

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

September 22, 2023

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

Ref No. 23OD-087

OAHU

(1) Consent to Assign General Lease of Easement No. S-5175, (a) Shoji Kitami, Assignor to Masahiro Kitami, Assignee; (b) Masahiro Kitami, Assignor, to Lukasz John Maj and Mary Liu Lan, Assignees; (2) Amend the Easement Conditions regarding Consent to Assignment and Insurance Provision; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:011seaward.

APPLICANT:

(a) Shoji Kitami, as Assignor to Masahiro Kitami, Tenant in Severalty, Assignee; (b) Masahiro Kitami, as Assignor, to Lukasz John Maj, unmarried, as to an undivided sixty-three percent (63%) interest, as Tenant in Severalty, and Mary Liu Lan, unmarried, as to an undivided thirty-seven percent (37%) interest as Tenant in Severalty, together as Tenants in Common, Assignees.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001:011seaward, as shown on the attached map labeled **Exhibit A**.

AREA:

1726 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:

Right, privilege and authority to use, maintain, repair, and replace and remove existing pier and shed over, under and across State-owned land.

TERM OF EASEMENT:

Fifty (50) years, commencing on November 7, 1986 and expiring on November 6, 2036. Last rental reopening occurred on November 7, 2016; next rental reopening is scheduled for November 7, 2026.

ANNUAL RENTAL:

\$2,390.00

CONSIDERATION:

The subject request was triggered by the sale of the abutting private property and there is no information on consideration allocated to the assignment of the subject easement.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020 the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing” and Part 1, Item 39 that states, “Creation or termination of easement, covenants, or other rights in structures or land.” The proposed action is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17 HAR.

DCCA VERIFICATION:

Not applicable as individuals are not required to register with the DCCA.

REMARKS:

At its meeting of November 7, 1986, under agenda item F-12, the Board approved the issuance of General Lease of Easement No. S-5175 (“GL5175”) for pier and shed to Kenneth and Sally Brockman. On April 10, 1992, under agenda item F-1, the Board consented to the assignment of GL5175 to Shoji Kitami.

Assignment:

Mr. Shoji Kitami transferred the abutting property at TMK: (1) 4-6-001:011 (Parcel 11) and his interest in GL5175 to his son, Masahiro Kitami, by the deed dated January 5, 2023 recorded as document no. T-12058171, before he passed away on January 25, 2023. Following the assignment of GL5175 from Masahiro Kitami to Lukasz John Maj and Mary Liu Lan consummated on August 29, 2023, the latter asked that the Board approve the consent to assignment of GL5175. Staff noted that Lukasz John Maj and Mary Liu Lan also have an agreement to purchase Parcel 11,

Amendment:

Paragraph thirteen (13) of GL5175 requires the prior written approval of the Board to any assignment of interest. The current policy for similar shoreline 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” that is serves, specifically Parcel 11.

Insurance:

Paragraph 17 of GL5175 requires the grantee to procure liability and property damage insurance in an amount of at least \$100,000 and \$300,000 respectively. The current insurance requirement for similar shoreline easements is \$1 million per occurrence and \$2 million aggregate. Staff recommends the Board authorize the amendment of the easement by updating the insurance provision with the current requirements.

Staff did not solicit comments from other agencies on the subject request as there is no change in the existing use. The Applicant 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.

RECOMMENDATION: That the Board

- A. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, Hawaii Revised Statutes and Chapter 11-200.1-15, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
- B. Consent to the assignment of General Lease of Easement No. S-5175, (a) Shoji Kitami, Assignor, to Masahiro Kitami, Assignee; and (b) Masahiro Kitami, husband of Minako Kitami, Assignor, to Lukasz John Maj, unmarried, as to an undivided sixty-three (63%) interest as Tenant in Severalty, and Mary Liu Lan, unmarried, as to an undivided thirty-seven (37%) interest as Tenant in Severalty, together as Tenants in Common, Assignees, 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. Authorize the amendment of General Lease of Easement No. S-5175 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. Replace paragraph thirteen (13) 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) 4-6-001:011, 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 seventeen (17) of the subject easement with the current insurance provision;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



