

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

July 10, 2015

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

PSF No.: 09OD-015

OAHU

Request to Amend Prior Board Action of May 8, 2015 (Item D-16), Amendment and Consent to Assignment of Grant of Non-Exclusive Easement No. S-5339, Sunset View Properties, LLC, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee, Pupukea-Paumalau Beach Lots, Koolauloa, Oahu, Tax Map Key: (1) 5-9-020:050 seaward. Rescind Prior Board Action of March 27, 2009, item D-13. The Purpose of the Amendment is to Allow the Easement to "Run with the Land" and to Inure to the Benefit of the Private Property it Abuts.

The purpose of the current amendment is to clarify that there are two separate assignments at issue: (1) from Sunset View Properties, LLC, as Assignor, to Kenneth V. Krebs, as Assignee, and (2) subsequently from Kenneth V. Krebs, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee. The prior Board action will therefore be amended to indicate the correct names of the assignors and assignees. An additional purpose of amendment is to modify the standard form of Board consent to exclude any covenant by the assignor regarding continuing liability under the easement.

BACKGROUND:

Grant of Non-Exclusive Easement No. S-5339 dated September 9, 1993 allows for the maintenance and repair of a revetment on State land at Koolauloa, Oahu. The easement benefits the private property designated as Tax Map Key: (1) 5-9-020:050 (Parcel 50). In 2005, Sunset View Properties, LLC (Sunset) conveyed Parcel 50 to Kenneth V. Krebs. The conveyance purported to include the rights under the easement. However, Grant of Non-Exclusive Easement No. S-5339 provides that the prior written consent of the Board of Land and Natural Resources is required for any assignment.

On March 27, 2009, Item D-13, the Board consented to the assignment of Grant of Non-Exclusive Easement No. S-5339 from Sunset, as assignor, to Mr. Krebs, as assignee. The

standard consent to assignment document includes a covenant by the assignor as follows:

FURTHERMORE, Assignor hereby acknowledges that the Grantor's consent to assignment of this grant of non-exclusive easement, does not release the Assignor of any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said grant of non-exclusive easement.

When the consent instrument was sent to Sunset for signature in June 2009, it was returned unsigned. Sunset later filed a voluntary petition for bankruptcy in the Bankruptcy Court of the Southern District of California as of November 30, 2011. As a result, Land Division's records were never changed to reflect the transfer of the easement from Sunset to Mr. Krebs.

On December 29, 2014, Mr. Krebs conveyed Parcel 50 to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002 (McGillin Trust). The conveyance purported to include the rights to the easement.

On May 8, 2015, under agenda item D-16, the Board gave its consent to the amendment and assignment of Grant of Non-Exclusive Easement S-5339 from Sunset to McGillin Trust. A copy of the approved Board submittal is attached as **Exhibit 1**. However, the submittal incorrectly omitted Mr. Krebs from the chain of title of approved assignments. The submittal should instead have amended the prior Board action of March 27, 2009, Item D-13 to modify the form of consent to the assignment from Sunset to Mr. Krebs to eliminate the standard assignor covenant above, because Sunset's signature could not be obtained on the consent. The Board submittal should also have sought approval of the subsequent assignment from Mr. Krebs to the McGillin Trust. Further, it is not clear whether Mr. Krebs will be available to sign the consent since he has already divested his interest in Parcel 50, and so staff is requesting that Board authorize the consent instrument to be modified to eliminate the assignor liability covenant.

The present action seeks to remedy the defects in the prior Board action of May 8, 2015.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of May 8, 2015 (Item D-16):
 - A. To clarify that two assignments of Grant of Non-Exclusive Easement No. S-5339 are approved: (1) from Sunset View Properties, LLC, as Assignor, to Kenneth V. Krebs, as Assignee, and (2) subsequently from Kenneth V. Krebs, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee;
 - B. Modify the standard form of consent to assignment of non-exclusive easement to eliminate the covenant regarding the continuing liability of assignor and the signature

block for assignor.

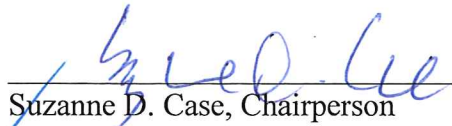
2. Except as amended hereby, all terms and conditions listed in the May 8, 2015 Board approval shall remain the same.

Respectfully Submitted,



Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

PSF: No. 09OD-015

Oahu

Amendment and Consent to Assignment of Grant of Non-Exclusive Easement No. S-5339, Sunset View Properties, LLC, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee, Pupukea-Paumalau Beach Lots, Koolauloa, Oahu, Tax Map Key: (1) 5-9-020:050 seaward. Rescind Prior Board Action of March 27, 2009, item D-13. The Purpose of the Amendment is to Allow the Easement to "Run with the Land" and to Inure to the Benefit of the Private Property it Abuts.

