

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

July 25, 2014

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

Ref: GL-5202

OAHU

First Amendment to Non-Exclusive Easement S-5202; Kaalaea, Koolaupoko Oahu, Tax Map Key: (1) 4-7-016:Seaward of 061. The Purpose of the Amendment is to Allow the Easement to Inure to the Benefit of the Abutting Property, Tax Map Key (1) 4-7-016:061, and Run with the Land.

APPLICANTS:

Lisa Gouw Iwata, Trustee of the Lisa Gouw Revocable Living Trust Agreement dated May 8, 1997, as amended and completely restated on May 23, 2006, and John Allen Wong, Trustee of the John Allen Wong Revocable Trust dated November 24, 1990 as amended and completely restated on March 14, 1998, as tenants in common.

LEGAL REFERENCE:

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

LOCATION:

Portion of lands situated at Kaalaea, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-016:seaward of 061, as shown on the attached map labeled Exhibit A.

AREA:

1,151 square feet, more or less.

TRUST LAND STATUS:

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

CHARACTER OF USE:

Seawall purposes

TERM OF EASEMENT:

55-year term beginning on September 8, 1989 until September 7, 2044

ANNUAL RENTAL:

\$3,181.00 annually until September 7, 2019, and subject to rent reopenings every ten (10) years thereafter.

DCCA VERIFICATION:

Applicants are trustees and, as such, are not required to register with DCCA.

REMARKS:

On June 27, 2014, under agenda item D-17, the Board gave its consent to the assignment of the subject easement from Marlene Ress to the Applicant following the sale of the abutting property.

To save the costs and time involved in the remaining reopenings for the easement scheduled for 2019, 2029, and 2039, the Division preferred to conduct an appraisal to determine the lump sum payment for the remaining term of the easement. Since the easement document does not contain any provision allowing amendment to be done unilaterally, staff discussed with the Applicants the possibility of amending the rental provision of the easement.

Meanwhile, the closing date of the sale was scheduled on June 23, 2014. The Applicants and staff agreed to bring the consent to assign to the Board for consideration while the Applicants were considering the proposal. Subsequently, the Applicants informed the staff that they did not want to proceed with the amendment described above. Nevertheless, the Applicants agreed to proceed with an amendment which would allow the easement inure to the benefit of the abutting property and run with the land. The intent of the amendment is to eliminate the consent needed from the Board regarding any future assignment(s). Staff recommends the Board authorize such amendment for the subject request because the amendment is consistent with the Board's current practice for issuing easements.

The Applicants have 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.

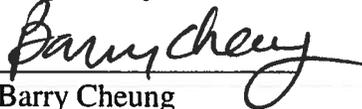
Since the subject request is for housekeeping purposes, staff did not solicit comments from other government agencies. There are no other pertinent issues or concerns. Staff has no objections to the subject request.

RECOMMENDATION: That the Board amend the Non-Exclusive Easement No. S-5202 by adding the following condition:

“The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-7-016:061, 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”, subject to the following:

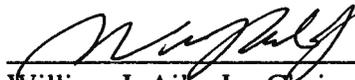
1. The standard terms and conditions of the most current amendment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

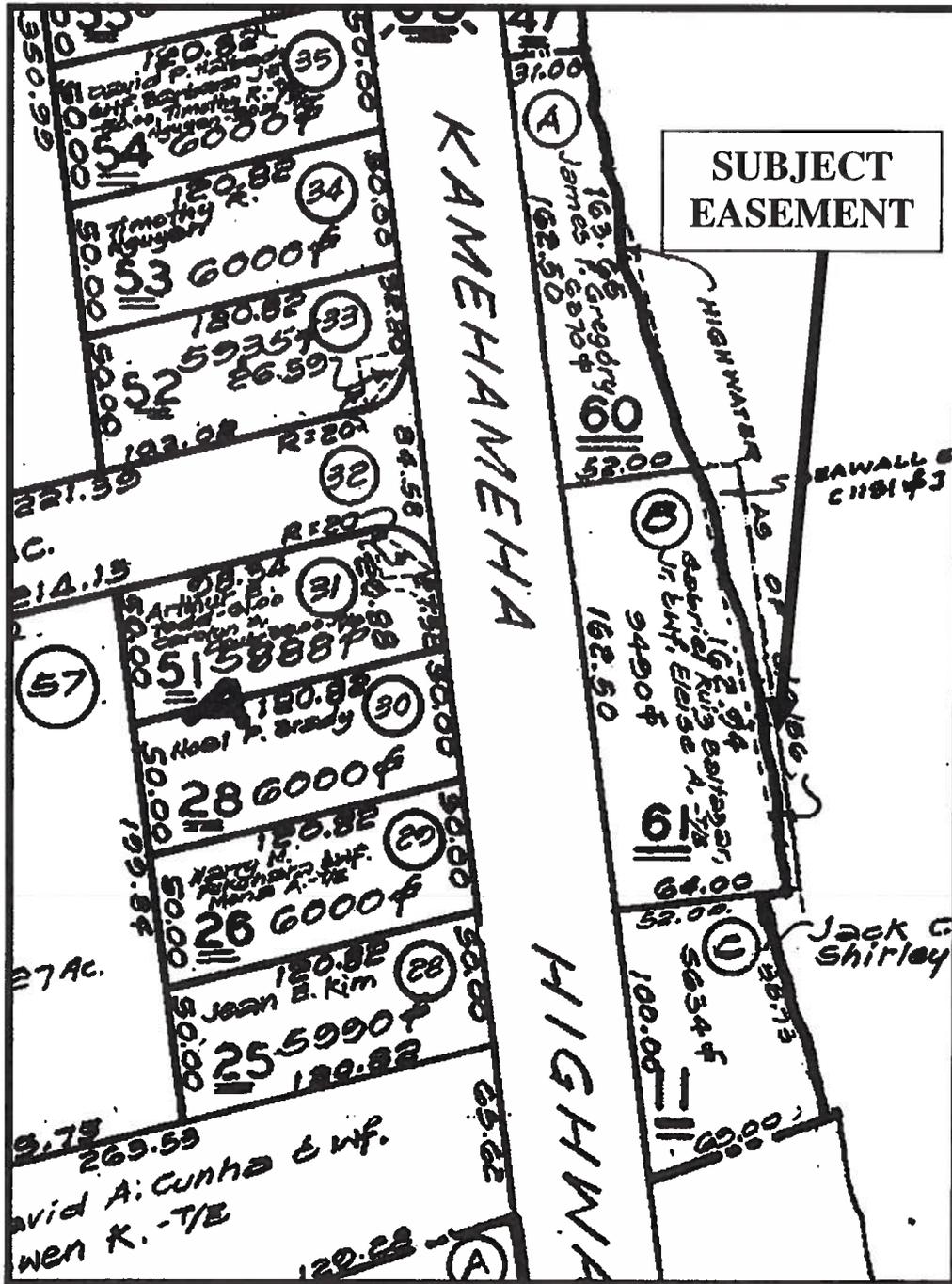


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TAX MAP KEY: (1) 4-7-016:seaward of 061

EXHIBIT A