

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

February 23, 2024

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

Ref: GL-3727

OAHU

A. After-the-Fact Consent to Assignment of General Lease No. S-3727, as follows:

1) From Amancio R. Nacapoy and Serafina N. Nacapoy, Assignors, to Amancio Ramiscal Nacapoy and Serafina Malacase Nacapoy, Trustees of the Amancio R. Nacapoy and Serafina M. Nacapoy Revocable Living Trust dated March 19, 1998, Assignees;

2) From Amancio R. Nacapoy and Serafina M. Nacapoy, Trustees of the Amancio R. Nacapoy and Serafina M. Nacapoy Revocable Living Trust dated March 19, 1998, Assignors, to Amancio R. Nacapoy and Serafina M. Nacapoy, husband and wife, and Gregory M. Nacapoy, Assignees;

3) From Amancio R. Nacapoy and Serafina M. Nacapoy, husband and wife, and Gregory M. Nacapoy, Assignors, to Gregory M. Nacapoy, Assignee;

4) From Gregory M. Nacapoy, Assignor, to Amancio R. Nacapoy, Assignee;

5) From Amancio Ramiscal Nacapoy, Assignor, to Amancio R. Nacapoy, as Trustee of the Amancio R. Nacapoy Trust dated June 4, 2012, Assignee; and

6) From Susan N. Osborn and Gregory M. Nacapoy, as Co-Trustees of the Amancio R. Nacapoy Trust Dated June 4, 2012, as Assignors, to Wenqiu Xie and Mingxia Lin, as Assignees;

B. Affirm the intent of the Board at its meeting of April 6, 1962, item F-19 that the subject easement inures to the benefit of the private property identified as tax map key (1) 1-3-021:006

Kaluaopalena, Kalihi, Honolulu, Oahu, Tax Map Key: (1) 1-3-022:003
(Portion)

APPLICANTS:

Wenqiu Xie and Mingxia Lin, husband and wife, as tenants by the entirety (Applicants).

LEGAL REFERENCE:

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

LOCATION:

Portion of government lands of Kaluaopalena situated at Kaluaopalena, Kalihi, Honolulu, Oahu, identified by Tax Map Key: (1) 1-3-022:003 (Portion), as shown on the attached map labeled **Exhibit A**.

AREA:

6,668 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:

Non-exclusive roadway easement purposes.

TERM OF EASEMENT:

65-year term beginning on January 14, 1963 until January 13, 2028.

ANNUAL RENTAL:

\$940.00 from January 14, 2023 to January 13, 2028.

DCCA VERIFICATION:

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

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the Hawaii Administrative Rules (HAR) §11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and

concluded 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 Class 1, that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or change of use beyond that previously existing." Part 1, Item 38, that states, "Transfer of title to land." The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR.

REMARKS:

The subject easement ("GL3727") was sold at public auction in 1963 to Harry S. Nakasone, as owner of the abutting private property further identified as tax map key (1) 1-3-021:006 (Parcel 6). Over the years, there were multiple changes in the ownership of Parcel 6. Nevertheless, only on two occasions did the owners request the Board consent to the assignment of GL3727. The first was in 1976 when the subject roadway easement was assigned to Amancio Ramiscal Nacapoy and Serafina Malacase Nacapoy. The second is the most recent request made in 2023 by Susan N. Osborn and Gregory M. Nacapoy, as Co-Trustees of the Amancio R. Nacapoy Trust Dated June 4, 2012, as Assignors, to Wenqiu Xie and Mingxia Lin, as Assignees.

Between 1999 and 2012, five changes in the ownership of Parcel 6 occurred to the grantees shown in the following list, with all the transfers involving family members or their trusts:

1. February 3, 1999 – to Amancio R. Nacapoy and Serafina M. Nacapoy, Trustees of the Amancio R. Nacapoy and Serafina M. Nacapoy Revocable Living Trust dated March 19, 1998;
2. July 20, 2005 – to Amancio R. Nacapoy and Serafina M. Nacapoy, husband and wife and Gregory M. Nacapoy;
3. August 2, 2007 – to Gregory M. Nacapoy;
4. October 18, 2011 – to Amancio R. Nacapoy; and
5. June 4, 2012 – to Amancio R. Nacapoy, as Trustee of the Amancio R. Nacapoy Trust dated June 4, 2012.

In the deeds for all the above-referenced transactions, the subject easement was included in the legal description of the property conveyed, with the result that the deeds served as an assignment of the easement. However, the easement does

not “run with the land” and each assignment requires Board consent.¹ For housekeeping purposes, staff recommends the Board consent after the fact to the five prior assignments mentioned above as well as the most recent request received in 2023.

