

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

May 25, 2012

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

PSF 12od-074

OAHU

Amend General Lease No. S-5478, Office of Hawaiian Affairs, Lessee, Waialua, Oahu, Tax Map Key: (1) 6-6-009:023 by Expanding Character of Use and Sublease Provisions in Lease Including the Authority to Assess Sublessees Reasonable Rental, Maintenance, and Utility Fees and Consent to Sublease to Haleiwa Farmers' Market Association, Inc. for Farmers' Market Purposes which Fulfills the "Prior Approval" Provision in Section 11 of the General Lease.

APPLICANT:

Office of Hawaiian Affairs

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at the Old Waialua Court House, Waialua, Oahu, Tax Map Key: (1) 6-6-009:023, as shown on the attached map labeled **Exhibit A**.

AREA:

1.064 acres, more or less.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: R-5

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:

For office space for the Lessee, and for office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources.

LEASE TERM:

Thirty-five (35) years, commencing on March 5, 1998 and expiring on March 4, 2033.

ANNUAL RENT:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation.", as explained in **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Government agency.

BACKGROUND:

In December 1993, the Board authorized the issuance of a 35-year lease to the Office of Hawaiian Affairs ("OHA") for the purposes mentioned in the Character of Use section.

By its letter dated July 18, 2011 attached as **Exhibit C**, OHA advises the department of the findings of a Community Planning and Assessment Report. Under the report, the subject property is identified as a place to "promote cultural arts in addition to hula, historical library, visitors resource center, internet café, museum, family counseling, children activities, general community center". OHA requested lease conditions in sections 11 and 30 be revised to allow OHA more flexibility in its use of the Premises. OHA suggested section 11 be revised

to allow any uses permitted by law on the premises and surrounding grounds. Because the term premises has already been defined in the lease as "the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased," staff recommends section 11 be amended just to allow for any uses permitted by law. The new section 11 being recommended by staff would be amended as follows:

11. Character of Use. The Lessee shall use or allow the premises ~~to be leased to be used solely for office space~~ for any use as permitted by law including the Lessee, and for office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources.

In addition, OHA requested section 30 be revised to allow OHA to generate revenues to offset operation costs and improvements and to allow it to provide better services to the community. Although OHA did not initially request the deletion of the section 30 that requires that maintenance and utility rates be reviewed and approved by the Lessor, staff believes it is not necessary as OHA is a government agency and accountable for its own policy and rules in managing its property, including the subject leased premises. Staff recommends section 30 be amended as follows:

30. ~~Office space to community service organizations. Subleases, Maintenance and Utility Fees. Office space to community service organizations shall be subleased from the Lessee at gratis rent. The Lessee may charge users, including sublessees of the premises, reasonable rental and use fees. The Lessee may also assess reasonable maintenance and utility fees at rates reviewed and approved by the Lessor.~~

Staff understands the requested revisions will provide more flexibility to OHA in utilizing the leased premises to serve its missions and the community. Staff does not have any other comments on the revisions.

Section 12 of the lease requires prior written approval of the Board for any sublease. The same section also provides that the consent by the Board to a sublease shall not be unreasonably withheld.

Recently, Haleiwa Farmers' Market Association, Inc. (HFM) received a notice to vacate from the Department of Transportation to leave the current location of the Haleiwa Farmers' Market, which is currently located on a portion of a state highway. OHA is engaged in active discussions with HFM for the temporary relocation of the farmers market to the premises as an interim solution for the farmers market until a permanent solution can be found. As part of the process of relocating the farmers market, OHA is asking the Board to consent to the proposed sublease to HFM for farmers' market purposes.

At the time of drafting this submittal, OHA and HFM have not yet agreed on the specific

terms of the proposed sublease. In view of the tight time frame for HFM to relocate the market to a new location, staff recommends the Board consent to the sublease between OHA and HFM and authorize the Chairperson to prescribe any terms and conditions to best serve the interest of the State. Staff recommends that at a minimum the sublessee, HFM, be required to provide liability insurance naming both OHA and the Department as additional insured.

There are no additional concerns that staff is aware of at this time either with the current lease or with the proposed sublease to HFM. Staff recommends the Board approve the requests as noted in the Recommendation Section.

