

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

June 13, 2025

PSF No.: 24KD-132
LOD 28120

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

KAUAI

Amend Prior Board Action of January 10, 2025, Item D-2, 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) 4-6-32: Por. 22.

Amend Land Office Deed (LOD) 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.

The purpose of this amendment is to correct the Tax Map Key number (TMK) for the land that the easement shall run with and inures to the benefit of the private property identified as TMK (4) 4-6-032:042 and not TMK (4) 4-6-032:025.

This amendment shall also consider the request for an after-the-fact consent to assignment of LOD No. S-28120 as follows:

1. From Gary W. Rodrigues and John S. Rodrigues, Assignors, to Gary W. Rodrigues, Assignee;
2. From Gary W. Rodrigues, Assignor, to Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, Assignee;
3. From Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, Assignor, to Shelly L. Rodrigues and Tani G. Oloso, Trustees of the Irrevocable Rodrigues Family Trust, as Assignees; and
4. From Shelly L. Rodrigues and Tani G. Oloso, Trustees of the Irrevocable Rodrigues Family Trust, as Assignors to Wendell B. Bandman, Assignee.

BACKGROUND:

At its meeting of July 23, 1993, Item F-3 the Board Land and Natural Resources (Board) approved a grant of easement to Gary W. Rodrigues. See attached Exhibit 1.

At its meeting of January 10, 2025, Item D-2, the Board approved the amendment of LOD 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. See attached Exhibit 2.

DCCA VERIFICATION:

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

REMARKS:

When the Board approved the LOD in 1993, it was done prior to the final subdivision of TMK (4) 4-6-032:0000. This large parcel was once owned by Adeline Rodrigues. The parcel subdivision was completed in 1996. Once the subdivision was completed, parcels were given to both John S. Rodrigues and Gary W. Rodrigues. Gary W. Rodrigues was the sole owner of TMK (4) 4-6-032:042. Since the subject LOD was issued prior to the subdivision, the easement was issued and executed by both John S. Rodrigues and Gary W. Rodrigues. John S. Rodrigues is now deceased.

Between 1997 and 2025, several changes in the ownership of TMK (4) 4-6-032:042 and assignment of LOD 28120 occurred to the grantees shown in the following list, with all the transfers involving family members or their trusts:

1. John S. Rodrigues and Gary W. Rodrigues, Assignors, to Gary W. Rodrigues, Assignee;
2. From Gary W. Rodrigues, Assignor, to Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, Assignee;
3. From Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, Assignor, to Shelly L. Rodrigues and Tani G. Olosa, Trustees of the Irrevocable Rodrigues Family Trust, as Assignees; and
4. From Shelly L. Rodrigues and Tani G. Olosa, Trustees of the Irrevocable Rodrigues Family Trust, as Assignors to Wendell B. Bandman, Assignee.

On December 22, 1998, Gary W. Rodrigues had transferred his private property to the Revocable Living Trust of Gary Wayne Rodrigues dated May 16, 1997 and then again transferred to Shelly L. Rodrigues and Tani G. Olosa, Trustees of the Irrevocable

Rodrigues Family Trust dated May 5, 2008. Staff recommends Consent to the assignment of LOD No. S-28120 from Gary W. Rodrigues and John S. Rodrigues, as Assignors, to Gary W. Rodrigues, as Assignee, then to Gary. W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, as Assignee, then again from Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues, as Assignor to Shelly L. Rodrigues and Tani G. Olaso, Trustees of the Irrevocable Rodrigues Family Trust, as Assignees and finally from Shelly L. Rodrigues and Tani G. Olaso, Trustees of the Irrevocable Rodrigues Family Trust, as Assignors to Wendell B. Bandman, Assignee.

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 John S. Rodrigues is now deceased. 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.

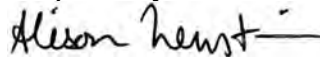
The January 10, 2025, Board item D-2 also requested that the easement "run with the land" making it appurtenant to private property, (4) 4-6-032:025 (Parcel 025). That way, when Parcel 025 is conveyed in the future, the interest in LOD 28120 will transfer automatically without need for further Board action. However, the appurtenant private property should have been listed as (4) 4-6-032:042 (Parcel 042) and not parcel 025. Parcel 042 has a private recorded easement over Parcel 025 but access over the subject LOD is necessary to access this easement. Staff recommends that the easement shall run with and inures to the benefit of the private property identified as TMK (4) 4-6-032:042.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of January 10, 2025, under agenda Item D-2, to provide that the easement shall inure to the benefit of parcel (4) 4-6-032: 042.
2. Consent, after-the-fact, to the assignments of LOD No. S-28120 from

