

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

June 8, 2012

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

Ref. No.: GLS-5523

HAWAII

Amend General Lease No. S-5523, Volcano Art Center, Lessee, Olaa, Puna, Hawaii, Tax Map Key: (3) 1-9-005:009. Purpose of the Amendment is to Modify the Character of Use Provision to Include Community Related Purposes, and to Authorize Subletting Portions of the Premises.

APPLICANT:

Volcano Art Center (VAC), a Hawaii nonprofit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Olaa situated at Olaa, Puna, Hawaii, identified by Tax Map Key: (3) 1-9-005:009, as shown on the attached map labeled Exhibit A.

AREA:

7.411 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES NO

CURRENT USE STATUS:

Encumbered under General Lease No. S-5523 to Volcano Art Center.

CHARACTER OF USE:

Educational and artistic purposes.

LEASE TERM:

Sixty-five (65) years, commencing on May 1, 1997 and expiring on April 30, 2062.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum (Minimum Rent Policy, May 13, 2005)

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on April 2, 1996, with a finding of no significant impact (FONSI).

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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." Should Applicant propose any future use of the land that triggers Hawaii Revised Statutes (HRS) Chapter 343 review, Applicant shall be responsible for compliance with HRS Chapter 343, as amended.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO
Registered business name confirmed:	YES <u> x </u>	NO
Applicant in good standing confirmed:	YES <u> x </u>	NO

APPLICANT REQUIREMENTS:

None.

REMARKS:

At its meeting of April 26, 1996, under agenda item D-13, the Board of Land and Natural Resources approved the withdrawal of approximately 7.32 acres from the Oloa Forest park Reserve and the direct issuance of a 65-year lease of the VAC for educational and artistic purposes.

At its meeting of August 24, 2001, Item D-30, the Land Board approved First Amendment of General Lease No. S-5523, Conditions 20 and 43, Relating to Mortgage and Termination By Either Parties, respectively, Extend Construction Deadlines and Consent to Mortgage.

At its meeting of August 22, 2006, the Board approved Second Amendment of General Lease No. S-5523, Resetting Annual Rent for VAC at 25% of Fair Market Value.

At its meeting of March 9, 2007, Item D-1, the Board approved Third Amendment of General Lease No. S-5523, Reconsideration of Rent to VAC by Resetting the Annual rent at the current BLNR minimum rent policy of \$480 per annum.

By letter dated February 16, 2012, Tanya Aynessazian, Chief Executive Officer, VAC, requested approval of two amendments to General Lease No. S-5523. Through the years, VAC has received numerous inquiries from various community non-profit groups, requesting to rent portions of the VAC Facility for regular monthly/periodic meetings and/or gatherings. The Volcano area has a very limited amount of public facilities available to the community for any type of community functions or gatherings. The lease as currently written, does not provide for community related uses or the subletting of

portions of the leased area. As VAC welcomes the opportunity to service the community needs, it requests that the above-mentioned amendments be considered:

1. Paragraph 12, Character of Use, currently states:

“12. Character of use. The Lessee shall use or allow the premises leased to be used solely for education and artistic activities purposes.”

Staff is requesting that the “Character of use” be deleted and replaced with the following, to include uses for community related purposes.

“12. Character of use. The Lessee shall use or allow the premises leased to be used solely for education, artistic, and community related activities purposes.”

2. Paragraph 14, Subletting, currently states:

“14. Subletting, The Lessee shall not rent or sublet the whole or any portion of the premises.”

Staff is requesting that paragraph 14 be deleted in its entirety and replaced with the following, which provides subletting with Board prior written approval.

“That the Lessee shall not rent or sublet the whole or any portion of the premises, without prior written approval of the Board; provided however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee, provided, further, that the rent may not be revised downward.”

VAC, a non-profit organization, is seeking alternative means to assist in the financing of its activities/ operations. Through the past years, the depressed economy has greatly affected its fundraising efforts, with a significant drop in the number and size of VAC donations. Amendments to the “character of use,” to allow community related purposes and to provide for the subletting of portions of the leased area would greatly assist the organization with a much needed source of funding. The amendments to the lease would further assist VAC in servicing the Volcano community and the public in general by providing a facility for community gatherings and meetings.

The proposed use is allowable in the county zoning, which is Agriculture.

VAC 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.


On 4/24/12, various governmental agencies and interest groups were solicited for comments. To date, the only respondents were the County of Hawaii, Planning Department, Police Department, and the Fire Department. All respondents had no objections to the request.

