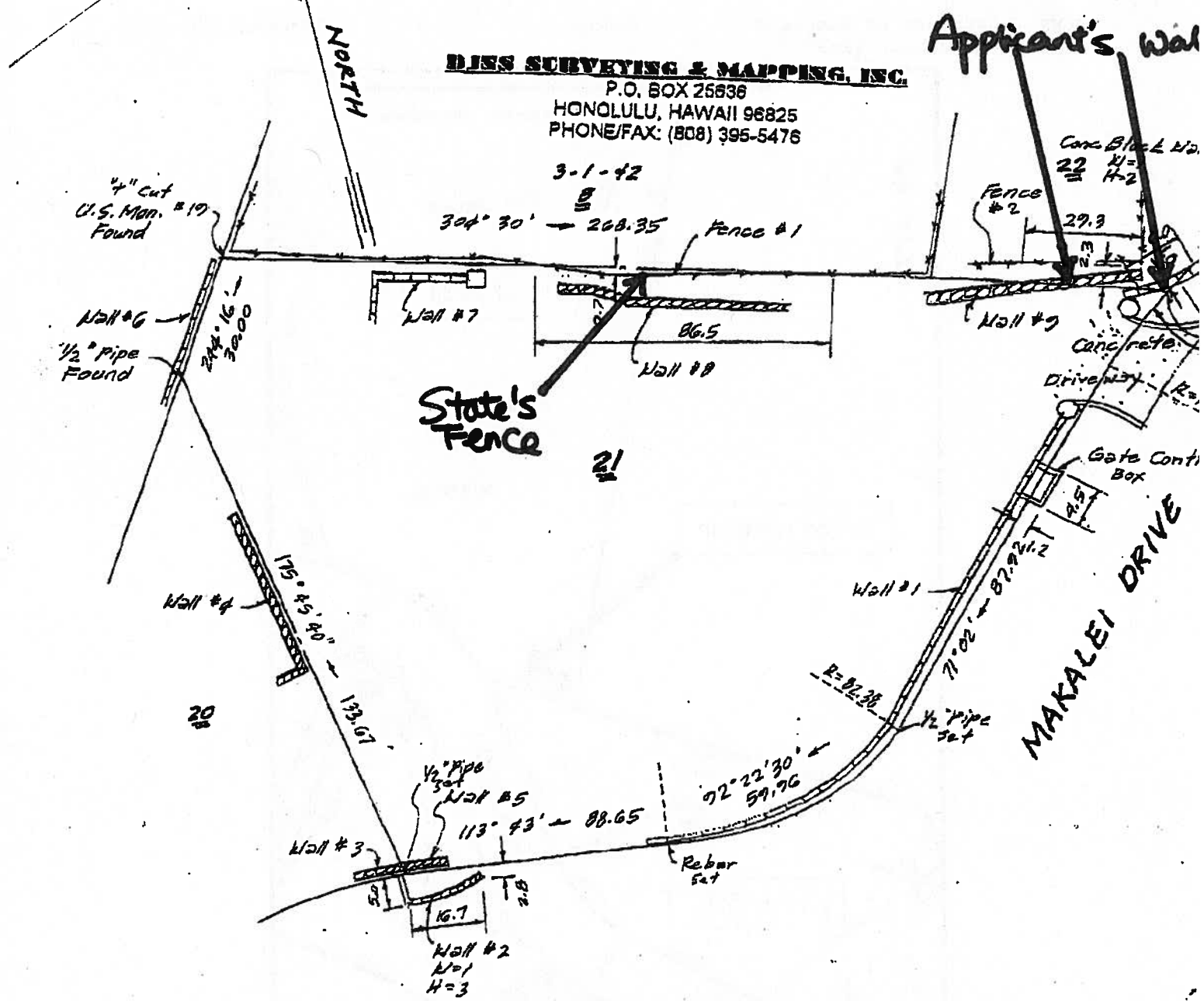
Peter T. Young, Chairperson





TMK (1) 3-1-35:23

EXHIBIT A



PERIMETER SURVEY SKETCH
TAX MAP KEY: 3-1-35:21

Honolulu, Oahu, Hawaii

Job Number 02814 Field Book 402:03
 December 13, 2002

Not To Scale



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
Dennis K. Hashimoto
 LICENSED PROFESSIONAL LAND SURVEYOR