January 25, 2023, Greg Nacapoy and Susan N. Osborn, as Co-Trustees of the Amancio R. Nacapoy Trust, Dated June 4, 2012, sold Parcel 6 to Wenqiu Xie and Mingxia Lin and notified the Land Division of the transaction on March 30, 2023. Upon review of the file, staff became aware of the previously unapproved assignments of easement and now brings all of them to the Board for consent after the fact. Wenqiu Xie and Mingxia Lin have indicated that they will accept the new rent (\$940) for the remaining five years of the lease.

None of the assignees listed above have 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.

The standard consent to assignment used by the Department of the Attorney General includes a signature block for the party assigning the easement, who makes the following acknowledgment in the consent:

FURTHERMORE, Assignor hereby acknowledges that the Grantor’s consent to the assignment of this grant of non-exclusive easement, does not release the Assignor of any and all responsibilities, obligations, liabilities, and all claims respecting or arising under or out of said grant of non-exclusive easement.

In this case, staff understands that both Amancio and Serafina Nacapoy are now deceased, and upon further research, contact information for the Co-Trustees, Greg Nacapoy and Susan N. Osborn is unknown. Accordingly, staff is including a recommendation below that the consent to assignment instrument be prepared without requiring the signatures of any of the Applicants’ predecessors-in-interest and without the standard assignor acknowledgment provision quoted above.

Further, staff notes from the subject line of the submittal dated April 6, 1962 (**Exhibit B**), when the Board originally authorized a sale of the subject easement at public auction, that the easement was intended for “for roadway purposes to provide access to Parcel 6, Tax Map Key 1-3-21, presently landlocked ...”. Staff was unable to locate a bid packet for the auction sale held after the Board’s approval. It is unusual that a public auction was used to issue the easement since it could only serve only one property, which basically meant the owner of the subject lot (Parcel 6) would not face competing bids at auction.

¹ Further, because GL3727 was issued by public auction, the Board cannot amend it to “run with the land.”

The 1962 Board approval (Exhibit B) was granted pursuant to Section 73(1) of the Hawaiian Organic Act.² Looking through the entire section 73 of the Organic Act, there was no provision allowing any direct issuance of an easement. It could be the reason why auction was the only avenue to a land disposition notwithstanding the limit in number of any competing bidders. Under current law, the Board is authorized to issue access easements serving landlocked private properties by direct negotiation.

Based on the above, staff believes that the intent of the Board in 1962 was clearly for the subject easement to serve Parcel 6. Accordingly, despite the general rule against amendment of dispositions sold by auction, staff recommends the Board affirm the intent of the Board in 1962 by authorizing the Department of the Attorney General (“AG”) to prepare appropriate documentation affirming the easement inures to the benefit of Parcel 6 and thereby “runs with the land.” This will eliminate the need to bring any further requests for consent to assignment of the subject easement to the Board before its expiration.

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:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this action 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 action.
2. Consent, after the fact, to the following assignments of General Lease No. S-3727, a Non-Exclusive Access Easement:
 - A. From Amancio R. Nacapoy and Serafina N. Nacapoy, as Assignors, to Amancio Ramiscal Nacapoy and Serafina Malacase Nacapoy, Trustees of the Amancio R. Nacapoy and Serafina M. Nacapoy Revocable Living Trust dated March 19, 1998, as Assignees;
 - B. From Amancio R. Nacapoy and Serafina M. Nacapoy, Trustees of the Amancio R. Nacapoy and Serafina M. Nacapoy Revocable Living Trust dated March 19, 1998, as Assignors, to Amancio R. Nacapoy and Serafina M. Nacapoy, husband and wife, and Gregory M. Nacapoy, as Assignees;
 - C. From Amancio R. Nacapoy and Serafina M. Nacapoy, husband and wife,

² Full text of Section 73 of Organic Act: https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/03-ORG/ORG%200073.htm

and Gregory M. Nacapoy, as Assignors to Gregory M. Nacapoy, as Assignee;

- D. From Gregory M. Nacapoy, as Assignor, to Amancio R. Nacapoy, as Assignee;
- E. From Amancio Ramiscal Nacapoy, as Assignor, to Amancio R. Nacapoy, as Trustee of the Amancio R. Nacapoy Trust dated June 4, 2012, as Assignee; and
- F. From Susan N. Osborn and Gregory M. Nacapoy, as Co-Trustees of the Amancio R. Nacapoy Trust, Dated June 4, 2012, as Assignors, to Wenqiu Xie and Mingxia Lin, husband and wife, as Assignees, as tenants by the entirety.

