

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

April 11, 2008

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

PSF 07od-179

OAHU

Consent to Assign Homestead Lease No. 34, Henrietta Kia Cypher, Assignor, to, Barney Kealoha Cypher, Assignee, Waianae, Oahu; Tax Map Key: (1) 8-5-004:027.

APPLICANT:

Henrietta Kia Cypher, as Assignor, to Barney Kealoha Cypher, husband of Bernadette Apuna Cypher, whose mailing address is P.O. Box 59, Anahola, Hawaii 96703, as Assignee.

LEGAL REFERENCE:

Section 171-99 (e), Hawaii Revised Statutes, as amended.

Note: Prior to June 6, 2000, upon the death of the lessee of a homestead lease (HL), the transfer of such homestead lease followed the specific order of succession stipulated in Section 171-99(e), Hawaii Revised Statutes attached as Exhibit A.

§171-99(e), HRS was amended on June 6, 2000 which allows the transfer of a homestead lease "by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family." A copy of the amended version is attached as Exhibit B.

LOCATION:

Portion of Government lands situated at Waianae, Oahu, identified by Tax Map Key: (1) 8-5-004:027, as shown on the attached map labeled Exhibit C.

AREA:

19.252 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:

Residential purposes.

TERM OF LEASE:

999 years, commencing on June 26, 1918 and expiring on June 25, 2917.

ANNUAL RENTAL:

None.

CONSIDERATION:

Gratis.

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

Not applicable. Individuals.

REMARKS:

A summary of important events for the subject HL is prepared at Exhibit D.

On March 26, 1919, HL No.34 was issued to Keahimakani Landford for a term of 999 years commencing from June 26, 1918 (Exhibit E). Subsequent to the death of her husband, William Landford, in 1924, Keahimakani Landford married John Fuller. Keahimakani Landford died in 1938.

According to the Petition for Decree of Determination and Declaration of Heirs of Keahimakani Landford, S.P. 3836 in 1975, staff understands that John Fuller died in 1951. Keahimakani Landford had five children from her first marriage and none from her second marriage.

Among the five children of Keahimakani Landford, William K. Landford was the sole survivor until he died in 1969. Pursuant to the Order for Determination and Declaration of Heirs of Keahimakani Landford, S.P. 3836, Mary Evelyn Kaaa Landford, widow of William K. Landford, became the sole successor-in-interest to the Homestead Lease No. 34. Mary Evelyn Kaaa Landford died in 1978, and she was survived by her five children: Richard Bernard Landford, Anthony Kaipulemanu Landford, Hannah Kailikea, Henrietta Kia, (now known as Henrietta Kia Cypher), and Verna Mae Albino (now known as Verna Mae Landford-Bright). Richard Bernard Landford died on January 11, 1980.

Pursuant to the Order of Formal Probate of Will, Determination of Testacy and Heirs, and Appointment of Personal Representative relating to the Estate of Mary Evelyn Kaaa Landford, P. No. 41346 dated March 13, 1981, the Court determined her heirs and devisees to be her children, namely Anthony Kaipulemanu Landford, Hannah Kailikea, Henrietta Kia, Verna Mae Albino, and grandchildren (children of Richard Bernard Landford, Sr., deceased).

Over the years, Hannah Kailikea died on October 24, 1997, and Anthony Kaipulemanu Landford died on February 6, 1999. Therefore, Mrs. Cypher & Ms. Landford-Bright are the surviving children of Mary Evelyn Kaaa Landford.

Mrs. Cypher intends to transfer her interest to her son. Staff has inquired the Department of the Attorney General about the effect of the change in § 171-99(e), HRS in relation to the transfer of HL. The amended law enabled the lessee to pass on his share in the HL by conveyance, devise, or bequest to a "family" (as defined in the statute) member.

When the law was changed in June 2000, HL 34 was held by Mrs. Cypher & Verna Mae Albino as the surviving lessees mentioned above. Now, Mrs. Cypher intends to transfer her interest in HL34 to her son, the share of her interest would be 50% of HL34.

Copies of birth certificate of the assignee and the death certificate of the siblings of Mrs. Cypher are not attached as exhibits; however, they are kept in the file.

Staff visited the subject property recently and met with Ms. Landford-Bright whose family and a daughter of Hannah Kailikea (Ms. Landford-Bright's sister, now deceased) are living on the property. Further, Mrs. Cypher told the staff that she is living elsewhere, not on the subject property. However, Mrs. Cypher mentioned that her granddaughter needs to seek treatment from medical facilities on Oahu. Therefore, her son plans to return to the subject property.