EXHIBIT B

CHOI

Choi International
American Savings Bank Bldg.
Kahala Branch
1215 Hunakai Street, Suite 200
Honolulu, Hawaii 96816
Tel: 808/734-7711
Fax: 808/735-8879
www.ChoiRealty.com
E-mail: hawaii@choi-realty.com

RECEIVED
LAND DIVISION

2003 NOV 18 P 2:19

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

November 18, 2003

VIA MAIL & FACSIMILE: 587-0455

Mr. Barry Cheung
Department of Land and Natural Resources
Land Division
State of Hawaii

Re: Ref: 03od-006 - Request for Non-exclusive easement on State lands TMK (1) 3-1-35:22

Dear Mr. Cheung,

Thank you for your letter of November 5. I would like to point out a few things for consideration by the Land Board:

- 1) It is true that the landowner is requesting a non-exclusive easement on State Lands from the Division of State Parks, but would prefer to have a mutual exchange of easements as recently agreed upon by the Division. The Division agreed to the issuance of the easement, subject to the property owner granting the Division of State Parks an easement and right-of-way for its fence onto the landowners property. In other words, there was to be an exchange of easements, since the State is encroaching onto private property. [See attached survey and map, which shows that "The north boundary is evident by: . . . 2. Fence #1 which extends into the subject parcel by 0.0 ft., to 0.7 ft. and to 0.0 ft. for 86.5 ft."] Fence #1 is admitted to be a State fence that is encroaching onto the landowners property.
- 2) The difficulty that your Department of Land and Natural Resources seems to have is that there is "no legal provision in the statutes that would allow the Board to issue such a "reciprocal" easement." What I would suggest is that there are equitable remedies that would permit the Department of Land and Natural Resources to enter into such a reciprocal arrangement, given the State's encroachment onto the landowners property.
- 3) In order for the Land Board to clearly understand the situation, I would suggest that at the same time that the State Appraiser appraises the value of the easement over State land, that he or she also appraise the value of an easement over the landowners property. I would assume the value of the two easements would be almost identical.

EXHIBIT C

- 4) There would seem to be 3 possible alternatives:
 - a) For the State to appraise the landowners request for a Non-exclusive easement and ignore the fact that the State needs to request a similar Non-exclusive easement over the landowners property (for the State's Fence that encroaches onto the landowners property).
 - b) For the State to appraise the value of both the State's and the Landowners non-exclusive easements and charge (or pay) the net difference.
 - c) Recognize that there are equitable or common sense principles of law that would permit "reciprocal easements".

In conclusion, I would like to note how sad it is that in our modern way of doing business with the Government that we have seeming lost the simple forms of common courtesy that we used to have. Years ago, these types of matters would have been the subject of a 20 minute discussion and a mutual agreement noted in a letter. You could call it "equity" under principles of Anglo Saxon Common Law or you could call it Kokua as we used to know it in Hawaii.