The consent to assignment shall further be subject to the following:

- 1. The standard terms and conditions of the most current consent form, as may be amended from time to time; provided, however that the consent instrument shall not require the signature of any of Applicants' predecessors-in-interest, and the standard assignor acknowledgment provision identified above shall not be included in the consent;
 - 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.
3. Affirm the intent of the Board at its meeting of April 6, 1962, item F-19 that the subject easement inures to the benefit of the private property identified as tax map key (1) 1-3-021:006 and runs with the land so that no Board consent to any future assignment(s) is required.

Respectfully Submitted,

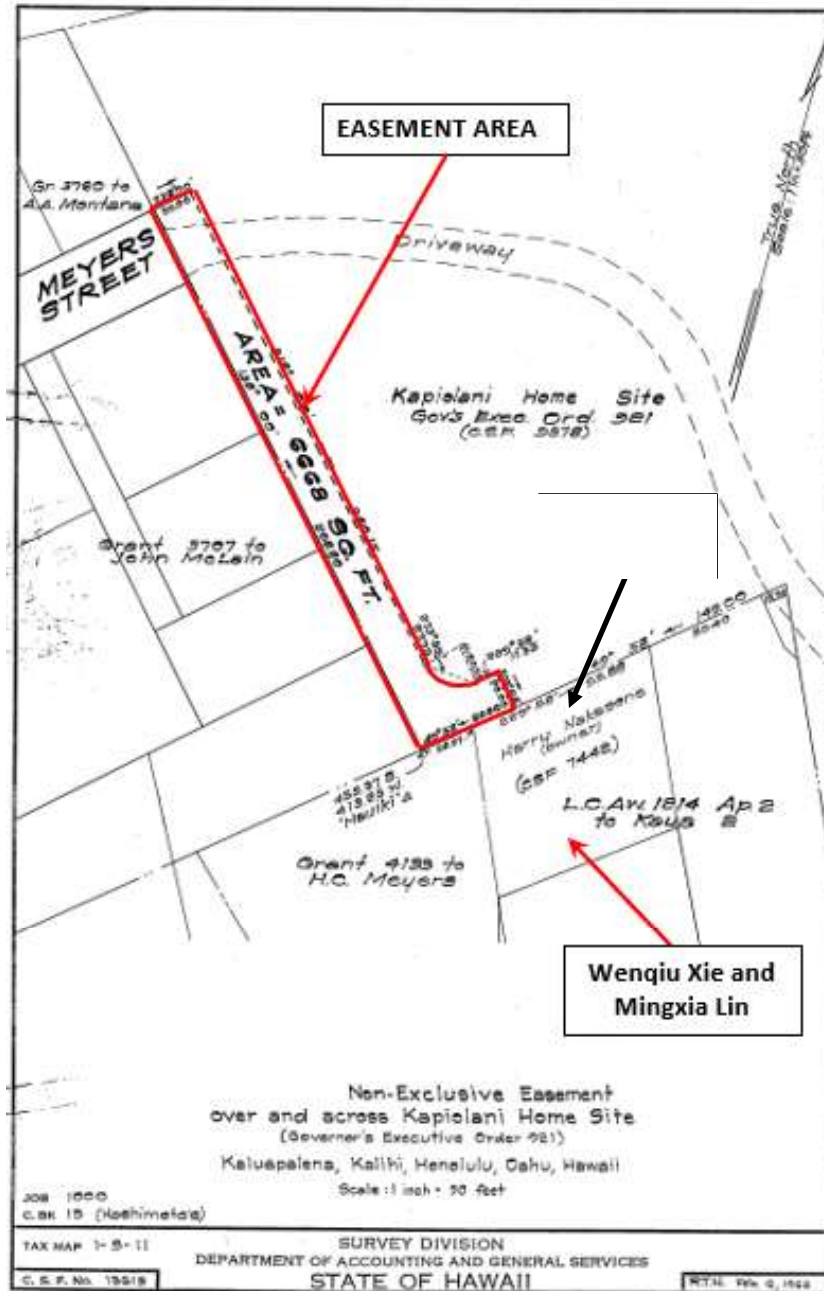


Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson *PCM*



TAX MAP KEY: (1) 1-3-022:003 (Portion)

EXHIBIT A

Board of Land and
Natural Resources

- 2 -

April 6, 1962

3. That the State of Hawaii, specifically reserves the right to use the easement and to grant easement rights to others over said right-of-way provided that each authorized user bear a proportionate share of the cost for improvements and maintenance.
4. That in the event the easement is abandoned or not used for a continuous period of one year said easement shall automatically revert to the State.
5. Indemnity and hold harmless clause in favor of the State.

Respectfully submitted,



JAMES J. DETOR, Head
Division of Land Management

RECOMMENDED FOR APPROVAL:



E. H. COOK, Director