

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

September 22, 2017

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

Ref No. 12OD-169

Oahu

Amend Prior Board Action of January 11, 2013, (Item D-12), Consent to Assign Grant of Non-Exclusive Easement No. S-5338, Brian Grazer, Trustee of the Brian Grazer Trust of 1995, Assignor, to Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, Assignee, Amend the Easement Conditions by Allowing the Easement to Run With the Abutting Property and Updating the Insurance Provision; Pupukea, Koolauloa, Oahu, Tax Map Key; (1) 5-9-001:038 portion.

The amendment is to Add John Alexander Florence, Unmarried, Tenant in Severalty, as Assignee, due to the recent change in ownership of the adjacent private property.

BACKGROUND:

On January 11, 2013, under agenda item D-12, the Board gave its consent to the assignment of the Grant of Non-Exclusive Easement No. S-5338 from Brian Grazer, Trustee of the Brian Grazer Trust of 1995, Assignor, to Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, as Assignee. The 2013 submittal also authorized the amendment of the subject easement by allowing the easement to run with the adjoining private property, further identified as TMK (1) 5-9-020:051 (Parcel 51), and adding the updated insurance coverage provision. A copy of the 2013 submittal is attached as **Exhibit 1**.

Following the 2013 approval, staff worked with the local attorney representing the Assignor pertaining to the execution of the consent document. To date, staff did not receive any signed consent document from the Assignor or his counsel, notwithstanding repeated requests were made.

Subsequently, staff noticed that pursuant to the warranty deed recorded as document no. A-59270227 on March 24, 2016, the ownership of Parcel 51 and the subject easement were transferred from Thomas McCormick, Trustee of the McCormick US Properties Trust 2012 to John Alexander Florence.

Staff contacted Mr. Florence and his agent, who agree to continue the consent and amendment

process as described above.

In addition to the Recommendations noted on Exhibit 1, staff recommends the Board adding its consent to the assignment from Thomas McCormick, Trustee of the McCormick US Properties Trust 2012 to John Alexander Florence, Tenant in Severalty, as Assignee as described above.

Upon approval of today's request, staff will work with the Department of the Attorney General by removing the requirement of the signatures for the assignors [Grazer and McCormick] and finalize the documents accordingly.

RECOMMENDATION: That the Board amend its prior action of January 11, 2013, item D-12, by replacing the entire Recommendation Section with the following:

- "A. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5338, from Brian Grazer, Trustee of the Brian Grazer Trust of 1995, as the Assignor, to Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, as the Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment 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.
- B. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5338 from Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, as Assignor, to John Alexander Florence, as Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment 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.
- C. Amend the Grant of Non-Exclusive Easement No. S-5338 as follows:
 - 1. Replace paragraph 6 of the easement with the following: "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-020:051, 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."

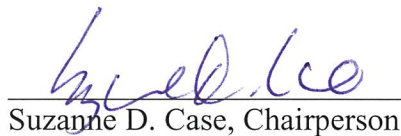
2. Update paragraph 8 of the easement with the current insurance provision, including the requirement of coverage in an amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, and naming the State of Hawaii as additional insured."

Respectfully Submitted,



Darlene Bryant-Takamatsu
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

January 11, 2013

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

PSF 12OD-169

OAHU

Consent to Assign Grant of Non-Exclusive Easement No. S-5338, Brian Grazer, Trustee of the Brian Grazer Trust of 1995, Assignor, to Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, Assignee, Amend the Easement Conditions by Allowing the Easement to Run With the Abutting Property and Updating the Insurance Provision; Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-001:038 portion

APPLICANT:

Brian Grazer, Trustee of the Brian Grazer Trust of 1995, Assignor, to Thomas McCormick, Trustee of the McCormick US Properties Trust 2012, as Assignee.

LEGAL REFERENCE:

Section 171-6, 36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Pupukea, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-9-001:038 portion, as shown on the attached map labeled Exhibit A.

AREA:

2,916 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:

For non-exclusive easement for the right, privilege and authority to use repair, construct, and maintain an existing revetment purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 11, 2013

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EXHIBIT "1"

D-12

TERM OF EASEMENT:

65 years, commencing on October 16, 1992 and expiring on October 15, 2057.

ANNUAL RENTAL:

Not applicable. One-time payment of \$17,496 was paid previously.

CONSIDERATION:

\$10.00

RECOMMENDED PREMIUM:

Not applicable as the easement does not allow for a premium.

DCCA VERIFICATION:

Not applicable.

REMARKS:

Pursuant to the Consent Decree and Order in Paumalu Beach Homeowners' Association, et al. v. William Paty, in his official capacity, et al., Civil No. 92-00663 ACK, entered October 16, 1992 a 65-year nonexclusive easement was issued to Mr. Douglas C. Ostman for revetment purposes. On October 11, 2002 (item D-12), the Board consented to the assignment of the subject easement to Brian Grazer Trust.

Assignment

The current owner is in the process of selling the abutting property to Thomas McCormick, Trustee and he requests the subject easement be transferred to the buyer of the property. The assignee 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.

Amendment

Paragraph 6 of the easement requires the prior written consent of the Board to any assignment of interest. The current policy for similar shoreline encroachment easements is to make the easement run with the property served by the easement. Therefore, staff recommends the Board authorize the amendment of the easement to allow it to "run with the land."

Insurance

Paragraph 8 of the easement requires the grantee to procure liability insurance in an amount acceptable to the Board. The current insurance requirement for similar shoreline encroachment easements is \$1 million and \$2 million per occurrence and aggregate respectively. Staff recommends the Board authorize the amendment of the subject easement

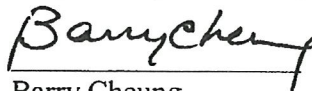
by updating the insurance provision with the current requirements.

Staff did not solicit comments from other agencies on the request as there is no change in the existing use. There are no other pertinent issues or concerns and staff has no objections to the request.

RECOMMENDATION: That the Board

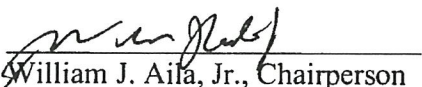
- A. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5338, Brian Grazer, Trustee, Assignor, to Thomas McCormick, Trustee, Assignee subject to the following:
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 - 2. Review and approval by the Department of the Attorney General; and
 - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend the Grant of Non-Exclusive Easement No. S-5338 as follows:
 - 1. Replace paragraph 6 of the easement with the following: "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-020:051, 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."
 - 2. Update paragraph 8 of the easement with the current insurance provision, including the requirement of coverage in an amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, and naming the State of Hawaii as additional insured.

Respectfully Submitted,

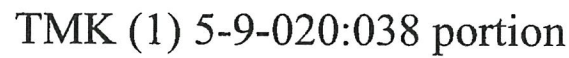


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



Correction: Exhibit A of the 2013 submittal should read TMK (1) 5-9-001:038 portion