

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

December 13, 2024

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

PSF No.: 24OD-096

OAHU

A. After-the Fact Consent to Assignment of Grant of Non-Exclusive Easement No S-5342 for Revetment Purposes, Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-001:038 portion, as follows:

- (1) From MARTIN A YESTER, aka Martin A. Yester, Assignor, to MARTIN A YESTER, TRUSTEE of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee;
- (2) From MARTIN A YESTER, TRUSTEE of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignor, to CRAIG YESTER and DAVID YESTER, Assignees, as to an undivided 0.62% interest, as tenants in common;
- (3) From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, CRAIG YESTER, and DAVID YESTER, Assignors, to CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee, as to Unit 401 as shown on Condominium Map No. 5555;
- (4) From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, CRAIG YESTER, and DAVID YESTER, Assignors, to CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee, as to Unit 401A as shown on Condominium Map No. 5555; and
- (5) From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust

Agreement dated April 23, 1992, as amended and restated, Assignors to CRAIG YESTER, Assignee.

- B. Amend Grant of Non-Exclusive Easement No. S-5342 by:
- (1) Updating the Insurance Provision to the Current Standard Provision used by the Department of the Attorney General; and
 - (2) Allowing the easement to “Run with the Land,” Specifically with the Abutting Property Identified as Tax Map Key: (1) 5-9-020:064.

APPLICANT:

Craig Yester, husband of Francie Yester, as tenant in severalty.

LEGAL REFERENCE:

Sections 171-6, and 13, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located in Pupukea, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-9-001:038 por., as shown on the attached maps labeled **Exhibits A-1 to A-3**.

AREA:

Existing Easement Area: 3,530 square feet, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: P-2

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 Governor Executive Order No. 2598 to the City and County of Honolulu for park and related purposes.

CHARACTER OF USE:

Revetment purposes.

TERM OF EASEMENT:

65-year term beginning on October 16, 1992 until October 15, 2057.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15 and -16 Hawaii Administrative Rules (“HAR”) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred with by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Part 1, Item 39 that states, "Creation or termination of easement, covenants, or other rights in structures or land". The request to consent to the assignment and amend the easement terms 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.

APPLICANT REQUIREMENTS:

None.

HISTORY:

Pursuant to a Consent Decree and Order entered in Puamalu Beach Homeowners' Association, et al. v. William Paty, in his official capacity, et al., Civil No. 92-00663 ACK, easement GL-5342 was issued to Martin A. Yester in October 1992. The order was recorded in the Bureau of Conveyance as document number 93-174959. The court ordered the easement to be a 65-year term, non-exclusive easement, beginning on October 16, 1992, and expiring on October 15, 2057, for the existing revetment. The order also stipulated that the one-time rent payment for the easement area be calculated by multiplying the total square feet by \$6.00. The consideration paid by Martin Yester was calculated at \$21,180.00 for an easement area of 3,530 square feet.

GL 5342 prohibits any assignments without prior written consent from the Board. Pursuant to the warranty deed, as recorded in the Bureau of Conveyance as document number 2007-080206, Martin A. Yester conveyed both the abutting property and the subject easement to the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated (“Trust”). This conveyance was not approved by the Board.

The Trust subsequently transferred 0.62% interest to Craig Yester and David Yester as tenants in common pursuant to the warranty deed recorded at the Bureau of Conveyances as

document number 2008-084595 in June 2008. In short, the Trust was holding the remaining 99.38% interest.

In 2016, the subject parcel was developed into a two-unit condominium project, recorded at the Bureau of Conveyances as document A60440872, with tax map key changing from (1) 5-9-020-047 to (1) 5-9-020-064 CPR 0001 and 0002, respectively, and pursuant to Unit Deeds recorded as document nos. A61360885 to 61360886, the Trust, Craig Yester, and David Yester conveyed their respective interest in the condominium units to the Trust. In short, the Trust thus held 100% of the property and the subject easement as both components were included in the above-mentioned unit deeds.

Subsequently, by another warranty deed recorded in the Bureau of Conveyance as document number A88660240, the Trust conveyed to Craig Yester, in his individual capacity, all of the abutting private property and the subject easement. None of the above-mentioned conveyances of the subject easement were approved by the Board.

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.

Martin A. Yester passed away on October 26, 2008. His son, Craig Yester, thereafter, became the successor trustee under the Trust. Accordingly, staff is including a recommendation below that the consent to assignment instrument be prepared without requiring the signature of MARTIN A. YESTER signing in his individual or trustee capacities.

For housekeeping purposes, staff recommends the Board give its consent to the above-mentioned assignments of the subject easement.

REMARKS:

The applicant has requested a consent to the assignment of the non-exclusive easement under General Lease No. S-5342 ("GL5342"). In addition, Staff recommends the Board authorize the amendment of the subject easement by allowing the easement to "run with the land" and inure to the benefit of the abutting property, further identified as TMK: (1) 5-9-020:064 and updating the insurance provisions to the current standard easement conditions used by the Department of the Attorney General.

Since the subject request is for housekeeping purposes, staff did not solicit comments from other government agencies. 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. There are no other pertinent issues or concerns. Staff does not have any objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15 and -16, HAR, 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 action.
2. Consent, after the fact, to the following assignments of Grant of Easement No. S-5342, for revetment purposes:
 - A. From MARTIN A YESTER, aka Martin A. Yester, Assignor, to MARTIN A YESTER, TRUSTEE of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee;
 - B. From MARTIN A YESTER, TRUSTEE of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignor, to CRAIG YESTER and DAVID YESTER, Assignees, as to an undivided 0.62% interest, as tenants in common;
 - C. From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, CRAIG YESTER, and DAVID YESTER, Assignors, to CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee, as to Unit 401 as shown on Condominium Map No. 5555;
 - D. From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, CRAIG YESTER, and DAVID YESTER, Assignors, to CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignee, as to Unit 401A as shown on Condominium Map No. 5555; and
 - E. From CRAIG YESTER, Successor Trustee of the Martin A Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, Assignors, to CRAIG YESTER, Assignee.

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 MARTIN A. YESTER signing in his individual or trustee capacities;
 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 interest of the State.
3. Authorize the amendment of Grant of Non-Exclusive Easement No. S-5342 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current amendment of easement form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-020:064, 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;
 - C. Review and approval by the Department of the Attorney General; and
 - D. 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:



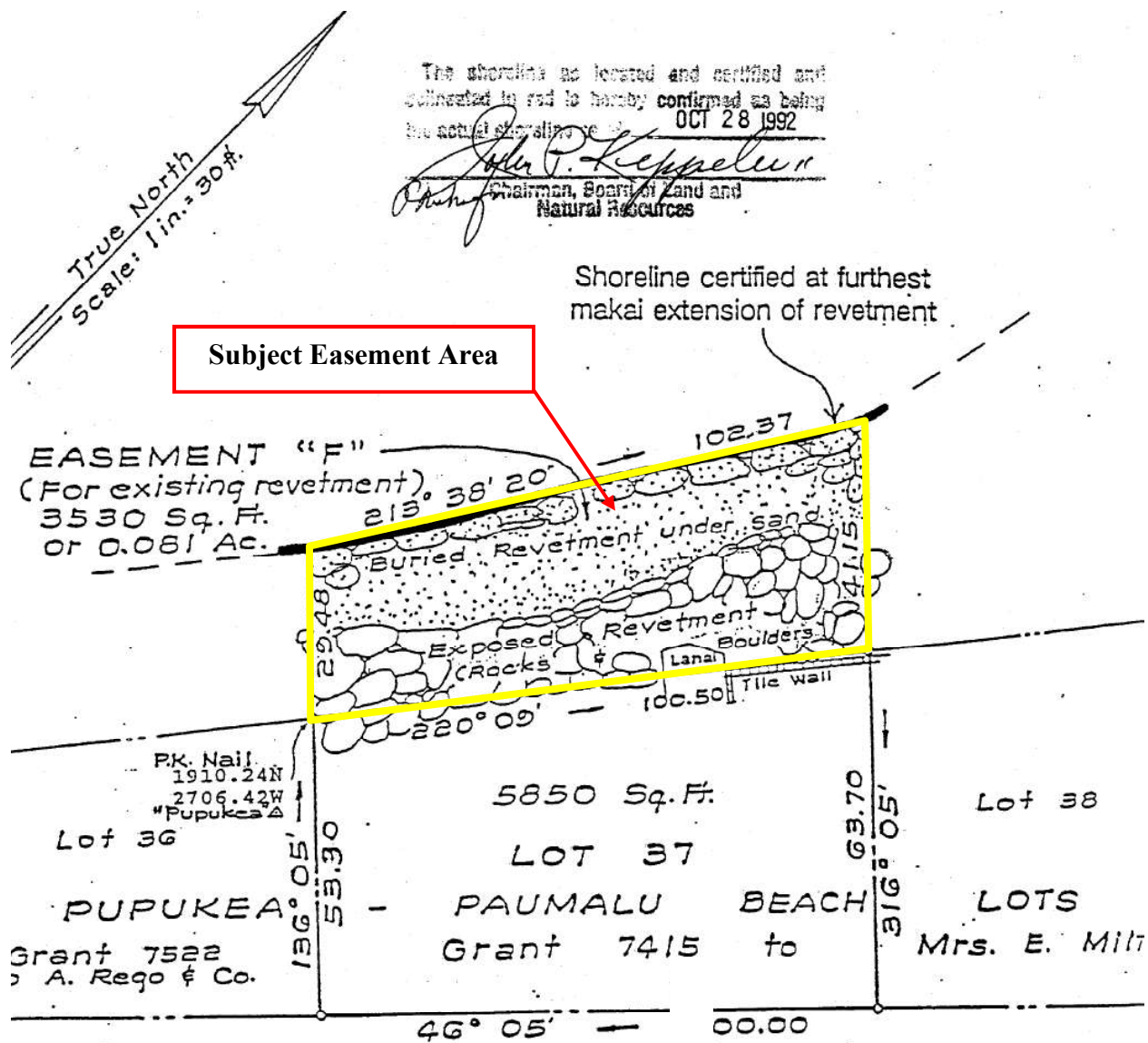
Dawn N.S. Chang, Chairperson





Note: The property is located in the Sunset Beach vicinity.

EXHIBIT A-1



Easement located TMK: (1) 5-9-001:portion of 038



Easement located TMK: (1) 5-9-001:portion of 038

Real Property located TMK: (1) 5-9-020:064

EXHIBIT A-3