

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

March 24, 2017

PSF No.: 16KD-058
GLS-4646

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

KAUAI

Consent to Assign Grant of Easement No. S-4646, Raymond W. Miller, Michael G. Estep, and Victoria A. Estep, now known as Victoria A. Butler, Assignors, to Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Revocable Living Trust dated July 6, 2015, Assignees, Omao, Koloa, Kauai, Tax Map Key: (4) 2-7-004:012.

Amend Grant of Easement No. S-4646, 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:

Raymond W. Miller, Michael G. Estep, and Victoria A. Estep now known as Victoria A. Butler, as joint tenants, Assignors, to Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Revocable Living Trust dated July 6, 2015, as Assignees.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Omao, Koloa, Kauai, identified by Tax Map Key: (4) 2-7-004:012, as shown on the attached map labeled Exhibit A.

AREA:

0.159 acres, 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 LEASE:

65 years, commencing on May 16, 1980 and expiring on May 15, 2045

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.

ASSIGNEES:

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

REMARKS:

Grant of Easement No. S-4646 was issued to Alida Toulon White, whose husband is Robert B. White, as her separate property on May 16, 1980 for access and utility purposes to benefit their private property identified as TMK: (4) 6-4-001:135 (Parcel 135). Mrs. White sold Parcel 135 to Mr. White's sister Victoria Estep on December 22, 1986 in order to generate working capital for Mr. White's business.

At its meeting of May 22, 1987, Item F-1-b, the Board of Land and Natural Resources consented to the assignment of Grant of Easement No. S-4646 from Alida Toulon White, whose husband is Robert B. White, Assignor, to Michael G. Estep and Victoria A. Estep, husband and wife, and Raymond W. Miller and Gail K. Miller, husband and wife, the whole being held as joint tenants, Assignees.

The current assignment of easement is being requested by Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Revocable Living Trust dated July 6, 2015 (together, the Trusts), who purchased Parcel 135 from Mr. Raymond Miller. Gail K. Miller is deceased as of November 29, 2009, and by right of survivorship under joint tenancy, her interest in the grant of easement passed to the surviving easement holders. A copy of her death certificate is on file. Victoria A. Estep, now known as Victoria A. Butler, and Michael G. Estep are now divorced and have not been involved in Parcel 135 or the grant of easement for many years and would like to have their names removed from title.

Staff reviewed the file and can report that a notice of default was sent on March 9, 2016 for liability insurance. However, the file contains a certificate of liability insurance in the name of the Trusts, scheduled to expire on May 17, 2017. No performance bond is required. The Assignors has never been cited for any illegal or unlawful activity on the State property.

The Trusts have 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 Trusts' private property, Parcel 135. That way, when Parcel 135 is conveyed in the future, the interest in Grant of Easement No. S-4646 will transfer automatically without need for further Board action.

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

RECOMMENDATION: That the Board:

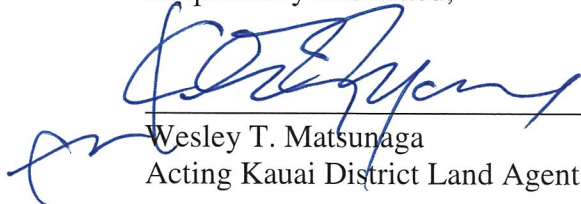
1. Consent to the assignment of Grant of Easement No. S-4646 from Raymond W. Miller, Michael G. Estep, and Victoria A. Estep, now known as Victoria A. Butler, as Assignors, to Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Living Trust dated July 6, 2015, as Assignees, 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 Grant of Easement No. S-4646, Zonia Venancia Martinez Morales, Trustee of the Lilikoi Revocable Living Trust dated November 2, 2015, and Rene Castella, Trustee of the Hanalei Bay Living Trust dated July 6, 2015, Grantees, to insert a provision allowing for the easement to run with the land, as stated below:

“This easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (4) 6-4-001:135, 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 .”

- A. The standard terms and conditions of the most current lease amendment document 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 interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Acting Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