APPLICANT:

Sunset View Properties, LLC, a limited liability company, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee

LEGAL REFERENCE:

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

LOCATION:

Portion of lands situated at Pupukea-Paumalau Beach Lots, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-9-020:050 seaward, as shown on the attached map labeled Exhibit 1.

AREA:

3,902 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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
May 8, 2015

Exhibit 1

CHARACTER OF USE:

Revetment purposes.

TERM OF LEASE:

65 years, commencing on October 16, 1992 and expiring on October 15, 2057.

ANNUAL RENTAL:

\$23,412 one-time payment paid. No rental reopening.

CONSIDERATION:

\$10.00

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

ASSIGNOR:

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

(The assignor is a California business entity not registered to do business in the State of Hawaii.)

ASSIGNEE:

Not applicable, as the assignee is a trust.

REMARKS:

The subject revetment easement was initiated pursuant to the Consent Decree and Order in Paumalu Beach Homeowner's Association, et al. v. William Paty, in his official capacity, et al. of October 16, 1992.

At its meeting of March 27, 2009, under agenda item D-13, the Board had approved of, and consented to the assignment of the subject revetment easement (Non-Exclusive Easement No. S-5339), from Sunset View Properties, LLC, as Assignor, to Kenneth V. Krebs, as Assignee. See Exhibit 2.

On June 23, 2009, the document consenting to the assignment of the revetment easement to Mr. Krebs, as Assignee, was mailed to Sunset View Properties, LLC, as the Assignor,

requesting its signature. Due to an undeliverable mailing address, the consent document was returned, unsigned, as of June 29, 2009. Subsequently, staff noted that Sunset View Properties, LLC, had voluntarily petitioned for bankruptcy with the California Southern Bankruptcy Court, effective as of November 30, 2011. Meanwhile, Sunset View Properties, LLC remained as the current grantee on record for the subject revetment easement.

Further, by way of a warranty deed document, identified by A-54760147, and recorded on December 29, 2014 in the Bureau of Conveyances, Kenneth V. Krebs sold the private property that abuts the subject revetment easement to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002. This event transferred property ownership rights and triggers the need for the Board to consent to the assignment of the subject revetment easement to the new owners of the private property.

Staff now brings this request to the Board to amend and consent to the assignment of the subject revetment easement from Sunset View Properties, LLC, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee.

In the event of changes to the ownership of the abutting privately owned property, staff recommends that the Board now amend the subject revetment easement to inure to the benefit of the said abutting property, to eliminate the consent needed from the Board regarding any future assignment(s). The current owners of the abutting private property concur.

According to our research, Stephen James McGillin and Diane Lynn McGillin 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.

Due to the housekeeping purposes of the subject request, staff did not solicit comments from other governmental agencies but recommends that the Board rescind its prior action of March 27, 2009, item D-13.

There are no other pertinent issues or concerns, and staff has no objection to the subject request.

Staff now brings the subject request to the Board for its approval.

RECOMMENDATION: That the Board

- A. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5339 from Sunset View Properties, LLC, as Assignor, to Stephen James McGillin and Diane Lynn McGillin, Trustees of The STEPHEN AND DIANE MCGILLIN 2002 TRUST dated November 14, 2002, as Assignee, subject to the following:

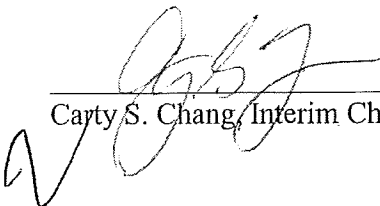
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend the Grant of Non-Exclusive Easement No. 5339 by adding the following condition:
- The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-020:050, 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 Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.
1. The standard terms and conditions of the most current amendment 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.
- C. Rescind the prior Board Action of March 27, 2009, item D-13.

