

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

June 14, 2024

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

PSF. No.: 24OD-033

OAHU

Request for Mutual Cancellation of Grant of Non-Exclusive Easement No. 5476 to Andrea Mapuna Peters, also known as Andrea Mapuana Peters, Grantee; Waimanalo, Koolaupoko, Oahu; Tax Map Key: (1) 4-1-007: adjacent to 065.

APPLICANT:

Andrea Mapuna Peters, also known as Andrea Mapuana Peters,¹ tenant in severalty.

LEGAL REFERENCE:

Sections 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-007: adjacent to 065, as shown on **Exhibits A-1 to A-4**.

AREA:

300 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: R-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

¹The name in the easement document was a typo, and the correct name is Andrea Mapuana Peters, as shown on two deeds in 2004 mentioned below,

CURRENT USE STATUS:

Encumbered by Grant of Non-Exclusive Easement No. 5476 to Andrea Mapuna Peters, also known as Andrea Mapuana Peters, for masonry wall, concrete footing, and wooden fence purposes.

Encumbered by Executive Order No. 4089 to the City and County of Honolulu, Department of Parks and Recreation for addition to Waimanalo Beach Park for beach right-of-way purposes.

TERM:

Sixty-five (65) years, commencing from May 27, 1994, and expires on May 26, 2059.

ANNUAL RENTAL:

\$700 effective May 27, 2014 to May 26, 2024. Rent due annually.

Pursuant to the recent rental reopening, the annual rent will be increased to \$2,700 for the 10-year period commencing from May 27, 2024.

DCCA VERIFICATION:

Individual, not applicable.

APPLICANT REQUIREMENTS:

1. The grantee shall obtain all necessary authorizations/permits regarding the demolition of the existing wall and building of the new wall;
2. Upon completion of the construction on the new enclosure, the grantee shall provide a topographical survey map prepared by a licensed land surveyor to the Land Division showing the new structure is not encroaching on the beach right-of-way; and
3. The grantee shall pay the prorated rent up to the date of the execution of the mutual cancellation document, including the new annual rent of \$2,700 effective from May 27, 2024 as mentioned above.

REMARKS:

At its meeting of May 27, 1994, under agenda item F-7 (**Exhibit B**), the Board of Land and Natural Resources (Board) authorized the issuance of a 65-year non-exclusive easement to Andrea Mapuana Peters regarding portions of her hollow tile masonry wall encroaching on the adjacent public beach right-of-way. The wall's concrete footing and a

portion of the wall itself encroaches 2 feet into the beach access right-of-way along the whole length of the wall.

According to the 1994 submittal, the department was working with the grantee when the top section of the wall “began to crack extensively causing a hazard to the beach right-of-way”. The top section of the wall was eventually removed. The Board authorized the issuance of the subject easement covering the remaining portions, including the footing.

In January of 2005 Executive Order No. 4089 was executed that set aside nine beach rights-of-way as an addition to Waimanalo Beach Park to the City and County of Honolulu, Department of Parks and Recreation. One of the beach rights-of-way, Parcel 1, encumbers the subject area as described, “Subject, however, to a Non-Exclusive Tile Wall and Footing Easement (2.00 feet wide) as shown on plan attached hereto and made a part hereof.” Comments were requested of the City and County of Honolulu, Department of Parks and Recreation (“DPR”) but we have not received a response as of this date. Staff will advise the Grantee to check with the DPR prior to any demolition/construction work.

Over the years, the recorded ownership of the adjacent private property (Parcel 65) changed twice: (1) Andrea Mapuana Peters to Andrea M. Peters Revocable Living Trust under that certain unrecorded Trust Agreement dated December 30, 2003; (2) Andrea M. Peters Revocable Living Trust under that certain unrecorded Trust Agreement dated December 30, 2003 to Andrea Mapuana Peters and Thomas Mark DeHarne.

Staff does not intend to pursue a consent to assignment that is triggered by the above-mentioned changes in the ownership of the adjacent private property in view of the requested mutual cancellation described below. Grant of Easement No. 5476 is an older form easement that requires the prior written consent of the Board to any assignment. Accordingly, staff believes any attempted transfers of the easement that did not receive Board consent can be disregarded for purposes of canceling the easement.

Pursuant to the recent rental reopening, the annual rent was increased from \$700 to \$2,700 effective as of May 27, 2024. Mr. DeHarne advised staff that the family is planning to replace the current wall with a new one which will be built entirely inside their private property boundary and inquired if the State would entertain a mutual cancellation of the subject easement.

At the time of this submittal, the grantee has complied with all the terms and conditions of the easement, including rent, insurance, and performance bond. Site inspection conducted on August 29, 2023 did not find any concerns or issues.