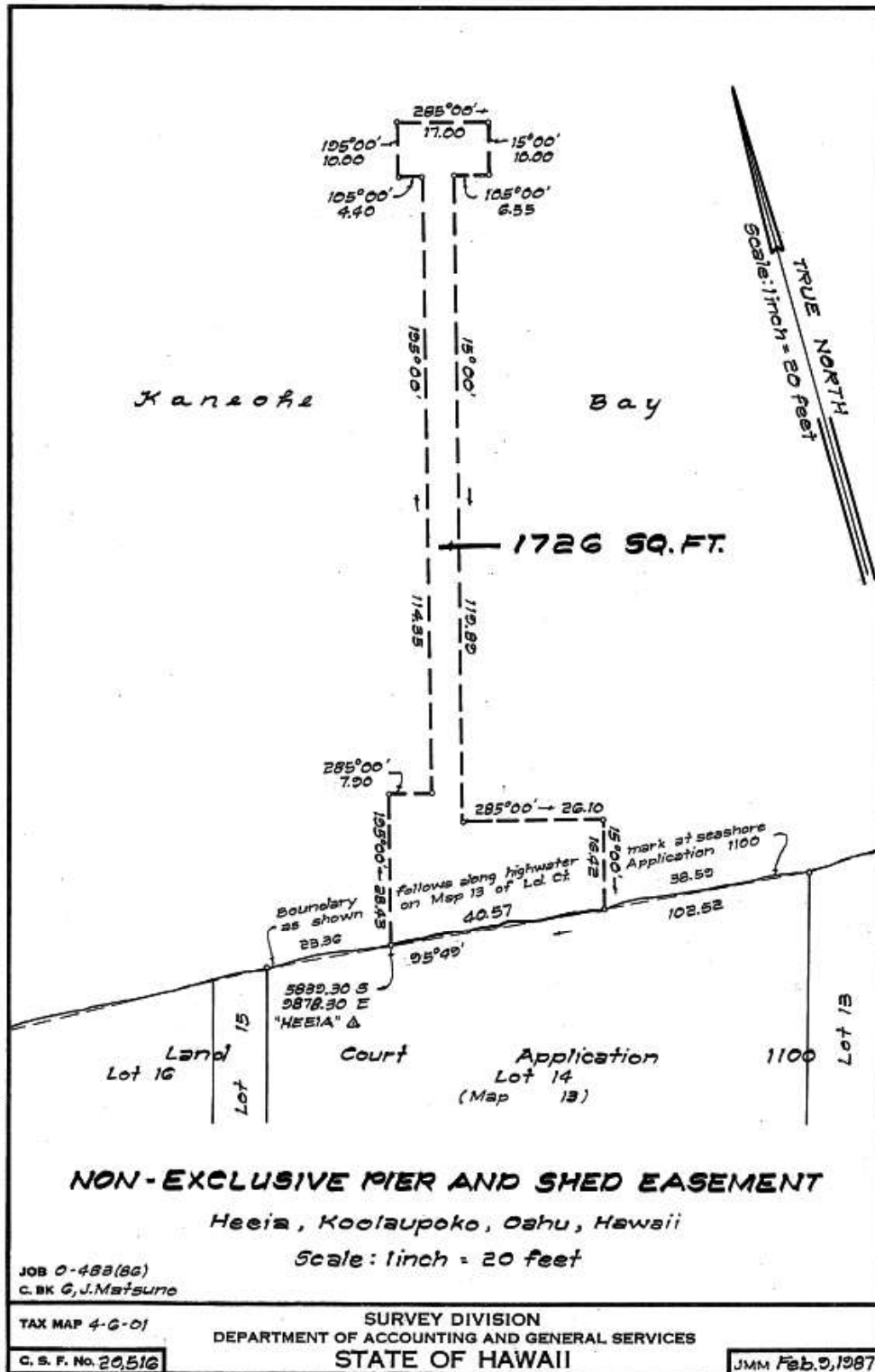
Darlene Bryant-Takamatsu, Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

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TMK: (1) 4-6-001:011seaward

Exhibit A