Sincerely,



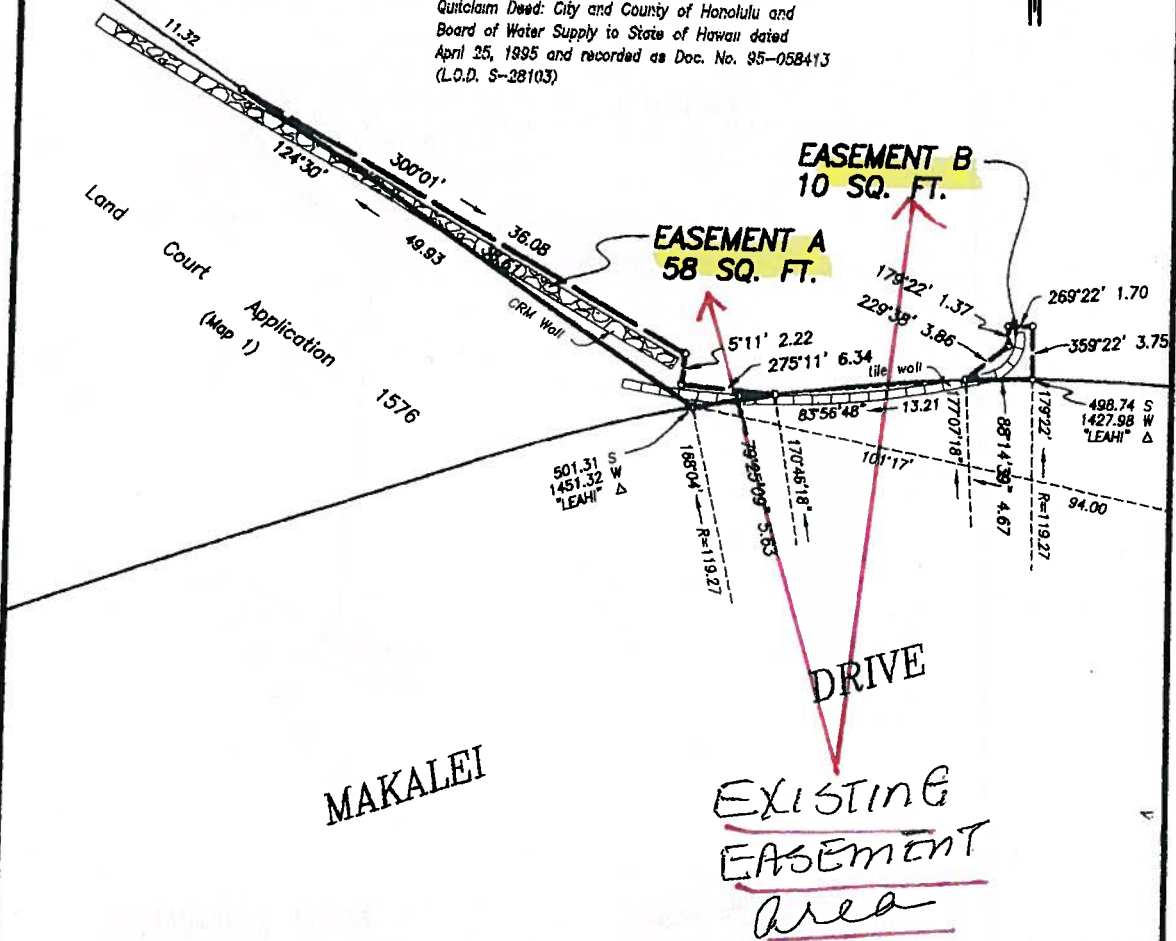
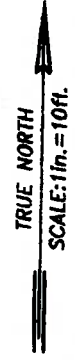
Cedric Choi, JD, RA
Managing Director
Choi International

Diamond Head State Monument
Governor's Executive Order 3642
Part 5
(C.S.F. 22,132)

L.P. 8165, Part B on a portion of L.C. Aw. 8559-B, Ap. 32 to William C. Lunalilo

Diamond Head State Monument
Governor's Executive Order 3743
(C.S.F. 22,358)

Quitclaim Deed: City and County of Honolulu and
Board of Water Supply to State of Hawaii dated
April 25, 1995 and recorded as Doc. No. 95-058413
(L.O.D. S-28103)



REDUCED NOT TO SCALE

NON-EXCLUSIVE WALL EASEMENT EASEMENTS A AND B

Kapahulu, Waikiki, Honolulu, Oahu, Hawaii

PRELIM. APPR'D.
Department of the
Attorney General

JOB 0-171(04)
C. BK.

