

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

May 8, 2015

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

HAWAII

Amend prior Board Action of September 27, 2013 Item D-4, After-the-Fact Consent to Assignment and After-the-Fact Consent to Mortgage of Grant of Easement No. S-4553 to Savio Waiakea Village LLC, as Grantee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-031: por. for landscape easement and Road Lots A and B adjacent to parcel 12.

The amendments are: 1) Add an After-the-Fact Consent to Assignment of Grant of Easement No. S-4553, from Commissioner Sandra P. Song, as Grantor, to Owens Mortgage Investment Fund, as Grantee, for the purpose of completing the chain of title for the easement; 2) Correct the Mortgagee name used in the assignment, from Owens Financial Group, Inc. to Owens Mortgage Investment Fund.

APPLICANTS AND REQUESTS:

Sandra P. Song, Commissioner, as Assignor, requesting after-the-fact consent to assignment to Owens Mortgage Investment Fund, as Assignee.

Savio Waiakea Village LLC, a Hawaii limited liability company, as Mortgagor, is requesting a consent to mortgage from Owens Mortgage Investment Fund, a California limited partnership, as Mortgagee, in the amount of \$1,700,000.00.

REMARKS:

At its meeting on September 27, 2013, Item D-4 (Exhibit A), the BLNR approved the after-the-fact consent to assign Grant of Easement No. S-4553 from Owens Mortgage Investment Fund, as Assignor, to Savio Waiakea Village LLC, as Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-031: por. for landscape easement and Road Lots A and B adjacent to parcel 12. The BLNR also approved the after-the-fact consent to Mortgage, Grant of Easement No. S-4553, from Owens Financial Group, Inc., Mortgagee, to Savio Waiakea Village LLC, Mortgagor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-031: por. for landscape easement and Road Lots A and B adjacent to parcel 12.

Although the request was approved by the BLNR, it was disapproved by the Attorney General on March 19, 2014 for the following reasons:

1. Prior to the subject Board action of September 27, 2013, Commissioner's Deed and Assignment of Developer's Rights was recorded in the Bureau of Conveyances as Doc. No. A-46861086, and in the Office of Assistant Registrar as Doc No. T-8338370, TCT

No. 988038. Exhibit A, page 5 references Grant of Easement No. S-4553 as part of the assignment for the conveyance of the property. Sandra P. Song was duly appointed as Commissioner pursuant to that certain “FIRST AMENDED ORDER GRANTING PLAINTIFF OWENS MORTGAGE INVESTMENT FUND’S MOTION FOR SUMMARY JUDGEMENT AND FOR INTERLOCUTORY DECREE OF FORECLOSURE (MOTION FILED AUGUST 22, 2011)” (“Interlocutory Decree”) filed December 2, 2011 in the Circuit Court of the Third Circuit, Hilo , State of Hawaii (Circuit Court”) in the proceeding entitled “OWENS MORTGAGE INVESTMENT FUND, Plaintiff v. WAIAKEA WATERFRONT LLC, et al., Defendants, “ and designation as Civil No. 11-1-0140 in the file of the Circuit Court.

- There are no records showing that this assignment was approved by the BLNR causing a missing link in the chain of title transfers.
 - Staff is recommending that the BLNR consent after-the-fact to the assignment of Grant of Easement No. S-4553, from Commissioner Sandra P. Song, Grantor, to Owens Mortgage Investment Fund, Grantee for the purpose of completing the chain of title transfers.
 - The standard consent to assignment of easement form used by the Department of the Attorney General includes a residual liability clause that provides as follows:
 - Assignor hereby acknowledges that the Lessor's consent to assignment of the general lease, does not release the Assignor from any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said general lease.
 - In the present situation, Commissioner Song cannot make such an acknowledgment because she served as an officer of the court and did not hold any personal interest in the easement. Accordingly, staff requests that the Board direct the Department of the Attorney General to omit this clause from the consent to assignment instrument, and that Commissioner Song not be required to execute the consent instrument.
2. Board submittal dated September 27, 2013, identifies Owens Financial Group, Inc. as mortgagee. In the Purchase Money Mortgage, Security Agreement, and Financing Statement effective May 13, 2013, the mortgagee is Owens Mortgage Investment Fund, a California limited partnership.
- The original board submittal had incorrectly referenced Owens Mortgage Investment Fund as “Owens Financial Group, Inc.” The correct name of the mortgagee is “Owens Mortgage Investment Fund, a California limited partnership” and should be used to replace “Owens Financial Group, Inc.” in all occurrences (2) in the amended submittal.
 - Staff is recommending that the BLNR consent after-the-fact to the mortgage of Grant of Easement No. S-4553, between Owens Mortgage Investment Fund, as Mortgagee, and Savio Waiakea Village LLC, as Mortgagor.

