

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

July 13, 2012

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

PSF No.:12HD-093

Hawai'i

Consent to Assign Grant of Easement No. S-4880, H-B, Inc., Assignor, to Bobbie's Steak & Lobster, LLC, Successor Company to Bobbie's Steak & Lobster, Ltd., Assignee, Assignment of Lease from Bobbie's Steak & Lobster, LLC, Assignor to NSIC Ponds LLC, Assignee, and Cancellation of Grant of Easement No. S-4880 and Issuance of a New Grant of Easement, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-06:10.

APPLICANT:

H-B Inc., as Assignor, to Bobbie's Steak & Lobster, LLC, a Hawaii Limited Liability Company, as Assignee and Bobbie's Steak and Lobster, LLC, as Assignor to NSIC Ponds LLC, a Hawaii limited liability company, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5)(b), Hawaii Revised Statutes, as amended.
Section 171-53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-1-06:10, as shown on the attached map labeled Exhibit A.

ZONING:

State Land Use District: Conservation
County of Hawaii CZO: Open

AREA:

360 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 Term Easement for right, privilege and authority to maintain and repair a concrete walkway, steps, stonewall and projecting roof purposes.

TERM OF LEASE:

Original term of 40 years, commencing on May 13, 1983 and expiring on May 12, 2023.

Assignee NSIC Ponds, LLC is requesting the cancellation and re-issuance of a new non-exclusive term easement for a period of sixty-five (65) years

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser establishing fair market rent, subject to review and approval by the Chairperson

EASEMENT TERM:

Sixty-five (65) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (Exhibit B)

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Good standing confirmed:	YES <u>X</u>	NO <u>__</u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

In February of 1982, the State Land Surveyor alerted the department about the existence of certain structural encroachments into the Kanakea Fish Pond fronting parcel 11 of Tax Map Key: 3rd/2-1-06, owned by the Assignor, Bobbie's Steak & Lobster, Ltd., after reviewing a request for shoreline certification. The file shows that the restaurant building on the property was rebuilt after the 1960 tsunami and a small portion of the roof was inadvertently built over the boundary. As for the concrete walkway and steps and stonewall, they were there many years before the property was acquired, probably before the 1950's. The fishpond is currently encumbered under Executive Order 1572 to the County of Hawaii.

In order to remedy the situation, it was suggested that the encroachments be covered by an easement. Bobbie's Steak & Lobster, Ltd. agreed and filed the required CDUA which was approved by the Board at its meeting on February 25, 1983 under agenda item H-4. Then at its meeting of May 13, 1983 under agenda item F-11, the Board authorized a term easement of 40 years to Bobbie's Steak and Lobster, Ltd.

At its meeting of February 12, 1988 under agenda item F-1-a, the Board consented to the assignment of GL S-4880 from Bobbie's Steak & Lobster, Ltd. as Assignor, to H-B, Inc., as Assignee. The assignment was in conjunction with a lease agreement for the restaurant situated on the private property adjacent to the easement and owned by Bobbie's Steak & Lobster, Ltd. A condition of the lease stipulated that the Assignee, H-B, Inc. shall hold the subject Grant of Easement for the term of the lease and no longer. Although the lease agreement was terminated on May 17, 1995¹, the Hawaii District Office was never notified and the Grant of Easement remained under H-B, Inc.

To correct this oversight, staff is requesting the Board consent to the assignment of Grant of Easement GL S-4880 from H-B, Inc., as Assignor, to Bobbie's Steak & Lobster, LLC, the successor company to Bobbie's Steak & Lobster, Ltd. as described in the Certificate of Conversion from the Department of Commerce and Consumer Affairs (DCCA) and shown as Exhibit C.

Bobbie's Steak & Lobster, LLC is selling the adjacent property and wants to convey the easement to NSIC Ponds LLC. The new owner is planning extensive renovations to the property and because the existing term easement will be expiring in 11 years, it is requesting an early cancellation of the term easement and the reissue a new term easement for a period of sixty-five (65) years.

Neither Bobbie's Steak & Lobster, LLC nor NSIC Ponds LLC has had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-

¹ Recorded with the Bureau of Conveyance, Doc. No. 95-065383

compliance with such terms and conditions.

Staff notes that the existing grant of easement document contains language requiring the Grantee to obtain Board approval for the transfer of the easement. Also there is no requirement for liability insurance as contained in our current term easement documents. The most recent grant of easement drafted by the Office of the Attorney General contains language that indicates the easement will run with the land should that land be conveyed through sale or other such transfer. This would allow for easier transition of the easement and not be an obstacle for any type of financing.

Staff is recommending that the Board consent to the Assignment of the Term Grant Easement GL S-4880 from Bobbie's Steak & Lobster, LLC, Assignor, to NSIC Ponds LLC, Assignee, and cancel the existing grant of easement and issue a new term easement containing the most current easement language to NSIC Ponds LLC for a period of sixty-five (65) years.

RECOMMENDATION: That the Board

ASSIGNMENT:

1. Consent to the assignment of the Term Grant Easement GL S-4880 from H-B, Inc, Assignor, to Bobbie's Steak & Lobster, LLC, Successor Company to Bobbie's Steak & Lobster, Ltd., Assignee and, in turn, Assignment of Term Grant Easement GL S-4880 from Bobbie's Steak & Lobster, LLC, Assignor, to NSIC Ponds 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.

CANCELLATION and REISSUE:

2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, 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.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 2-1-06:11, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the cancellation of GL S-4880 and issuance of a new term non-exclusive easement to NSIC Ponds, LLC covering the subject area for right, privilege and authority to maintain and repair a concrete walkway, steps, stonewall and projecting

roof purposes 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 term easement document 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 (3) 2-1-06:11, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- c) Review and approval by the Department of the Attorney General; and
- d) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for Non Exclusive Term Easement for right, privilege and authority to maintain and repair a concrete walkway, steps, stonewall and projecting roof purposes.

Project Number: PSF No.:12HD-093

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-1-06:10.

Project Description: The parcel was previously encumbered under Tem Grant of Easement GL S-4880 for right, privilege and authority to maintain and repair a concrete walkway, steps, stonewall and projecting roof purposes to Bobbie's Steak & Lobster, LLC. The adjacent fee property is being sold to NCIS Ponds, LLC. They are now requesting a new non-exclusive term easement.

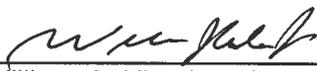
Consulted Parties: None

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

EXHIBIT B

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



Date



Department of Commerce and Consumer Affairs

CERTIFICATE OF CONVERSION

I, LAWRENCE M. REIFURTH, Director of Commerce and Consumer Affairs of the State of Hawaii, do hereby certify that pursuant to the Articles of Conversion of BOBBIE'S STEAK & LOBSTER, LTD., a Hawaii profit corporation, filed in this department on August 25, 2008, in accordance with the Hawaii Revised Statutes, BOBBIE'S STEAK & LOBSTER, LTD. is hereby converted to BOBBIE'S STEAK & LOBSTER, LLC, a Hawaii limited liability company, and that the conversion became effective on August 25, 2008, at 8:32 a.m.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Department of Commerce and Consumer Affairs, at Honolulu, State of Hawaii, this 25th day of August, 2008.

Lawrence M Reifurth

Director of Commerce and Consumer
Affairs



EXHIBIT C