Comments from other Agencies are as follows: The Division of Aquatic Resources requests that the public right-of-way to the beach be accessible during the construction and that best management practices be utilized to mitigate erosion and land-based sources of pollution. The Office of Conservation and Coastal Lands and the City and County of Honolulu’s Department of Facility Maintenance have no objections and concur with the

environmental assessment exemption. The Board of Water Supply has no objections or comments and concur with the environmental assessment exemption. The Division of Forestry and Wildlife, Department of Planning and Permitting and the Office of Hawaiian Affairs have not responded to a request for comments before the deadline.

RECOMMENDATION: That the Board, subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the mutual cancellation of Grant of Non-Exclusive Easement No. 5476, Andrea Mapuna Peters, also known as Andrea Mapuana Peters, Grantee, 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 mutual cancellation form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Darlene Bryant-Takamatsu, Land Agent

APPROVED FOR SUBMITTAL:



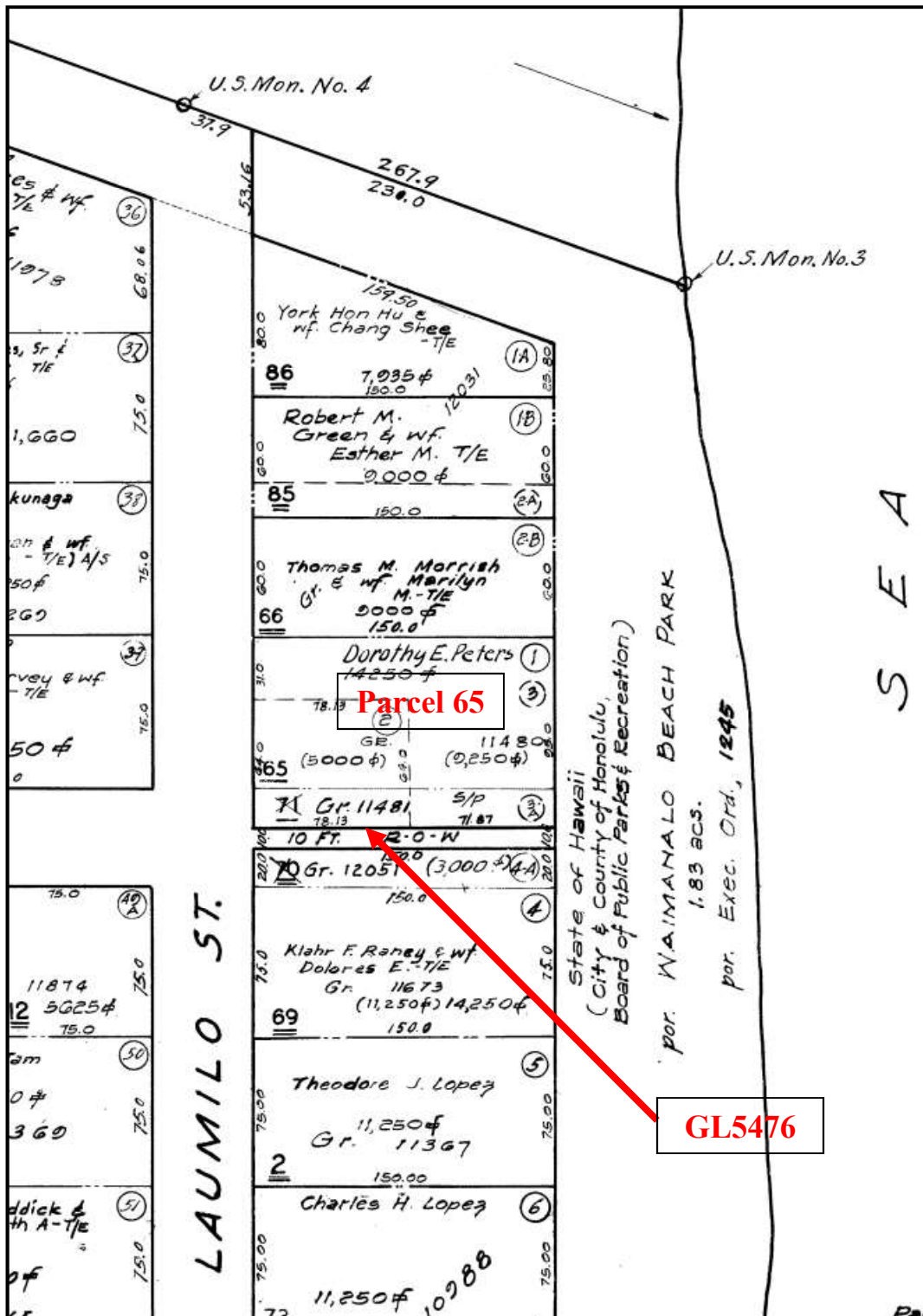
Dawn N. S. Chang, Chairperson

RT *KOM*



TMK (1) 4-1-007: adjacent to 065

EXHIBIT A-1



TMK (1) 4-1-007: adjacent to 065

EXHIBIT A-2

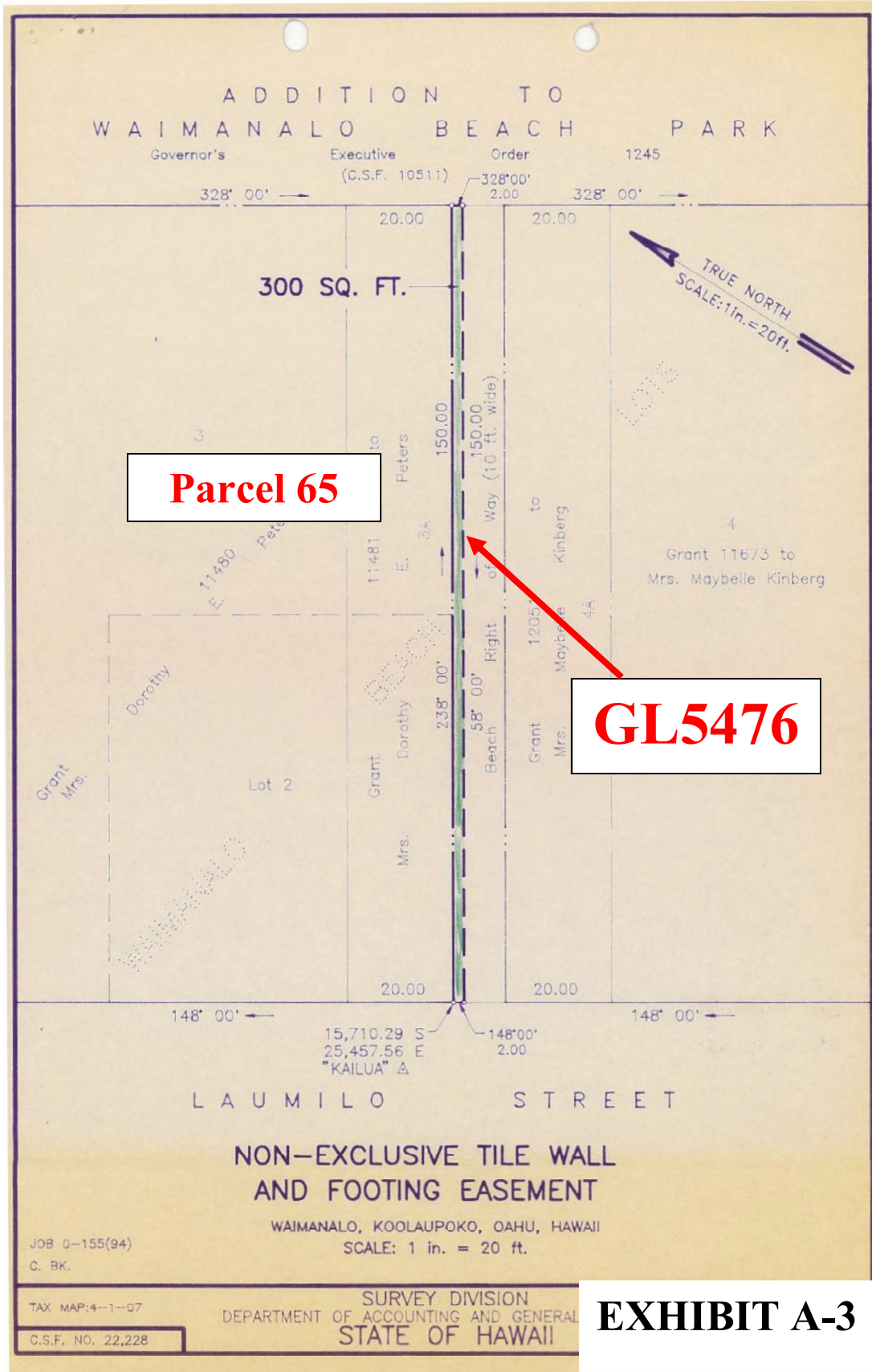




EXHIBIT A-4

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

May 27, 1994

Board of Land and
Natural Resources
Honolulu, Hawaii

Subject: Direct Sale of Non-Exclusive Term Easement, Andrea Peters, OAHU
Waimanalo, Oahu, TMK: 4-1-07:65

STATUTE: Section 171-13, Hawaii Revised Statutes

APPLICANT: ANDREA PETERS

FOR: Sixty-five (65) year non-exclusive wall easement for tile wall, concrete footing and wooden fence built on State-owned beach walkway shown outlined in red on the tax map labeled Land Board Exhibit "A" appended to the basic file, Waimanalo, Oahu, TMK: 4-1-07:65.