There are no insurance requirement, rent obligation, and performance bond in a typical homestead lease agreement.

Staff did not solicit comments from other agencies since no change on the use of land is involved upon the disposition of the subject request. Staff has no objections to the

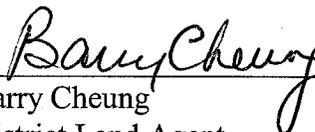
request.

RECOMMENDATION:

That the Board consent to the assignment of 50% interest of Homestead Lease No. 34 from Henrietta Kia Cypher, as Assignor, to Barney Kealoha Cypher, 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,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



(e) Interests, descent; certificate of occupation or homestead lease. In case of the death of any occupier or lessee under an existing certificate of occupation or existing homestead lease, all the interest of the occupier or lessee, any conveyance, devise, or bequest to the contrary notwithstanding, in land held by the decedent by virtue of such certificate of occupation or homestead lease shall vest in the relations of the decedent as follows:

- (1) In the widow or widower;
- (2) If there is no widow or widower, then in the children;
- (3) If there are no children, then in the widows or widowers of the children;
- (4) If there are no such widows or widowers, then in the grandchildren;
- (5) If there are no grandchildren, then in the parents or surviving parent;
- (6) If there are no parents or surviving parent, then in the sisters and brothers;
- (7) If there are no sisters and brothers, then in the widowers or widows of the sisters and brothers;
- (8) If there are no such widowers or widows, then in the nieces and nephews;
- (9) If there are no nieces or nephews, then in the widowers or widows of the nieces and nephews;
- (10) If there are no such widowers or widows, then in the grandchildren of the sisters and brothers;
- (11) If there are no grandchildren of any sister or brother, then in the State.

All the successors, except the State, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in like manner as the decedent would have been subject to the performance if the decedent had continued alive; provided that if a widow or widower in whom the interest shall have vested, shall thereafter marry again and de cease leaving a widower or widow and a child or children of the first marriage surviving, the interest of the deceased shall vest in such child or children; and provided further that in case two or more persons succeed together to the interest of any occupier or lessee. according to the foregoing provisions, they shall hold the same by joint tenancy so long as two or more shall survive, but upon the death of the last survivor, the estate shall descend as provided above.

171-99(e), HRS
Pre June 6, 2000 version

EXHIBIT " A "

under the age of eighteen years, unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board, in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for the uses as provided in this chapter. Before the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of the funds.

(e) Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family.

For the purposes of this section, "family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, nephews, a parent's siblings, children of a parent's siblings, and grandchildren of a parent's siblings, of the occupier or lessee.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation, or homestead lease by inheritance or otherwise, any one or more of the persons, less than the whole number, may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price, according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer [is] mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.

Effective Date	Name(s) of Lessee	Notes
June 26, 1918	Keahimakani Landford	Original lessee, had five children.
1924		Husband of Keahimakani Landford, William Landford, died.
		Keahimakani Landford married John Fuller. No children from this marriage.
1938	John Fuller	Keahimakani Landford died.
1951 - 1969	Five children of 1 st marriage. William K. Landford outlived his four siblings	John Fuller died.
1969	Mary Evelyn Kaaa Landford	Mary is the widow of William K. Landford, and became the successor lessee pursuant to the Order for Determination and Declaration of Heirs of Keahimakani Landford, S.P. 3836. Mary Evelyn Kaaa Landford died in 1978.
1978	Five children of Mary Evelyn Kaa Landford: Richard Bernard Landford Hannah Kailikea Anthony Kaipulemanu Landford Henrietta Kia Verna Mae Albino	Order of Formal Probate of Will, Determination of Testacy and Heirs, and Appointment of Personal Representative relating to the Estate of Mary Evelyn Kaaa Landford, P. No. 41346.
Jan 11, 1980	Hannah Kailikea Anthony Kaipulemanu Landford Henrietta Kia Verna Mae Albino	Death of Richard Bernard Landford
Oct 24, 1997	Anthony Kaipulemanu Landford Henrietta Kia Verna Mae Albino	Death of Hannah Kailikea
Feb 6, 1999	Henrietta Kia Verna Mae Albino	Death of Anthony Kaipulemanu Landford
Jun 6, 2000		§ 171-99 (e) HRS amended

EXHIBIT D