**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Amend sections 11 and 30 for General Lease No. S-5478 to Office of Hawaiian Affairs, Lessee, to read:
  - "11. Character of Use. The Lessee shall use or allow the premises to be used for any use as permitted by law including office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources."
  - "30. Subleases, Maintenance and Utility Fees. Lessee may charge users, including sublessees of the premises, reasonable rental and use fees. The Lessee may also assess reasonable maintenance and utility fees."
3. Consent to the sublease under General Lease No. S-5478 between Office of Hawaiian Affairs, as Sublessor, and Haleiwa Farmers' Market Association, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
  - B. The Sublessee shall provide liability insurance policy coverage in an amount acceptable to the Office of Hawaiian Affairs, and such insurance policy shall name the Office of Hawaiian Affairs and the Department of Land and Natural Resources as additional insured;

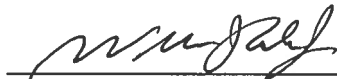
- C. Authorize the Chairperson to prescribe the terms and conditions that best serve the interests of the State; and
- D. Review and approval by the Department of the Attorney General.

Respectfully Submitted,



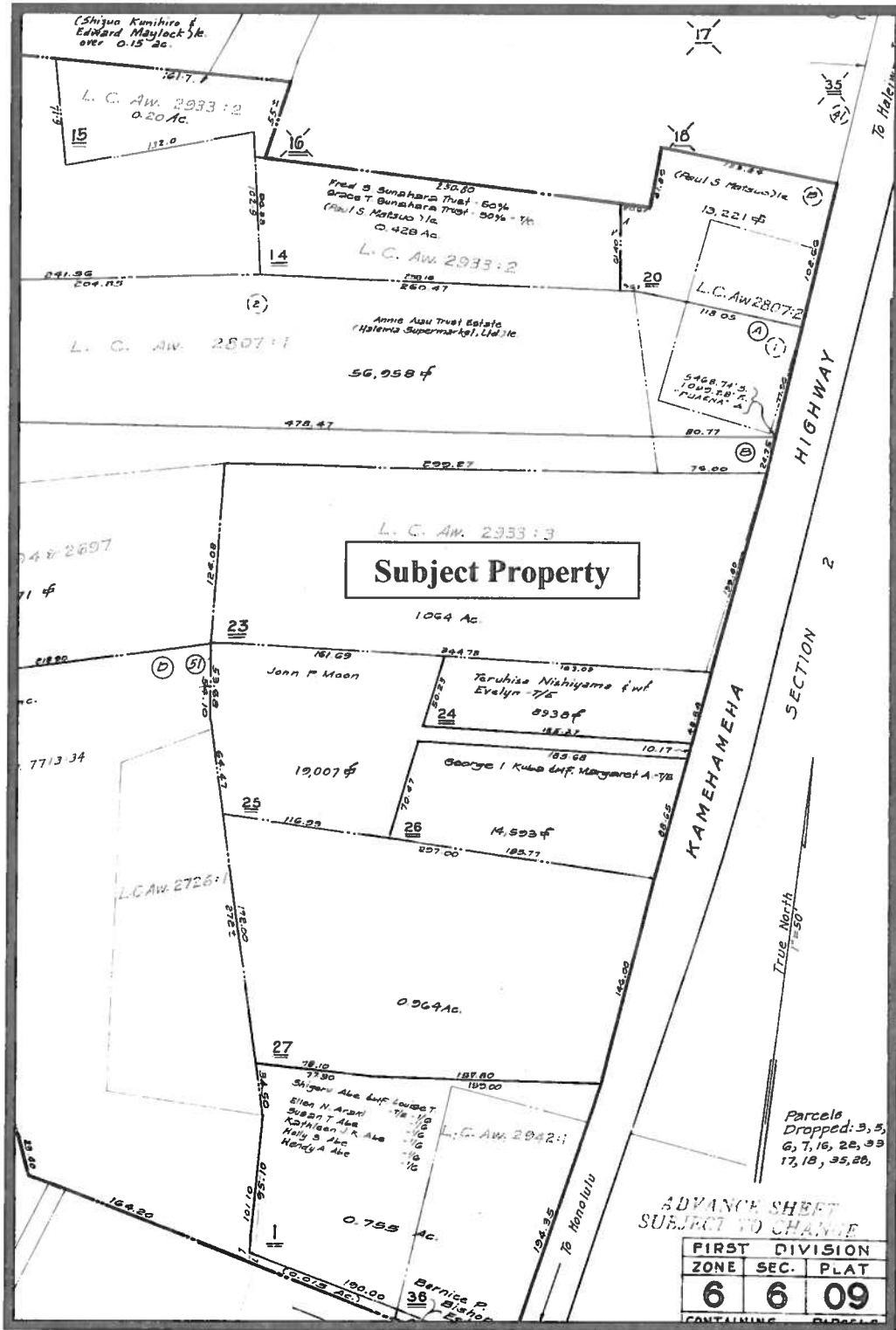
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





TAX MAP KEY: (1) 6-6-009:023

EXHIBIT A

**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Amendment of the Lease Conditions and Consent to Sublease for General Lease No. S-5478

Project / Reference No.: GL-5478

Project Location: Waialua, Oahu, Tax Map Key: (1) 6-6-009:023

Project Description: Amend Lease Conditions

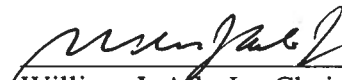
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The proposed amendment and the proposed sublease do not trigger major changes to the use of the facilities. The activities on the premises have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed amendment would involve negligible or no expansion or change in use beyond that previously existing.

