

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

February 22, 2013

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

Maui

Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28030 for Access and Utility Purposes to Michael P. Marquard as to an Undivided 46.192% Undivided Interest; Michael P. Marquard as Custodian for Michelle Marquard as to an Undivided 4.110% Undivided Interest; and Michael P. Marquard as Trustee Under the Alexandra Morrow 1992 Irrevocable Property Trust Dated December 28, 1992 as to an Undivided 49.698% Interest, Grantee, Hoolawa, Makawao, Maui, Tax Map Key: (2) 2-9-002: Portion of 012.

PURPOSE:

Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28030, Michael P. Marquard as to an Undivided 46.192% Undivided Interest; Michael P. Marquard as Custodian for Michelle Marquard as to an Undivided 4.110% Undivided Interest; and Michael P. Marquard as Trustee Under the Alexandra Morrow 1992 Irrevocable Property Trust Dated December 28, 1992 as to an Undivided 49.698% Interest, Grantee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hoolawa situated at Makawao, Maui, identified by Tax Map Key: (2) 2-9-002: Portion of 012, as shown on the attached map labeled Exhibit 1.

AREA:

1,023 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:

Access and Utility purposes.

REMARKS:

At its meeting of July 13, 1990, under Item No. F-3, the Board of Land and Natural Resources approved the issuance of a perpetual, non-exclusive easement to The Landing at Lahaina, a Hawaii General Partnership, for access and utility purposes to inure to the benefit of the property at Tax Map Key No.: (2) 2-9-002:014. The subject easement encumbered an area of 1,023 square feet of State land, further identified by Tax Map Key: (2) 2-9-002: Portion of 012.

Due to a conveyance of lands by The Landing at Lahaina to principals and family members of their General Partnership, a request was made to have the Grantee name changed to the following: Michael P. Marquard as to an Undivided 46.192% Undivided Interest; Michael P. Marquard as Custodian for Michelle Marquard as to an Undivided 4.110% Undivided Interest; and Michael P. Marquard as Trustee Under the Alexandra Morrow 1992 Irrevocable Property Trust Dated December 28, 1992 as to an Undivided 49.698% Interest (also referred to as Grantee). On February 26, 1993, the Board of Land and Natural Resources, under Agenda Item F-3 approved an amend of the prior Board action of July 13, 1990 (Agenda Item F-3) by for this change.

Grant of Easement LOD S-28030 was effected on May 31, 1994 to Michael P. Marquard, individually, as custodian for Michelle Marquard, and Trustee for the Alexandra Morrow 1992 Irrevocable Property Trust.

The Grantee has failed to respond to a number of requests for liability insurance compliance as required by the easement agreement.

Pursuant to the authority granted to the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in Land Office Deed S-28030, Grantee was served default notices dated October 3, 2011, November 29, 2011, and again on January 9, 2012, via certified mailing for failure to post required liability insurance policy (Condition #26, Insurance Requirement).

Said notices were received and signed for as required when receiving certified mail. Each letter advised Mr. Marquard that his liability insurance policy had expired. The Grantee had sixty-day cure periods after the receipt of each letter to correct the default. The final cure period expired on March 14, 2012.

To date Mr. Marquard has not posted the required liability insurance and has not contacted staff to apprise of the status of his disposition.

A 2012 review of County of Maui Real Property Tax records indicated that Michael P. Marquard, Michelle Marquard and the Alexandra Morrow Trust were still the fee owners of the benefiting property at Tax Map Key No.: (2) 2-9-002:014.

Staff is requesting that the Board approve the forfeiture of Land Office Deed No. 28030 due to non-compliance with the terms and conditions of the access easement document.

RECOMMENDATION: That the Board:

1. Authorize the forfeiture of Grant of Easement bearing Land Office Deed No. S-28030 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under Land Office Deed No. S-28030 to be applied to any past due amounts;
3. Terminate Land Office Deed No. S-28030 and all rights of Grantee and all obligations of the Grantor effective as of January 11, 2013, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the Land Office Deed to survive termination shall endure past such termination date until duly fulfilled, and further

provided that Grantor reserves all other rights and claims allowed by law; and

4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Land Office Deed No. S-28030 and to pursue all other rights and remedies as appropriate.

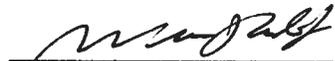
Respectfully Submitted,



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Daniel Ornellas,  
District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson