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. Subject to the Applicant fulfilling the Applicant requirements listed above, Authorize the Amendment of General Lease No. S-5523, Volcano Art Center, Lessee, to:
 - A. Modify the "Character of Use" provision (Paragraph 12) to include permitted uses for community related purposes;
 - B. Authorize the deletion of the current provision for "Subletting" (Paragraph 14), and to replace with the following:

"That the Lessee shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Board; provided, however, that prior to such approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the said sublessee; provided, further, that the rent may not be revised downward."
 - C. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



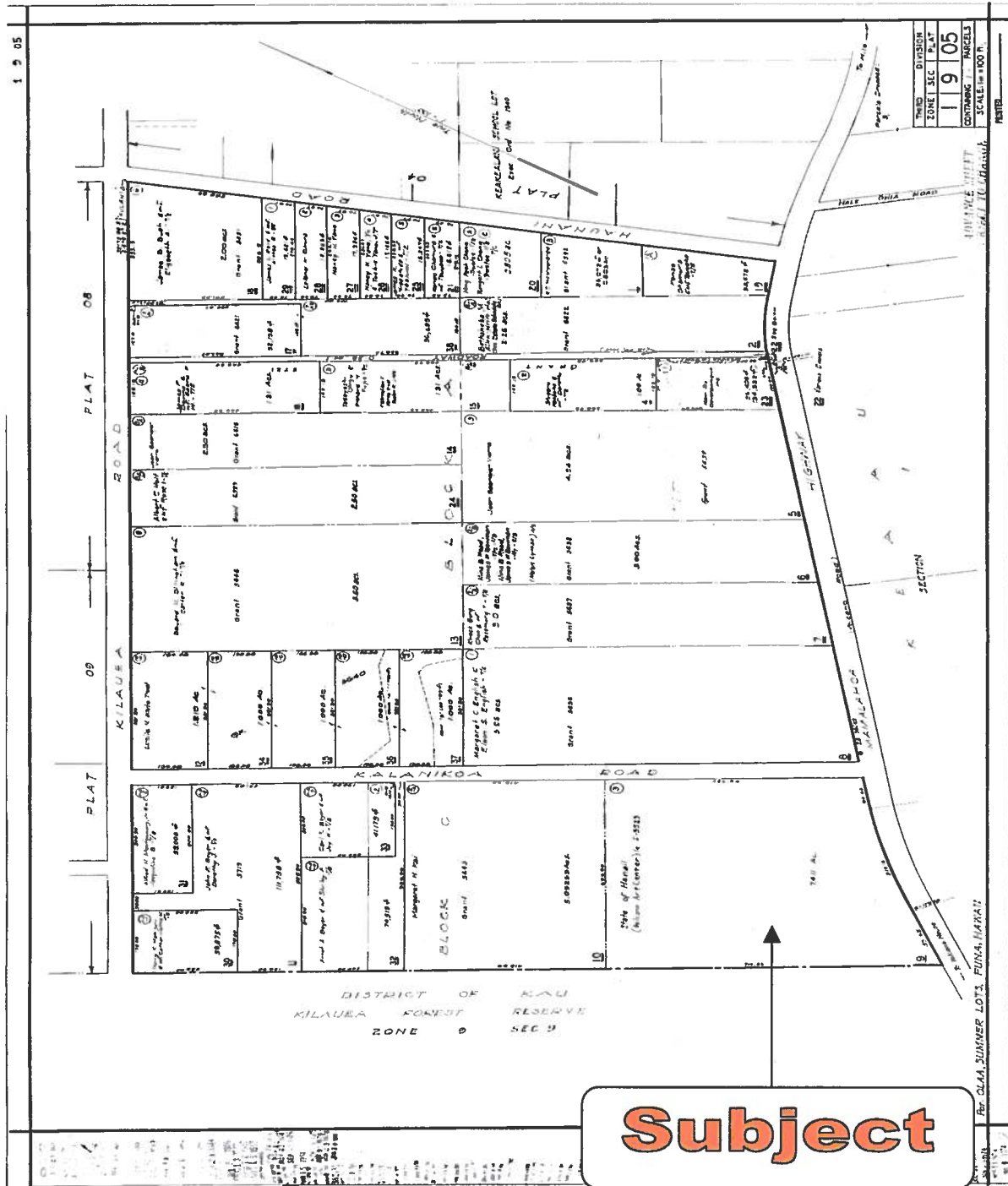
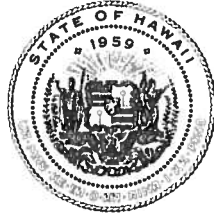


EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AHL, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title: Amend General Lease No. S-5523, Volcano Art Center, Lessee, Olaa, Puna, Hawaii, Tax Map Key: (3) 1-9-005:009.

Project / Reference No.: Ref. No.: GLS-5523

Project Location: Olaa, Puna, Hawaii.

Project Description: Amend General Lease No. S-5523, Volcano Art Center

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

Exemption Class No. and Description: In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to **Exemption Class No.1**, "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 [HAR § 11-200-8(a)(1)]." **Exemption Class No. 4**, which states, "Minor alterations in the conditions of land, water or vegetation [HAR § 11-200-8(a)(4)]".


Exemption Item Description from Agency Exemption List: 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.

Minor alterations in the conditions of land, water or vegetation.


EXHIBIT B

Recommendation:

It is recommended that the Land Board find that by modifying the character of use to include uses for community related purposes and to allow subletting of the premises is exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is therefore, presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



5/22/12

Date

EXHIBIT B