

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

January 10, 2025

PSF No.: 24KD-126
LOD 28120

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

KAUAI

Consent to Assign Grant of Easement No. S-4135, McBryde Sugar Company, LLC, Assignors to BBCP Kauai Operating, LLC, Assignee, Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-9-003:002, 003 and 004.

Amend Grant of Easement No. S-4135 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:

McBryde Sugar Company LLC, a Delaware limited liability company, as Assignor, to BBCP Kauai Operating, LLC, a Colorado limited liability company, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-9-003:002, 003 and 004, as shown on the attached map labeled Exhibit A.

AREA:

1.71 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 and right of way for cane haul road purposes.

TERM OF EASEMENT:

Sixty-five (65) years, commencing on November 29, 1967 up to and including November 28, 2032.

ANNUAL RENTAL:

Currently, the annual rent is \$480. The last rent re-opening was on November 29, 2022.

RECOMMENDED PREMIUM:

Not applicable as the grant of easement does not allow for a premium.

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 assignment of a grant of easement 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:

ASSIGNOR: McBryde Sugar Company LLC

Place of business registration confirmed: YES
Registered business name confirmed: YES
Good standing confirmed: YES

ASSIGNEE: BBCP Kauai Operating, LLC

Place of business registration confirmed: YES
Registered business name confirmed: YES

Good standing confirmed: YES

REMARKS:

On November 29, 1967, McBryde Sugar Company, Ltd. was the winning bidder at Public Auction for non-exclusive road easement for cane-haul purposes.

Non-Exclusive Grant of Easement No. S-4135 was issued to McBryde Sugar Company Ltd. for cane haul road purposes to benefit their private property identified as TMKs (4) 1-9-003:005 and (4) 2-1-001:010. McBryde Sugar Company, Ltd. converted to a limited liability company under the name McBryde Sugar Company, LLC pursuant to Articles of Conversion filed with the Department of Commerce and Consumer Affairs (DCCA) on June 7, 2012.

The current assignment of easement is being requested by McBryde Sugar Company, LLC. They have sold their abutting private property to BBCP Kauai Operating, LLC and assigned their assets including Grant of Easement No. 4135 as of September 10, 2024.

Staff reviewed the file and can report that the easement is compliant with all easement terms and conditions and the liability insurance is current. McBryde Sugar Company, LLC has been a good tenant and has never been cited for any illegal or unlawful activity on the State property.

BBCP Kauai Operating, LLC, 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 properties, (4) 1-9-003:005 and (4) 2-1-001:010. That way, when these parcels are conveyed in the future, the interest in Grant of Easement No. S-4135 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:

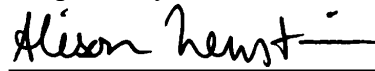
1. Consent to the assignment of Grant of Easement No. S-4135, McBryde Sugar Company, LLC, Assignor, to BBCP Kauai Operating, LLC, Assignee, subject to the following:
 - A. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - B. Review 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 Grant of Easement No. S-4135, McBryde Sugar Company, LLC, Grantee, 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 Nos. (4) 1-9-003:005 and (4) 2-1-001:010, 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 easement 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,



