

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

February 8, 2019

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

Ref No. 19OD-005

OAHU

Amendment of Grant of Non-Exclusive Easement S-5712 to Thomas Mitsuo Tanaka and Angel Montaine, Co-Trustees of the Thomas Mitsuo Tanaka and Gladys Chisato Tanaka Unrecorded Joint Revocable Living Trust dated June 16, 2000, as amended, for Seawall, Fill Land, Portion of Beach House and Boat Ramp Purposes; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-018: seaward of 076.

The purpose of amending the document is to (1) insert a provision allowing the easement to "Run with the Land," thereby becoming assignable without the written consent of the Board of Land and Natural Resources. The easement will be appurtenant to and inure to the benefit of the private real property identified as Tax Map Key: (1) 4-4-018:076; (2) updating the insurance provision to meet the current requirements.

APPLICANT:

Angel Montaine, Trustee of the Thomas Mitsuo Tanaka and Gladys Chisato Tanaka Unrecorded Joint Revocable Living Trust dated June 16, 2000, as amended.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-018:seaward of 076, as shown on the attached map labeled **Exhibit A**.<sup>1</sup>

AREA:

327 square feet, more or less.

<sup>1</sup> The subject private property also has a 55-year lease (GL5694) for the pier shown on Exhibit A. GL5694, as drafted, does not require prior Board approval in the event of change of ownership of abutting property.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Grant of Non-Exclusive Easement S-5712 ("GL 5712") to Thomas Mitsuo Tanaka and Angel Montaine, Co-Trustees of the Thomas Mitsuo Tanaka and Gladys Chisato Tanaka Unrecorded Joint Revocable Living Trust dated June 16, 2000, as amended, for Seawall, Fill Land, Portion of Beach House and Boat Ramp Purposes.

CONSIDERATION:

One-time payment of \$8,370 was paid in full prior to execution of GL 5712.

TERM:

Fifty-five (55) years from April 20, 2005 to April 19, 2060.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." See **Exhibit B**.

DCCA VERIFICATION:

Not required for individuals.

APPLICANT REQUIREMENTS:

None.

BACKGROUND:

GL5712 was issued to Thomas Mitsuo Tanaka and Angel Montaine, Co-Trustees of the Thomas Mitsuo Tanaka and Gladys Chisato Tanaka Unrecorded Joint Revocable Living Trust dated June 16, 2000, as amended, effective from April 20, 2005.

Angel Montaine became the sole trustee of the trust upon the passing of her father, Thomas Mitsuo Tanaka. In anticipation of selling the abutting property, she is requesting an amendment of the easement conditions which will allow the easement to "run with the land". Current language in GL5712 requires prior written consent from the Board in the event of any change of the grantee. The requested amendment is consistent with the current template for shoreline easements.

Further, the current insurance coverage requirement for similar shoreline easements is \$1 million per occurrence and \$2 million aggregate. GL5712 requires \$300,000 and \$500,000 per occurrence and aggregate respectively. Staff recommends the Board authorize the amendment of the easement by updating the insurance coverage provision with the current requirements.

The grantee is compliant with the terms and conditions of GL 5712. There are no other pertinent issues or concerns, and staff recommends the Board approve the request.

RECOMMENDATION: That the Board amend the Grant of Non-Exclusive Easement No. S-5712 as follows:

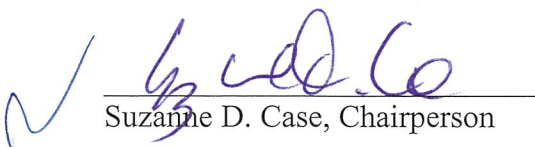
1. Replace paragraph 5 of the subject easement with the following: "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-4-018:076, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease 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. Replace paragraph 11 of the subject 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
3. Such other terms and conditions as prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



