

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

September 11, 2020

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

Ref: GL5601

OAHU

Amendment of Grant of Non-Exclusive Easement S-5601 to Robert W.S. Chang and Carol L.H. Chang, Trustees under Unrecorded Robert W.S. Chang and Carol L.H. Chang Revocable Living Trust dated December 23, 1986 and Ryan K. Chang for Seawall Purposes, Waialae Iki, Honolulu Oahu, Tax Map Key: (1) 3-5-022:Seaward of 002.

The purpose of this amendment is to modify the easement condition regarding consent to assignment, eliminate the requirement of posting a performance bond, and add a new condition requiring the prior written approval of the Chairperson to mortgage the easement area.

BACKGROUND:

On December 10, 1999, the Board authorized the issuance of a 55-year non-exclusive easement for seawall purposes to Robert Chang, Carol Chang, and Ryan Chang ("Grantees"). The easement document (GL5601) for the subject area as shown on **Exhibits A1-A2** was executed on July 12, 2000.

Condition 5 of GL5601 requires that the easement or any rights granted herein shall not be sold, assigned, conveyed, mortgaged, granted, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Board of Land and Natural Resources ("Board"). The current shoreline encroachment easement template the department uses includes language allowing the easement to run with the land and no longer requires the Board's consent to assignment. However, staff notes that the template still requires the prior written approval of the Chairperson to mortgage the easement area.

Condition 25 of GL5601 requires the grantee to post a performance bond of \$1,500. Staff notes that the performance bond requirement is no longer a standard condition of the current shoreline encroachment easement in which a lump sum payment is paid as consideration. Grantees paid \$2,100 as the consideration for this easement in 2000. To date they have posted the required bond to be in compliance with GL 5601, but now request the bond requirement be removed from GL5601.

There are no issues regarding the compliance with the terms and conditions of GL 5601 by the Grantees. Staff has no objection to the request since it is consistent with other similar easement dispositions. There are no other pertinent issues and concerns.

RECOMMENDATION: That the Board authorize the amendment of grant of non-exclusive easement S-5601, subject to the terms and conditions cited above, and further subject to the following:

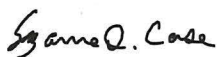
- A. Replace Condition 5 with the following: “The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-5-022:002, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the 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.”
- B. Add the following: “The Grantee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this easement without the prior written approval of the Chairperson of the Board of Land and Natural Resources and any mortgage, hypothecation, or pledge without the approval shall be null and void.”
- C. Remove Condition 25 therein regarding the provision of performance bond;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



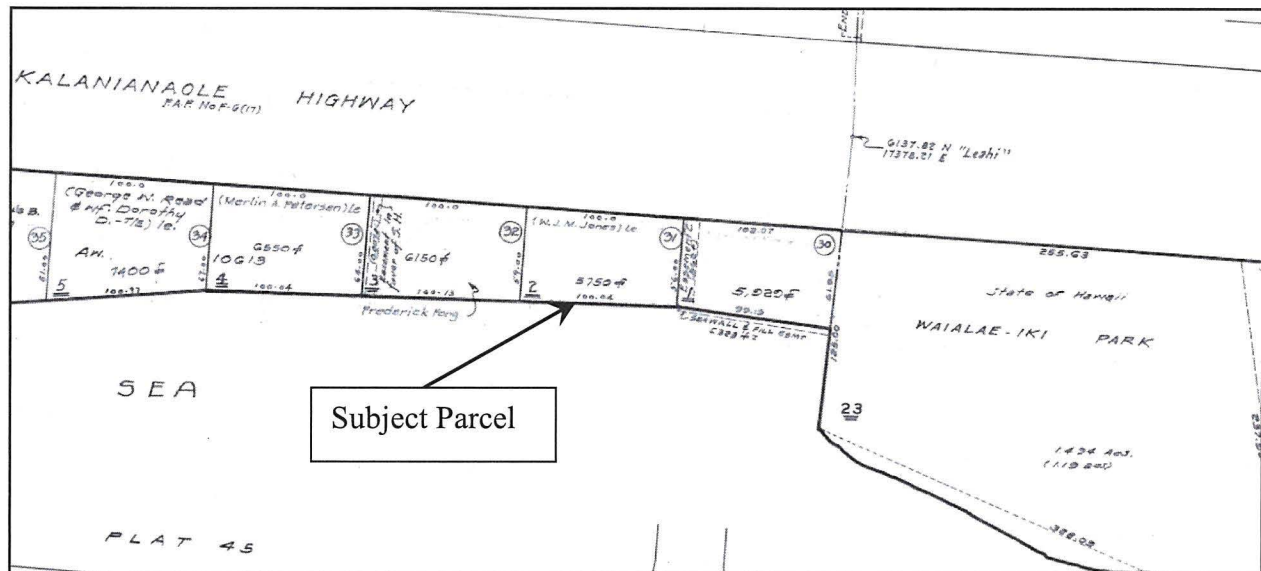
Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





Tax Map Key: (1) 3-5-022:Seaward of 002

EXHIBIT A1