LOCATION: Portion of Waimanalo Beach Lots, Waimanalo, Oahu, being a portion of a beach right-of-way located between TMK: 4-1-07:65 and TMK: 4-1-07:69, Waimanalo Beach Lots, Waimanalo, Oahu.

OEQC REQUIREMENTS:

Disposition is exempted from OEQC requirements pursuant to Sub-Chapter 11-200-8 (Item 1) of the Hawaii Administrative rules that exempts "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."

PURPOSE: Right, privilege and authority to construct, use, maintain and
Amendment to Board action
May 27, 1994, Item F-7

Add to Board submittal:

RECOMMENDATION:

Recommendation Item C

No. 16. The Grantee shall submit all plans for the installation of any structures located anywhere upon the footing located within the easement area for review and approval by the Chairperson prior to construction.

ITEM F-7

BLNR - Andrea Peters

-2-

May 27, 1994

LAND TITLE

STATUS: Ceded land, sub-section 5-B of the Admissions Act

ZONING: State Land Use Commission: Urban

CONSIDERATION: Annual rental to be determined by an independent appraisal establishing fair market value, same subject to review and acceptance by the Chairperson.

RENTAL REOPENINGS:

To be determined by an independent appraisal at the end of the 10th, 20th, 30th, 40th, 50th and 60th years of the easement term.

REMARKS:

Ms. Andrea Peters is the fee holder of Lot 3 of the Waimanalo Beach Lots, also identified as TMK: 4-1-07:65. Approximately forty-five (45) years ago a footing and tile wall was constructed within the territorial beach right-of-way shown outlined in red on Land Board Exhibit "A". The wall and footing encroach from one foot to two feet into the right-of-way.

Over a year ago, the top section of the tile wall which is approximately nine (9) feet high began to crack extensively causing a hazard to the beach right-of-way. Staff has worked with Ms. Peters in removing this hazard which entailed removing a four foot upper portion of the wall. The applicant has cooperated with us in removing this hazard.

We have brought it to her attention that the encroachment should be resolved through a wall easement. She has responded with a letter request to acquire this easement from the Department.

The width of the beach right-of-way is ten (10) feet. The wall footing encroaches up to two (2) feet into the right-of-way which leaves ample room of eight (8) feet wide to access the beach. The public has used this accessway for over forty-five years with the encroachment. The public's use of the right-of-way will not be diminished or impaired.

RECOMMENDATION:

That the Board:

- A. Find that the area in question to be an economic unit in terms of the use to which the area will be put.

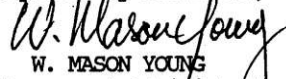
BLNR - Andrea Peters

-3-

May 27, 1994

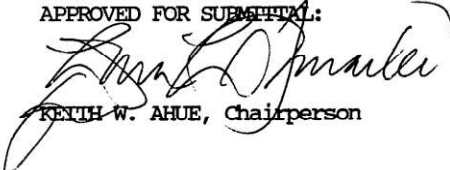
- B. Find that the encroachment is Violation of Chapter 171-6 of the Hawaii Revised Statutes and assess the applicant a fine of \$500.00 for an unauthorized encroachment onto State-owned lands.
- C. Authorize the direct award to the applicant of the subject easement under the above terms and conditions, which are by this reference incorporated herein, in addition to the following:
1. The grantee shall use the easement for masonry wall, concrete footing and wooden wall purposes only.
 2. Standard Department delinquency service charge schedule.
 3. Standard Department sub-lease premium schedule.
 4. Standard Department assignment of Lease Premium Schedule.
 5. Standard Department compliance Bond Requirement.
 6. Review and approval of the easement documents by the Attorney General's Office.
 7. Standard abandonment and relocation clause.
 8. Standard indemnity and hold-harmless clause.
 9. Standard liability insurance policy clause.
 10. Upon expiration or sooner termination of the easement, if desired by the Grantor, the grantee, at its own cost and expense, shall remove any and all improvements installed or constructed by them and restore the area to a condition satisfactory to the grantor.

Respectfully submitted,


W. MASON YOUNG

Land Management Administrator *WMS*

APPROVED FOR SUBMITTAL:


KENNETH W. AHUE, Chairperson