Respectfully Submitted,

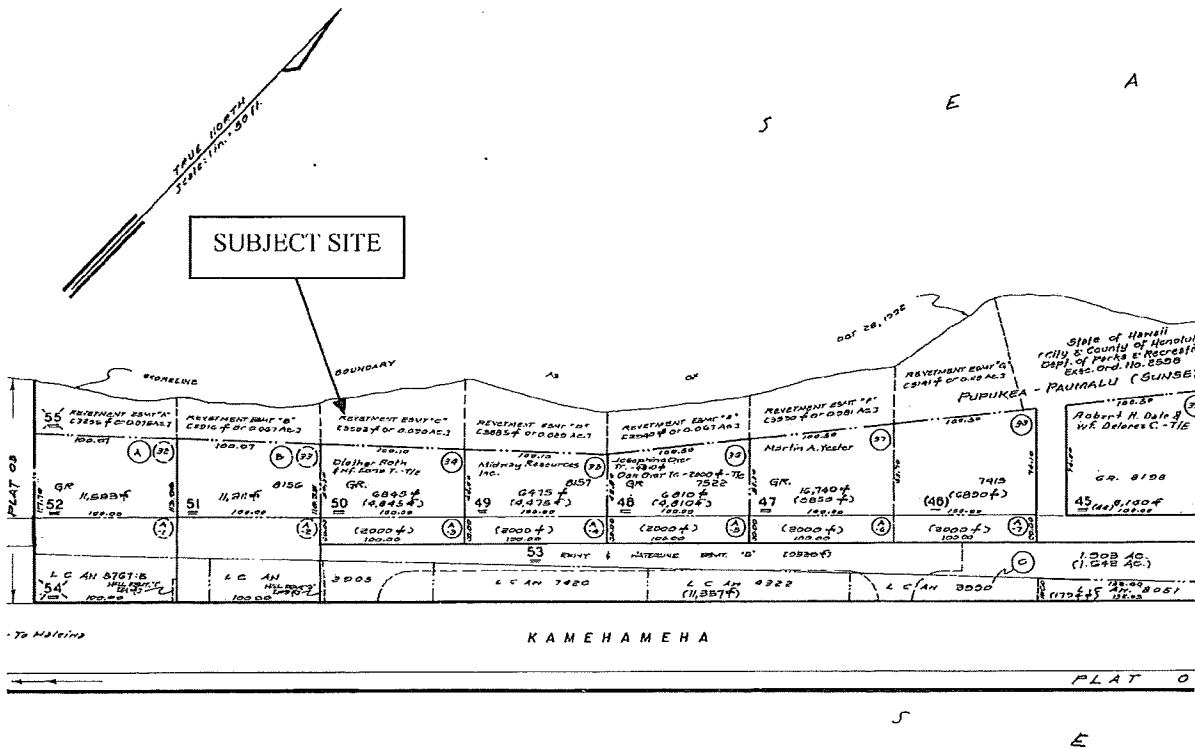


Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson



TAX MAP KEY: (1) 5-9-020:050 SEAWARD

EXHIBIT 1

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

March 27, 2009

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

PSF No.: 09od-015

OAHU

Consent to Assign Non-Exclusive Easement No. S-5339, Sunset View Properties, LLC, Assignor, to Kenneth V. Krebs, Assignee, Pupukea-Paumalau Beach Lots, Koolauloa, Oahu, Tax Map Key: (1) 5-9-020:seaward of 050.

APPLICANT:

Sunset View Properties, as Assignor, to Kenneth V. Krebs, married, whose mailing address is Haleiwa, Hawaii 96712, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Pupukea-Paumalu situated at Pupukea-Paumalu Beach Lots, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-9-020:seaward of 050, as shown on the attached map labeled Exhibit A.

AREA:

3,902 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: YES NO

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

MARCH 27, 2009

D-13

EXHIBIT 2

X

CHARACTER OF USE:

Revetment purposes.

TERM OF LEASE:

65 years, commencing on October 16, 1992 and expiring on October 15, 2057.

RENTAL:

\$23,412, one-time payment paid. No rental reopening.

CONSIDERATION:

\$ 10.00.

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

Not applicable.

REMARKS:

The subject revetment easement was initiated pursuant to the Consent Decree and Order in Paumalu Beach Homeowner's Association, et al. v. William Paty, in his official capacity, et al. of October 16, 1992. By subsequent assignment, the most recent grantee was Sunset View Properties, LLC.

Assignee purchased the private property abutting the subject revetment in 2005, and the purchase was recorded at the Bureau of Conveyances by document no. 2005-114666. The subject revetment easement is included in the exhibit of the deed that transferred the private property.

Upon approval, Assignee is required to provide us with the liability insurance policy.

Assignee 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 did not solicit comments from other governmental agencies since the request is basically for housekeeping purposes.


There are no other pertinent issues or concerns. Staff has no objections to the request.

