

LATE TESTIMONY

Transmittal Cover

Testifier: Ms Nancy Mueing

Title: Liaison for Ilikai Condominium Association, Inc.

Representative for Ala Moana Properties, Limited

To: Committee on Water, Land and Ocean Resources

Hearing date: February 5th 2010, 9:00 a.m.

Measure: HB 2582

Testimony

Chairman, Ken Ito and committee members:

A blanket allowance for commercial vessels in Ala Wai Harbor, contradicts a current deed agreement in place by the State. Developer Ala Moana Properties, Limited, donated to the State harbor lots 23 and 25 for the urban side road, Holomoana St. The compensation for such was covenants. One involves a landside marine restriction, against commercial moorings, adjacent to the lots. Its location exists as the first dock row in the Ala Wai. The mapped area and deed, 196552, will be provided for your review.

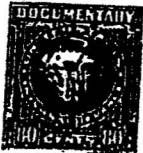
To prevent discrepancies, the Bill 2582 should include an exception: "No commercial moorings on the seaward side of Ala Wai Harbor lots 23 and 25." If this should occur, it represents a "judicial taking", since the covenant was the developer's compensation.

These facts are presented for your consideration only and with uncertainty. ✓



INDENTURE AND DEED

- THIS INDENTURE AND DEED made, executed and delivered this 20th day of December, 1956, by and between the TERRITORY OF HAWAII, whose place of business and post office address is Iolani Palace, Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called "Territory", and ALA MOANA PROPERTIES, LIMITED, a Hawaii corporation, whose principal place of business is 1350 Ala Moana, said Honolulu, and whose post office address is Post Office Box 3468, said Honolulu, hereinafter called "Ala Moana",



W I T N E S S E T H:

WHEREAS, the parties hereto did enter into an "Agreement" dated April 30, 1956, whereby the parties hereto, under the provisions of Section 4535, Revised Laws of Hawaii, 1945, and other pertinent provisions of law thereunto enabling, did agree to an exchange of land, extinguishment of certain easements, establishment of new easements, and restriction of use of lands and yacht harbor; and

WHEREAS, the Board of Harbor Commissioners, at a meeting held April 26, 1956, has concurred in, and the Commissioner of Public Lands of the Territory of Hawaii, and the Attorney General of the Territory of Hawaii, and the Governor of the Territory of Hawaii, have approved the above-mentioned Agreement;

NOW, THEREFORE, for and in consideration of the covenants of Territory contained in said Agreement, and for

AND PROVIDED FURTHER, HOWEVER, that the Territory shall restrict its use of the marine area immediately makai of the said described 8-foot strip and in front of or makai of the property of Ala Moana to non-commercial seaworthy marine vessels in first-class condition, shall prohibit the persons on such craft from setting up residences or effectuating major repairs on vessels while in said area, and shall refrain from building, causing to be built, or permitting to be built, any structures within said marine area above the level of the existing sidewalk on the 8-foot strip described herein, except for catwalks and bits, cleats, or other mooring devices thereon.

Non commercial
vessels in
first class
condition no
residential
dwelling use

Restricting
all restrict
use of land
makai of
Ala Moana
used to
non commercial
vessels

6. Does hereby surrender, grant, convey, relinquish, release and quitclaim to Territory, its successors and assigns, any and all littoral rights appurtenant to Lots 24 and 26, as shown on Map No. 4 of said Land Court Consolidation No. 32, and Lot No. 19 as shown on Map No. 1 of said Land Court Consolidation No. 32.

TO HAVE AND TO HOLD the same, together with all rights and privileges belonging or appertaining thereto, unto the said Territory, its successors and assigns, forever.

7. Does hereby remise, release and forever discharge the Territory, its successors and assigns, of and from any and all manner of action or actions, cause and causes of action, suits, controversies and trespasses, damages, claims and demands of whatsoever kind or nature, and from any and all provisions and obligations of that certain Agreement known as the Waikiki Agreement entered into on October 19, 1928,

release of
littoral rights
in the lots

IN WITNESS WHEREOF, the TERRITORY OF HAWAII has caused these presents to be duly executed by those Territorial officials in whom the authority so to do is in them vested by law, and ALA MOANA PROPERTIES, LIMITED has caused these presents to be executed and its corporate seal to be hereunto affixed by its proper officers in that behalf duly authorized, on the day and year first above written.

TERRITORY OF HAWAII

BY Samuel Wilder King
Governor, Territory of Hawaii

ALA MOANA PROPERTIES, LIMITED

BY [Signature]
ITS VICE-PRES.

BY [Signature] C. W. HUMME
ITS VICE-PRES. and SECRETARY

COUNTERSIGNED:

[Signature]
Commissioner of Public Lands

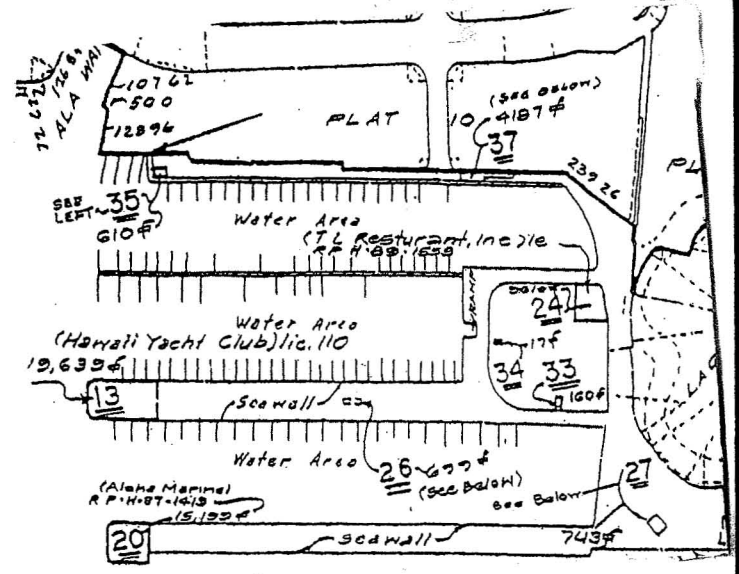
[Signature]
Chairman, Board of Harbor Commissioners

APPROVED AS TO FORM:

Richard K. Aoyama
Attorney General, Territory of Hawaii

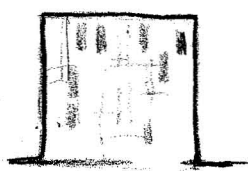
NON COMMERCIAL + NON RESIDENTIAL

LOT 23



PRINCE HOTEL

8' WIDE LAND STRIP SIDEWALK



ILUKAI MARINA TOWER

HOBRON LANE



WATCH HARBOR TOWER



ILUKAI

ALA WAI HARBOR MOOR RESTRICTION MAP

SHOWING AREA AND ADJACENT DWELLING TOWERS - NOT ALL INCLUSIVE

PER INDENTURE DEED DATED: 12-20-56, DOC # 190552, PAGE 5, PARAGRAPH 1

AS INTERPRETED BY: NANCY MUETING, 1079-09 ILUKAI ASSOCIATION MEMBER

8'
SCALE: 1/2" = 75'