- 1) John S. Rodrigues and Gary W. Rodrigues, as Assignors, to Gary W. Rodrigues, Assignee;
 - 2) From Gary W. Rodrigues, Assignor to Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues dated May 16, 1997, as Assignee;
 - 3) From Gary W. Rodrigues, Trustee of the Revocable Living Trust of Gary Wayne Rodrigues dated May 16, 1997, as Assignor to Shelly L. Rodrigues and Tani G. Olaso, Trustees of the Irrevocable Rodrigues Family Trust dated May 5, 2008, as Assignees; and
 - 4) From Shelly L. Rodrigues and Tani G. Olaso, Trustees of the Irrevocable Rodrigues Family Trust, as Assignors to Wendell B. Bandman, Assignee.
3. The consent shall further be 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; 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;
 - 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.
4. Except as amended hereby, all terms and conditions listed in its January 10, 2025 approval to remain the same.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Land Management
Honolulu, Hawaii 96813

July 23, 1993

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

KAUAI

Subject: Request for Perpetual, Non-Exclusive Easement for Access and Utility Purposes, Kapaa Homesteads, 3rd Series, Kawaihau, Kauai, Tax Map Key: 4-6-32:Por. 22

STATUTE:

Chapter 171, Hawaii Revised Statutes, as amended

APPLICANT:

GARY W. RODRIGUES

FOR:

Perpetual, non-exclusive easement for access and utility purposes affecting state land at Kapaa, Kauai, Tax Map Key: 4-6-32:Por. 22 as shown outlined in red on map labeled Land Board Exhibit "A", appended to the basic file.

STATUS:

Encumbered by General Lease No. S-3827, to East Kauai Water Company, Ltd.

PURPOSE:

Right, privilege and authority to construct, use, maintain and repair a 44-foot wide access and utility easement.

AREA:

To be determined by the applicant, subject to confirmation by the Department of Accounting and General Services, Survey Division.

CONSIDERATION:

To be determined by independent appraisal with payment based on a (1) one-time charge, subject to review and approval by the Chairperson.

Amendment:

The applicant shall address all comments received, in connection with the environmental assessment, during the 30-day comment period to DLR's satisfaction.

LAND TITLE STATUS:

Section 5(b) land, Admission Act

ZONING:

State Land Use District - Agricultural
County of Kauai CZO - Open

ENVIRONMENTAL REVIEW:

The applicant's draft environmental assessment, for which a negative declaration is anticipated, was submitted to the Office of Environmental Quality Control for publication in its July 23, 1993 bulletin.

REMARKS:

Applicant's father owns property located north of and adjacent to State owned property, and is requesting the necessary land area in which to establish a 44 ft. wide access easement to the property in order to consolidate and resubdivide other family owned lands. The County of Kauai will permit the Rodrigues' to consolidate and subdivide provided they obtain this easement over State lands.

The location of the proposed easement is the only level area of the State property in which the easement could properly function. The balance of the State property is gully and marsh land.

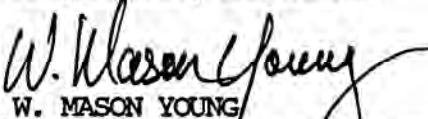
RECOMMENDATION: That the Board:

- A. Authorize the direct award of a perpetual, non-exclusive easement for access and utility purposes subject to the above conditions which are by reference incorporated herein, and subject further to the following conditions:
 - 1. Applicant shall provide the Department of Land and Natural Resources with at least two (2) sets of survey maps and descriptions for the easement area.
 - 2. Standard relocation clause.
 - 3. Standard abandonment and non-use clause.


July 23, 1993

4. Standard indemnity clause.
5. Other conditions as may be prescribed by the Chairperson.

Respectfully submitted,


W. MASON YOUNG
Land Management Administrator

APPROVED FOR SUBMITTAL:


KEITH W. AHUE, Chairperson

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 10, 2025 KA

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:

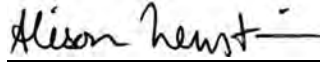
- A. The standard terms and conditions of the most current easement amendment document form, as may be amended from time to time, which shall incorporate the following provision:

“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:



Dawn N.S. Chang, Chairperson

RT