RECOMMENDATION: That the Board:

- A. Consent, after-the-fact, to the assignment of Grant of Easement No. S-4553, from Commissioner Sandra P. Song, as Grantor, to Owens Mortgage Investment Fund, a California limited partnership, as Grantee, pursuant to Commissioners Deed and Assignment of Developer's Rights, TCT No. 988,038, and subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Consent, after-the-fact, to the mortgage that includes Grant of Easement No. S-4553, between Owens Mortgage Investment Fund, a California limited partnership, as Mortgagee, and Savio Waiakea Village LLC, a Hawaii limited liability company, as Mortgagor, and subject to the following:
1. In all other occurrences where the name "Owens Financial Group, Inc." exists in the original board submittal, replace with "Owens Mortgage Investment Fund."
 2. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. All other terms and conditions listed in Item D-4 of its September 27, 2013 Board approval to remain the same.

Respectfully Submitted,



Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson

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

September 27, 2013

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

Hawaii

After-the-Fact Consent to Assignment of Grant of Easement No. S-4553 from Owens Mortgage Investment Fund, to Savio Waiakea Village LLC, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-31: por. for landscape easement and Road Lots A and B adjacent to parcel 12

After-the-Fact Consent to Mortgage, Grant of Easement No. S-4553, Savio Waiakea Village LLC, Grantee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-31: por. for landscape easement and Road Lots A and B adjacent to parcel 12

APPLICANTS AND REQUESTS:

Owens Mortgage Investment Fund, as Assignor, requesting consent to assignment to Savio Waiakea Village LLC, a Hawaii Limited Liability Company, as Assignee.

Savio Waiakea Village LLC, a Hawaii corporation, as Mortgagor, is requesting a consent to mortgage from Owens Financial Group, Inc., a California corporation, as Mortgagee, in the amount of \$1,700,000.

LEGAL REFERENCE:

Sections 171-22 and 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/ 2-2-31: por. for landscaping easement and Road Lots A and B adjacent to parcel 12, as shown on the attached maps labeled Exhibits A, B and C.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 27, 2013 *uo*

D-4

EXHIBIT A

ZONING / AREA / SMA:

Parcel	LUC	Zoning	Area	SMA
TMK (3) 2-2-31: por.				
Landscape easement	Conservation	N/A	0.58 acre	Yes
Road Lot A	Urban	N/A	23,800 sq. ft.	Yes
Road Lot B	Conservation	N/A	800 sq. ft.	Yes

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Grant of Easement No. S-4553 is currently used for access, utility and landscape purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair non-exclusive easements over, under and across State-owned land for roadway, utility, and landscaping purposes.

EASEMENT TERM:

Sixty-five (65) years, commencing on October 7, 1976 and expiring October 6, 2041. There are no rental reopenings; consideration was paid on a one-time, lump sum basis upon grant of easement.

ANNUAL RENTAL:

Not applicable.

USE OF LOAN PROCEEDS:

Mortgagor Savio Waiakea Village LLC acquired a partial interest in the subject easement through the purchase of a private parcel designated as Tax Map Key: (3) 2-2-30:18.

CONSIDERATION:

Assignee paid \$1,700,000.00 for the private parcel. No specific allocation was made for the value of the easement rights.

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

Assignor/Mortgagee- Owens Mortgage Investment Fund

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Good standing confirmed: YES X NO ___

Assignee/Mortgagor- Savio Waiakea Village LLC:

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Good standing confirmed: YES X NO ___

REMARKS:

Applicants Owens Mortgage Investment Fund (Owens Mortgage) and Savio Waiakea Village LLC (Savio) have requested after-the-fact approvals of two transactions relating to the subject easement. The first transaction is an assignment of the easement from Owens Mortgage to Savio through the sale of the adjacent private property by warranty deed dated May 13, 2013, and the second is the consent to mortgage between Owens Mortgage, as Mortgagee, and Savio, as Mortgagor. The mortgage is also dated May 13, 2013. Staff reviews the relevant history below.