RECOMMENDATION:

That the Board consent to the assignment of non-exclusive easement No. S-5339 from Sunset View Properties, LLC, as Assignor, to Kenneth V. Krebs, as Assignee, subject to the following:

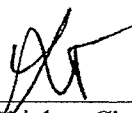
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,

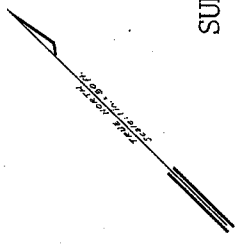


Timothy Chee
Land Agent

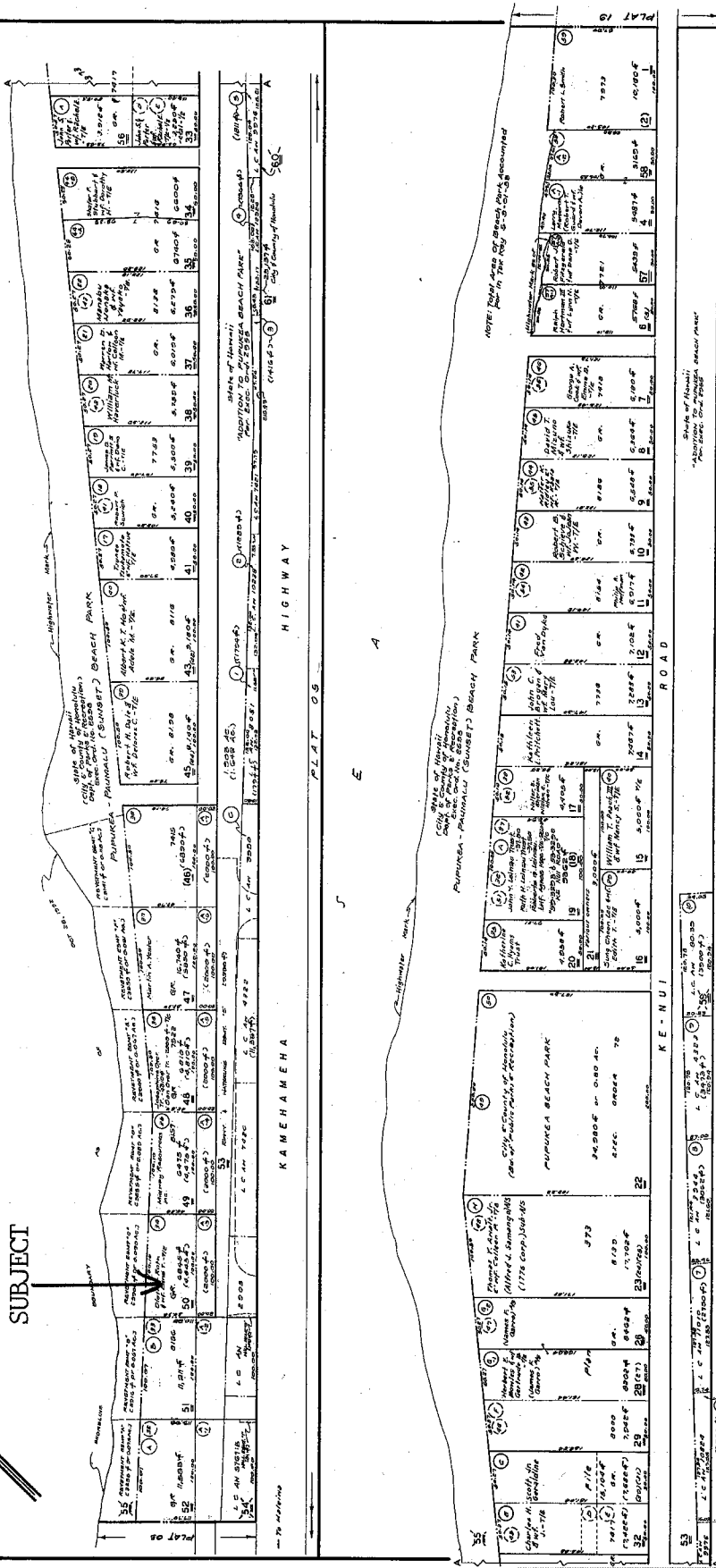
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 



SUBJECT



DEPARTMENT OF THE TAX COMMISSIONER	
TAXATION MAPS BUREAU	
STATE OF HAWAII	
TAX MAP	
FILE NO.	5920
CONTAINING	PAGES

PLAT 06
 SUBJECT TO CHANGE

MAPS, NOT INCLUDING THIS MAP, ARE TO BE NUMBERED IN ORDER OF DATE OF RECORDATION.

PLAT 05
 KAMEHAMEHA HIGHWAY

PLAT 06
 KAMEHAMEHA HIGHWAY

PLAT 05
 KAMEHAMEHA HIGHWAY

PLAT 06
 KAMEHAMEHA HIGHWAY

PLAT 05
 KAMEHAMEHA HIGHWAY

EXHIBIT "A" 77

POT. PUUPEKA-PALMALU BEACH LOTS, KOOLAULO, OAHU (continuation of map of 10-20-82)

SOURCE: THE OFFICE OF THE TAX COMMISSIONER, STATE OF HAWAII