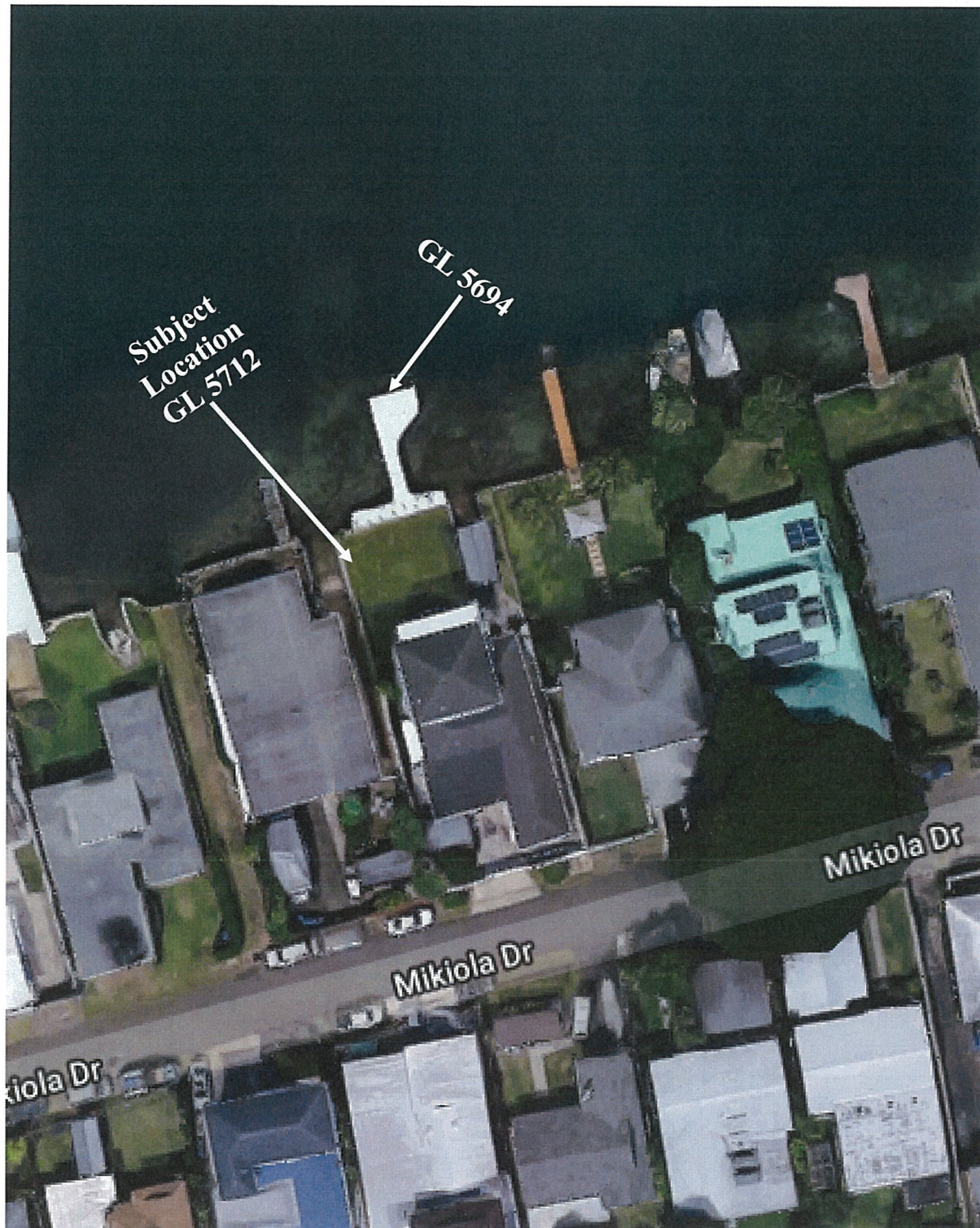
Darlene Bryant-Takamatsu  
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





TMK (1) 4-4-018: seaward of 076

**EXHIBIT A**

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Amendment of Grant of Non-Exclusive Easement S-5712 to Thomas Mitsuo Tanaka and Angel Montaine, Co-Trustees of the Thomas Mitsuo Tanaka and Gladys Chisato Tanaka Unrecorded Joint Revocable Living Trust dated June 16, 2000, as amended
Project Location:	Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-018:seaward of 076.
Project Description:	Amend Conditions Regarding Assignment and Insurance Under Grant of Non-Exclusive Easement S-5712.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. All currently existing improvements are permanently constructed so there would be no successive or repetitive action in the same place. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive Environment:	No. There are no changes to the existing use.
Consulted Parties	Office of Conservation and Coastal Lands.
Analysis:	Based on the above mentioned, staff believes there would be no significant impact to sensitive environmental or ecological receptors.
Recommendation	That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.