Scale : 1 inch = 10 feet

EXHIBIT "D"

TAX MAP 3-1-35 : par. 23

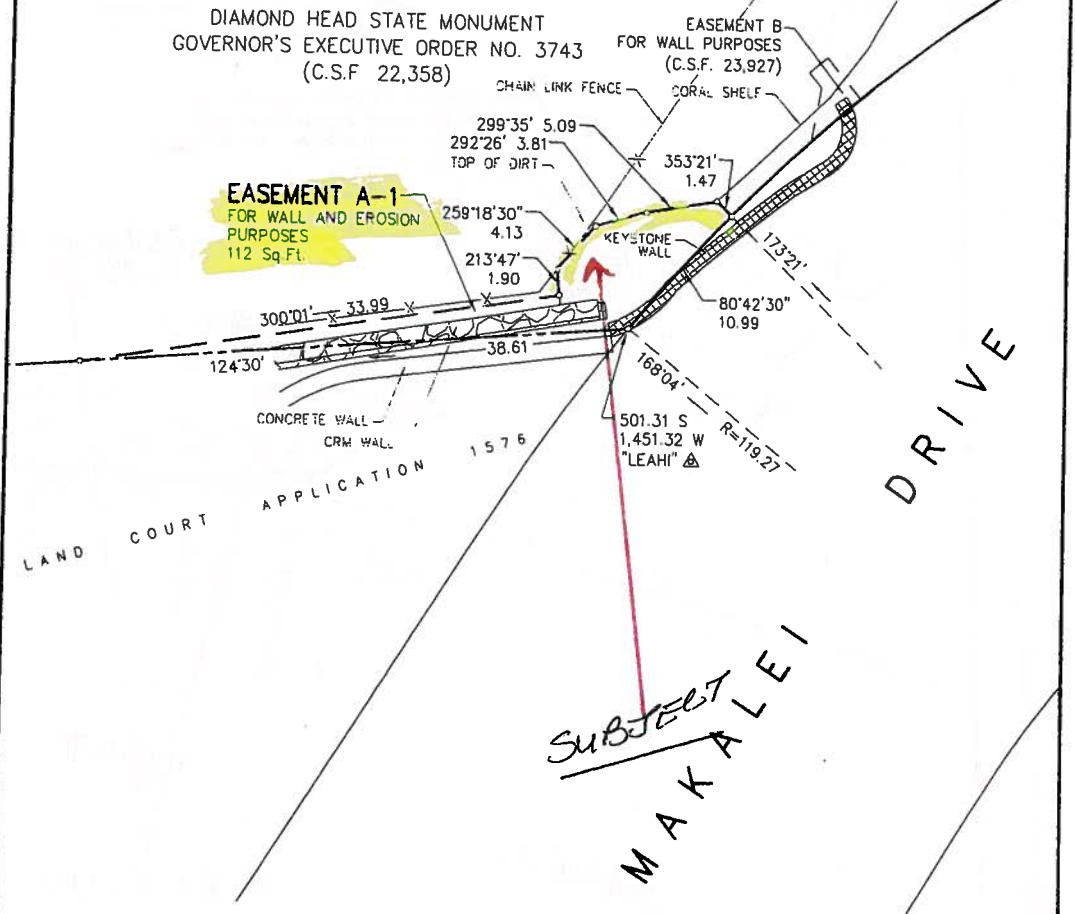
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 23,827

JGL November 29, 2004

TRUE NORTH
SCALE: 1 IN. = 10 FT.

L.P. 8165 L.C. TO
PART B 8559-A
AW ON -B
WILLIAM C-
PORTION OF AP. 32 LUNALILO



MAP SHOWING WALL AND EROSION EASEMENT AFFECTING DIAMOND HEAD STATE MONUMENT

AT WAIKIKI, HONOLULU, OAHU, HAWAII

THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION

SCALE: 1 IN. = 10 FT

James R. Thompson
Exp. 04/30/18
TAX MAP KEY 3 - 1 - 35 POR. 23
16100c00.dwg/1630.59/swj/20160701

JULY 27, 2016

WALTER P. THOMPSON, INC.

8.5" x 14" = 0.83 Sq.Ft.

EXHIBIT B-1