At its meetings of November 12, 1971, Item F-13, November 17, 1972, Item F-7, and September 14, 1973, Item F-4, the Board of Land and Natural Resources approved the sale at public auction of a non-exclusive, 65-year term easement for several purposes over portions of State land situated at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-31. The easements were needed for the development of the Waiakea Village Hotel on two private parcels designated as Tax Map Keys: (3) 2-2-30:03 (Parcel 3) and 2-2-30:18 (Parcel 18). The successful bidder at auction was Waiakea Corporation, one of the entities involved in the development of the hotel and its related commercial facilities.

Grant of Easement No. S-4553 was issued to Waiakea Corporation effective as of October 7, 1976. The grant covered three separate easement rights over portions of Tax Map Key: (3) 2-2-31: (i) easements over Road Lots A and B for access and utility purposes; (ii) a landscape easement; and (iii) Easements G, H and J for sewer purposes. Shortly thereafter, at its meeting of November 12, 1976, Item F-6, the Board approved a partial assignment of Grant of Easement No. S-4553, relating to the sewer easements only, to the County of Hawaii. The assignment was prepared and dated as of August 5, 1977. As a result, the sewer easements

are not at issue in Applicants' assignment request. Maps showing Parcels 3 and 18, the access and utility easements over Road Lots A and B, and the landscape easement are attached Exhibits A, B and C.

Over the years, the Waiakea Village Hotel ceased to operate as a hotel. In 1984, the residential portion of the hotel located on Parcel 3 was converted to a horizontal property regime, now referred to as a condominium property regime (CPR), known as Waiakea Villas (Villas CPR). The condominium project consists of 12 buildings, 301 condominium units, as well as common areas and other real property interests. The commercial buildings of the former hotel located on Parcel 18 were not included in the CPR. Rather, the commercial buildings continued to be operated as various retail shops, restaurants and offices, commonly known as Waiakea Village. See Exhibit A.

Through a series of mesne conveyances with Board approval, the road, utility and landscape rights under Grant of Easement No. S-4553 were acquired by Shanghai Investment Company, Inc. (Shanghai) pursuant to a Special Warranty Deed executed March 29, 1993. The Board approved an after-the-fact request for assignment of the easement to Shanghai at its meeting of January 13, 1996, Item F-1-d, and the Chairperson executed the consent instrument on February 26, 1996.

Subsequently, by Warranty Deed dated June 27, 1997, Shanghai conveyed Parcel 3 (containing the Villas CPR) to Waiakea Villas, LLC (WVL), together with rights in Grant of Easement No. S-4553. The Board approved an after-the-fact request for this partial assignment of the easement to WVL at its meeting of August 8, 1997, Item D-41, and the Chairperson executed the consent instrument on June 19, 1998. Shanghai retained ownership of the Waiakea Village on Parcel 18. Accordingly, Shanghai and WVL shared the easement rights under Grant of Easement No. S-4553 after the 1997 conveyance of Parcel 3.

On January 3, 2000, Shanghai changed its name to Hotels In Paradise, Inc. (HIPI), as reflected in DCCA records. By instrument dated February 15, 2000, HIPI granted a mortgage in favor of Owens Financial in the amount of \$1,500,000. HIPI and Owens Financial did not obtain Board consent to the mortgage. On July 5, 2000, Owens Financial assigned the mortgage to Owens Mortgage. HIPI defaulted on the mortgage and in 2007 Owens Mortgage commenced a foreclosure action in the First Circuit Court against HIPI and others under Civil No. 07-1-0831-05. The court ordered judgment in favor of Owens Mortgage, and a decree of foreclosure appointed Richard Emery as Commissioner.

Commissioner Emery sold Parcel 18, including HIPI's interest in Grant of Easement No. S-4553, at public auction with Owens Mortgage as the successful bidder. The court approved and confirmed the sale by order entered in the foreclosure action on June 26, 2008. On July 29, 2008, Commissioner Emery executed a Commissioner's Deed covering Parcel 18 and rights in Grant of Easement No. S-4553 in favor of Owens Mortgage. However, Owens Mortgage did not seek the Board's approval for this conveyance.

On January 14, 2010, Commissioner Emery and Owens Mortgage executed a separate Assignment of Grant of Easement No. S-4553, which details and confirms the assignment of certain rights in the easement to Owens Mortgage.

At its meeting of February 11, 2010 under agenda item D-2, the Board approved staff's recommendation for the after-the-fact consent to mortgage and after-the-fact consent to assignment of Grant of Easement No. S-4553.

Staff is recommending the Board consent after-the-fact to the assignment of Grant of Easement No. S-4553 from Owens Mortgage, as Assignor, to Savio, as Assignee, pursuant to the warranty deed dated May 13, 2013, and consent to the mortgage of the same date between Owens Mortgage, as Mortgagee, and Savio, as Mortgagor.