Consulted Parties Not Applicable

Recommendation: It is recommended that the Land Board find this project to have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
 \_\_\_\_\_  
 William J. Aila Jr., Chairperson  
 Date 5/12/12

**EXHIBIT B**


 RECEIVED  
 LAND DIVISION  
 TO: Central  
 FROM: COB

 No.: GLS-5478

2011 AUG -8 A 11:09

STATE OF HAWAII  
 OFFICE OF HAWAIIAN AFFAIRS  
 711 KAPI'OLANI BOULEVARD, SUITE 500  
 HONOLULU, HAWAII 96813

DEPT. OF LAND &  
 NATURAL RESOURCES  
 STATE OF HAWAII

July 18, 2011

Mr. Barry Cheung, District Land Agent  
 Board of Land and Natural Resources  
 Land Division  
 P. O. Box 621  
 Honolulu, Hawaii'i 96809

Re: Waialua Courthouse Lease Amendment

Aloha mai e Mr. Cheung:

The Office of Hawaiian Affairs (OHA) requests approval to amend the "Old Waialua Courthouse Lot" (TMK No. [1] 6-6-09:023) General Lease (#S-5478) of August 1998 with the Board of Land and Natural Resources to allow OHA to generate income for operations and other mission related needs. The current lease restricts use to non-revenue generating purposes. There are approximately 22 years left on the 35-year lease. The property is approximately 1.064 acres; the facility itself has about 1,864 square feet of usable space.

Since 1998, OHA has hosted 'ukulele and hula classes, elderly activities, community meetings and housed important Native Hawaiian health programs such as Ke Ola Mamo. OHA intends to continue these kinds of activities. However, current lease restrictions have made it difficult to breathe life into the building, increase its notoriety, usage and contemporary significance.

In November 2010, OHA contractors Erskine Architects finalized a Community Planning and Assessment Report to help OHA re-position the Waialua Courthouse (WCH) to better serve its mission and address the needs of its beneficiaries. The community interests identified by the report included a place to promote cultural arts in addition to hula (lomi lomi, lā'au lapa'au, quilting, etc.), a historical library and visitors resource center, an internet café, a museum linked to the region's past, a place to provide family counseling, a place to provide activities for children (tutoring, mentoring etc.), and a general community center. OHA would like to consider hosting some of these activities going forward.

OHA has only recently embarked on a new path as a land and property manager and like other State agencies currently struggles with the ability to generate revenues to offset operation costs and improvements which affect its greater budget and ability to fulfill its mission. OHA respectfully proposes the following amendments to sections 11 and 30 of general lease #S-5478.

EXHIBIT "C"



Section 11 currently reads as such:

11. Character of use. The Lessee shall use or allow the premises to be leased to be used solely for office space for the Lessee, and for office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources.

OHA would like to amend the language in the following manner:

11. Character of use. The Lessee shall use or allow the premises **and surrounding grounds (parking and back lot)** to be leased ~~solely for office space~~ for any use as permitted by law including office space for government and private community service organizations. The Lessee can change the use of the premises provided that the change of use receives prior approval from the Board of Land and Natural Resources.

Section 30 currently reads as such:

30. Office space to community service organizations. Office space to community service organizations shall be subleased from the Lessee at gratis rent. The Lessee may assess maintenance and utility fees at rates reviewed and approved by the Lessor.

OHA proposes that Section 30 be changed to the following:

30. Subleases, Maintenance and Utility Fees. Lessee may charge users including sub lessees of the premises, reasonable rental and use fees. The Lessee may also assess reasonable maintenance and utility fees.

These amendments will allow OHA the flexibility to balance the need to generate sustainable income resources to operate and maintain the Old Waialua Courthouse and to pursue activities that will allow it to pursue its mission, empower its beneficiaries and strengthen the greater North Shore community in the process.

Thank you for the opportunity to protect this historical landmark and serve our beneficiaries and the greater community. If you have any questions, please contact Kevin Chang at (808) 594-1944 or e-mail him at [kevinc@oha.org](mailto:kevinc@oha.org).

‘O wau iho nō,



Clyde W. Nāmu‘o  
Chief Executive Officer