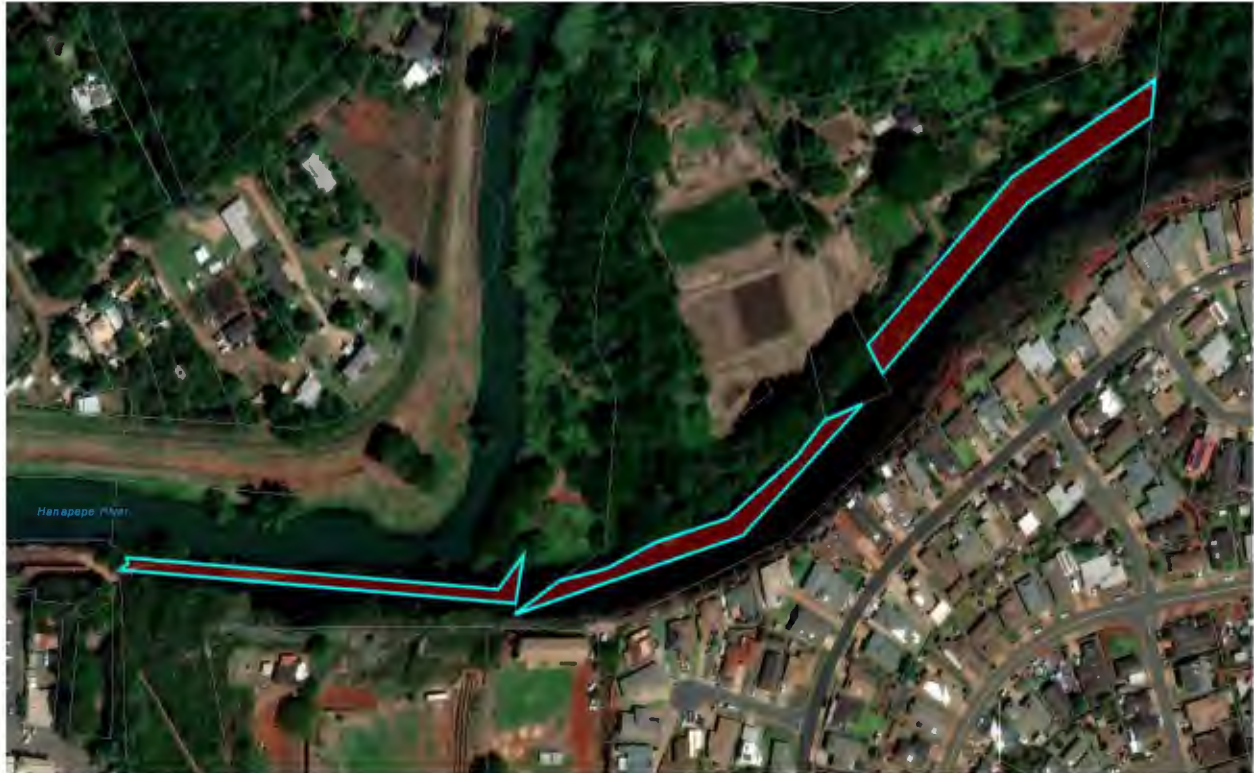
Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

RT



Subject Area

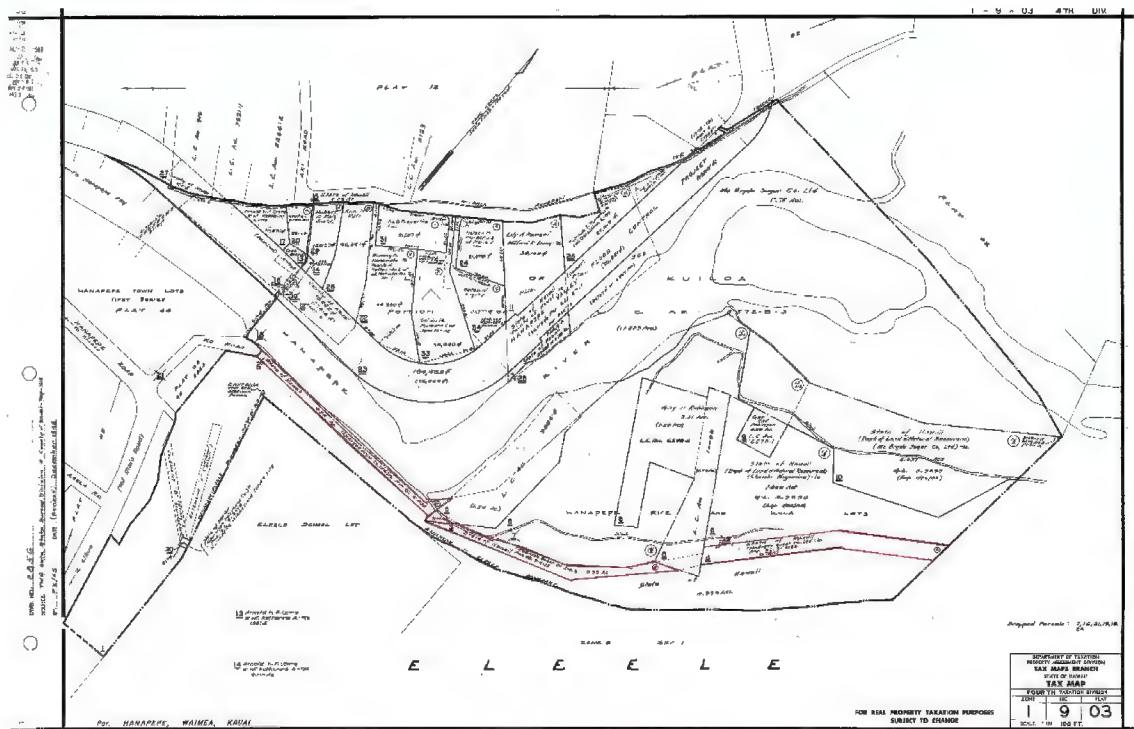


EXHIBIT A