Savio 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. There are no outstanding rental reopening issues.

RECOMMENDATION: That the Board:

- A. Consent after-the-fact to the assignment of Grant of Easement No. S-4553 from Owens Mortgage Investment Fund, as Assignor, to Savio Waiakea Village LLC, as Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and
 - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- B. Consent after-the-fact to the mortgage between Savio Waiakea Village LLC, Mortgagor, and Owens Financial Group, Inc., Mortgagee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and

3. 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

2

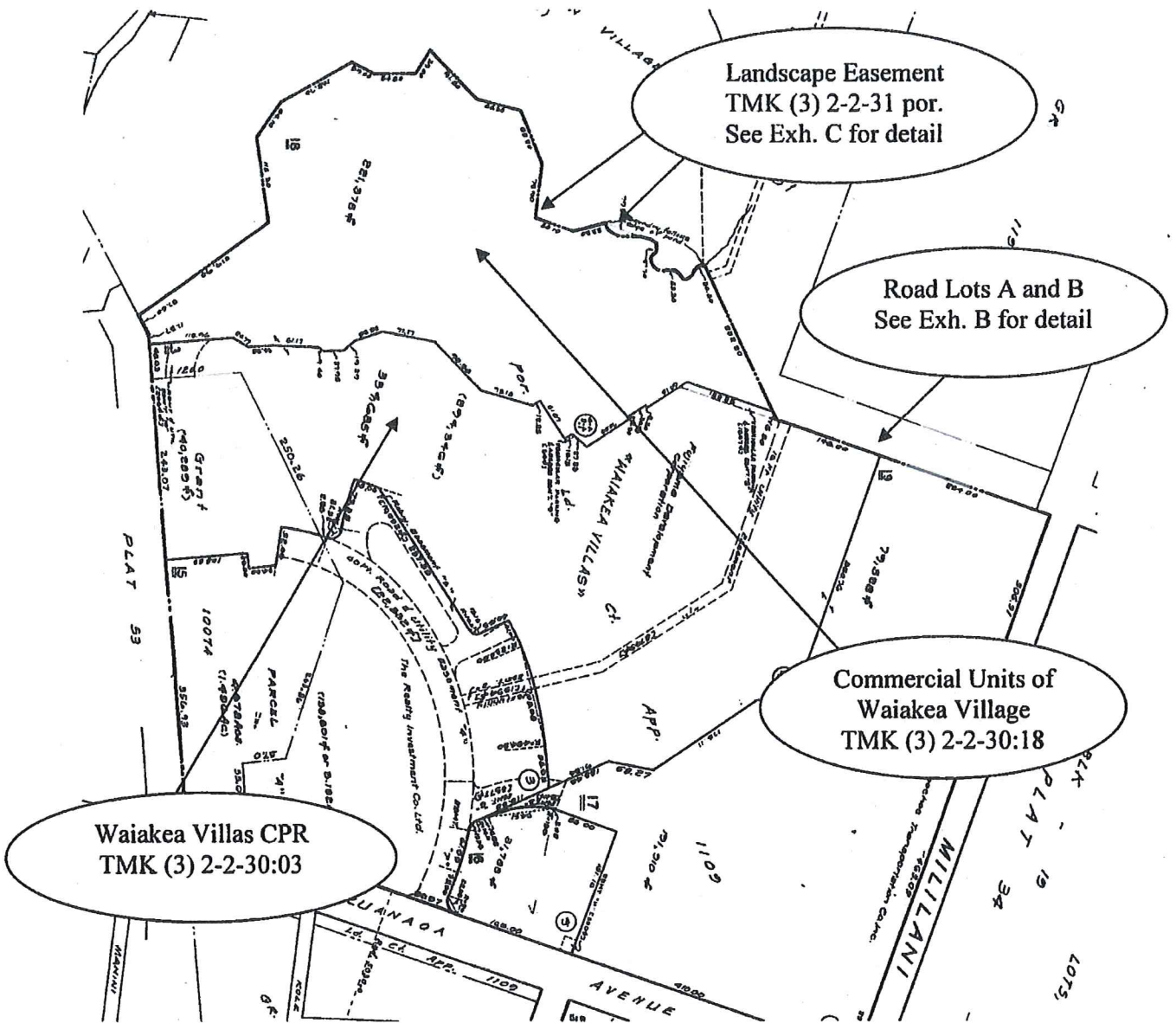


EXHIBIT A

