

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

June 27, 2014

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

Ref. No.: GLS-5435
PSF No.: 08HD-094

HAWAII

Rescind Prior Board Action of March 27, 2009, Item D-4, Consent to Assignment of General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Jake Kaawaloa, Assignee, Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-043:035. And

Consent to Assign General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Beverly Keonaona Amaral, Assignee, Lot 35, Kalapana Section, Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-043:035.

APPLICANT:

Lei Mamo Kaapana Aken, as Assignor, to Beverly Keonaona Amaral (aka: Beverly Keonaona Sagapolu, Beverly K. Amaral), married, wife of Henry Amaral Jr. ,Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lot 35, Kalapana Section, Kikala-Keokea Residential Subdivision situated at Kikala and Keokea, Puna, Hawaii, identified by Tax Map Key: (3) 1-2-043: 035, as shown on the attached map labeled Exhibit A.

AREA:

1.080 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:

The lessee shall use or allow the premises leased, to be used solely for residential purposes as the lessee's primary domicile, provided that the following additional uses shall be permitted:

1. Storage of boats, fish catch, fishing nets and other fishing related implements;
2. Raising and keeping of small livestock and poultry for subsistence purposes only, except that the raising of swine (also called hogs and pigs) on the leased premises shall be prohibited; and
3. Cultivation of farm and agricultural crops for subsistence purposes (for home consumption only and not for sale), including herbal plants.

TERM OF LEASE:

65 years, commencing on January 1, 1997 and expiring on December 31, 2061. First scheduled rental reopening is for January 1, 2022.

ANNUAL RENTAL:

\$132 per annum. Payable in advance, in semi-annual installments of \$66, on the First Day of January and July of each and every year.

CONSIDERATION:

Gratis

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

ASSIGNOR:

Not applicable. Assignor is an individual and, as such, is not required to register with DCCA.

ASSIGNEE:

Not applicable. Assignor is an individual and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Submit a basic homeowner's insurance or a Certificate of Liability Insurance for the property as required under the lease, within sixty (60) days of this approval;

REMARKS:

Pursuant to Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993 and Act 81, Session Laws of Hawaii 1994, the Legislature of the State of Hawaii authorized the Department to negotiate and enter into long term residential leases to persons living in Kalapana who were dispossessed or displaced as a result of the volcanic eruptions on the island of Hawaii, which began January 3, 1983 and persons who meet the qualifications of Section 13D-3(b), Hawaii Revised Statutes.

At its meeting of December 16, 1994, Item F-3, the Board authorized the awarding of direct residential leases, pursuant to Act 314 at Kikala-Keokea, Puna, Hawaii.

At its meeting of November 17, 1995, Item F-9, the Board of Land and Natural Resources approved to amend its prior board action of December 16, 1994 (Item F-3) to revise or delete certain conditions contained in the lease form, relating to authorization to award direct residential leases pursuant to Act 314, Session Laws of Hawaii of 1991, as amended. These amendments included: 1) deletion of lease requirements regarding performance bond, fire insurance, and extended insurance; and 2) that designated successors of the lease be a spouse, son, daughter, father, mother, brother, sister, grandfather, grandmother, grandson, granddaughter of Lessee.

A drawing of lots was conducted on December 9, 1995, and Lei Mamo Kaapana Aken was awarded a 65-year residential lease under General Lease No. S-5435. Forty-seven other leases were also awarded at the drawing.

At its meeting of November 20, 1998, Item D-6, the Land Board authorized Land Division to instruct its Fiscal Office to stop rental billings of the 48 general leases and to amend the lease document to reflect a "new" commencement date.

At its meeting of September 8, 2006, Item D-5, the Board of Land and Natural Resources approved to amend the 48 general leases awarded for residential purposes by: 1) Authorizing Land Division to instruct its Fiscal Office to commence with billing of lease rents, effective January 1, 2007; and 2) Amend lease terms and conditions of the general leases awarded relating to revisions of rent, liability insurance, improvements, mortgage, construction requirement, and the Kikala-Keokea Residential Community Association.

At its meeting of April 11, 2008, Item D-2, the Land Board approved to amend the insurance requirement for the forty-eight Kikala-Keokea general leases awarded for residential purposes, by lowering the amount of coverage required from \$300,000 per occurrence and \$500,000 aggregate to \$100,000 per occurrence/aggregate.

The Amendment of General Lease No. S-5435 document was executed by Lei Aken and recorded with the Bureau of Conveyances under Document Number 2007-002462, on January 5, 2007.

At its meeting of March 27, 2009, Item D-4, the Board of Land and Natural Resources approved the assignment of General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Jake Kaawaloa, Assignee. In the processing of the assignment, Mr. Kaawaloa could not obtain the required tax clearances and liability insurance, so the assignment of the lease could not be completed. Ms. Aken is now requesting that the Land Board rescind its action of March 27, 2009, under Item D-4, so the lease can then be reassigned to Beverly Keonaona Amaral.

Staff reviewed the file and reports that in the past two (2) years, a notice of default was sent on 1/31/11 for failure to provide rent. The rent was immediately cured. Two notices of default were sent on 6/1/07 and 7/11/08 for failure to provide liability insurance. To date, the default has not yet been cured. Lessee explains that she is unable to afford the required insurance. No bond is required. The Lessee has never been cited for any other illegal or unlawful activity on the State property.

Ms. Aken currently serves in the armed forces and resides on Oahu. She is having some health problems and plans to retire in the near future. Ms. Aken is currently a widow and her children have no plans to relocate to Kalapana, therefore, she requested that the lease be assigned to Beverly Keonaona Amaral.

Beverly Amaral, as 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.

Beverly Amaral is a qualified Applicant/ Assignee under Act 314 for a Kikala-Keokea residential lease as a descendent of a survivor/displaced resident of Kalapana from the volcanic eruptions beginning January 3, 1983.

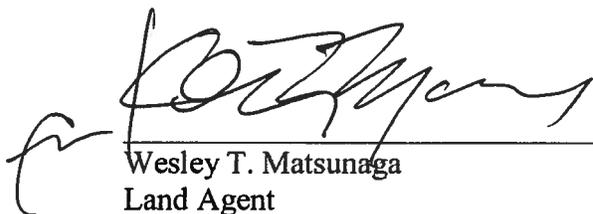
The first rental reopening is scheduled for 1/01/2022. There is no outstanding rental reopening issues.

The Office of Hawaiian Affairs was not solicited for comments as this is not a new disposition or change in use.

RECOMMENDATION: That the Board:

1. Rescind its Prior Board Action of March 27, 2009, Item D-4, Consent to Assignment of General Lease No. S-5434, Lei Mamo Kaapana Aken, Assignor, to Jake Kaawaloa, Assignee;
2. Consent to the assignment of General Lease No. S-5435 from Lei Mamo Kaapana Aken, as Assignor, to Beverly Keonaona Amaral, aka: Beverly Keonaona Sagapolu, Beverly K. Amaral, and Beverly Amaral, as 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. Assignee shall provide acceptable evidence of insurance to HDLO and AG, prior to execution of the Assignment;
 - 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,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



