

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

December 13, 2024

PSF No.: 24KD-132
LOD 28120

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

KAUAI

Consent to Assign Land Office Deed No. S-28,120, Gary W. Rodrigues and John S. Rodrigues, Assignors, to Wendell B. Bandman, Assignee, Kapaa Homesteads, 3rd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-032: Por. 022.

Amend Land Office Deed No. S- 28120, to allow the easement to “Run with the Land” and to be assignable without the prior written consent from the Board of Land and Natural Resources.

APPLICANT:

Gary W. Rodrigues and John S. Rodrigues, as tenants in common, Assignors, to Wendell B. Bandman, a single man, as Assignee.

LEGAL REFERENCE:

Section 171-36, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa Homesteads, 3rd Series, Kawaihau, Kauai, Tax Map Key: 4-6-032: Por. 022, as shown on the attached map labeled Exhibit A.

AREA:

4,565 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 easement for access and utility purposes.

TERM OF EASEMENT:

Perpetual, commencing on October 27, 1995.

ANNUAL RENTAL:

Not applicable.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNORS:

Not Applicable. Assignors as individuals are not required to register with DCCA.

ASSIGNEE:

Not Applicable. Assignees as individuals are not required to register with DCCA.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 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 Exemption Class No. 1, that states "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." and Item 40, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existed." The proposed lease assignment 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.

REMARKS:

At its meeting of July 23, 1993, Item F-3, the Board of Land and Natural Resources (Board) consented to a Grant of Easement to Gary W. Rodrigues and John S. Rodrigues, as tenants in common.

Perpetual Easement, Land Office Deed (LOD) No. S-28,120, was issued to Gary W. Rodrigues and John S. Rodrigues, for access and utility purposes to benefit their private property identified as TMK: (4) 4-6-032:025.

The current assignment of easement is being requested by Gary W. Rodrigues and John S. Rodrigues. They are under contract to sell their abutting private property to Wendell B. Bandman. The title company will not allow the purchase to close until the Board consents to the assignment of the subject access easement.

Staff reviewed the file and can report that the easement is compliant with all easement terms and conditions and the liability insurance is current. The Assignors have been good tenants and have never been cited for any illegal or unlawful activity on the State property.

The Assignee, Wendell B. Bandman, 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.

Staff is including a recommendation below that the grant of easement be amended to “run with the land” making it appurtenant to the abutting private property, (4) 4-6-032:025 (Parcel 025). That way, when Parcel 025 is conveyed in the future, the interest in Grant of Easement LOD 28120 will transfer automatically without need for further Board action. However, the amended Grant of Easement will require notification to the State upon the transfer of the easement and will also require the grantee to notify of the assignee of the insurance requirement separate and apart from the easement.

No comments were solicited as there will be no new disposition or change in land use.

RECOMMENDATION: That the Board:

1. Consent to the assignment of LOD No. S-28,120 from Gary W. Rodrigues and John S. Rodrigues, Assignors, to Wendell B. Bandman, Assignee, subject to the following:
 - A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Amendment of LOD No. S-28,120 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

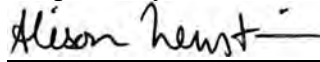
- A. The standard terms and conditions of the most current easement amendment document form, as may be amended from time to time, which shall incorporate the following provision:

“This easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key No. (4) 4-6-032:025, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee’s estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantor of such transaction in writing, and shall notify the Grantee’s successors or assigns of the insurance requirement in writing, separate and apart from this easement document .”

- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

3. The Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Section 11-200.1-16, 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 activity.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:

RT



Dawn N.S. Chang, Chairperson

