

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

March 28, 2014

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

PSF No.: 12HD-079

Hawaii

Rescind Prior Board Action of August 24, 2012, Agenda Item D-5, Issuance of a Direct Lease to Ka'analike, also known as Ka'analike*, for Educational Purposes, Kalaoa 4th, North Kona, Hawaii Tax Map Key: (3) 7-3-04:05.

APPLICANT:

Ka'analike, also known as Ka'analike* (Ka'analike*), a Hawaii Non-profit, 501(c) (3) corporation.

LEGAL REFERENCE:

Sections 171-13, 171-16 and 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kalaoa 4th, North Kona, Hawaii and identified by Tax Map Key: (3) 7-3-04:05.

AREA:

1.44 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture – 1 acre (AG-1)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Formerly encumbered by General Lease No. S-4577 to Mauna Ziona Church, for educational purposes. Lease was cancelled effective August 12, 2009.

CHARACTER OF USE:

Cultural related educational purposes.

REMARKS:

The Board at its meeting of August 24, 2012 under agenda item D-5, approved the issuance of a direct lease to Ka’analike* for educational purposes (Exhibit A).

The subject property was previously encumbered under General Lease No. S-4577 issued to the Mauna Ziona Church and covering the former Kalaoa School site for the operation and maintenance of a school and/or educational purposes. At its meeting of October 24, 2008, under agenda item D-6, the Board of Land and Natural Resources authorized the cancellation of the lease for failure to provide the required liability insurance. The effective date of the cancellation was August 12, 2009.

Ka’analike* intended to utilize the existing buildings and land area to promote educational, cultural and community based programs, classes and events. Ka’analike* sought to encourage the facility to be used as a community gathering place for meetings and sharing of knowledge to include topics of native languages, genealogy, local art and skills and the areas local history and historic values.

Prior to the Board approval of the lease to Ka’analike*, the previous tenant had re-occupied the property claiming it as their own under the Hawaiian sovereignty movement. Staff is moving forward with a plan of action to remove the occupants and secure the property, however it is taking a longer than anticipated in coordinating all the necessary components. Until this issue is resolved, staff will not be able to proceed with the issuance of a new lease.

By telephone communication on February 26, 2014, Ms. Nalani Freitas, President of Ka’analike* served notice that they are no longer interested in pursuing a direct lease with the State. Staff is therefore recommending that the Board rescind the prior action of August 24, 2012, agenda item D-5 authorizing the direct lease of State land.

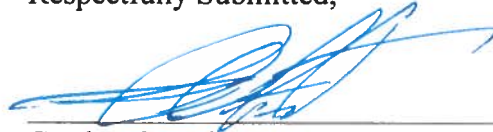
RECOMMENDATION:

That the Board:

1. Rescind its prior action of August 12, 2010, agenda item D-8 authorizing the agreement in concept for the issuance of a direct lease of State land to Ka’analike*;

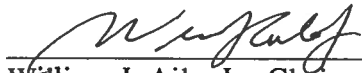
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



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

August 24, 2012

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

PSF No.: 12HD-079

Hawai'i

Issuance of Direct Lease to Ka'analike, also known as Ka'analike*, for Educational Purposes, Kalaoa 4th, North Kona, Hawaii Tax Map Key:3rd/7-3-04:05.

APPLICANT:

Ka'analike, also known as Ka'analike*, a Hawaii Non-profit, 501(c) (3) corporation.

LEGAL REFERENCE:

Sections 171-16 and 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalaoa 4th, North Kona, Hawaii, identified by Tax Map Key: 3rd/7-3-04:05, as shown on the attached map labeled Exhibit A.

AREA:

1.44 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture- 1 acre (AG-1)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *DN*
August 24, 2012

CURRENT USE STATUS:

Formerly encumbered by General Lease No. S-4577 to Mauna Ziona Church, for educational purposes. Lease was cancelled August 12, 2009.

CHARACTER OF USE:

Cultural related educational purposes.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

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

ANNUAL RENT:

Pursuant to HRS §171-43, and the minimum rent policy established by the Board at its meeting of May 13, 2005 under agenda item D-19, the annual rent will be set at \$480.00.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th 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 Exhibit B.

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 of or change of use beyond that previously existing."

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

Pay for the costs of public notice pursuant to section 171-16.

Consult with County of Hawaii, Planning Department regarding a Special Permit amendment.

REMARKS:

The subject property was previously encumbered under General Lease No. S-4577 issued to the Mauna Ziona Church (MZC) and covering the former Kalaoa School site for the operation and maintenance of a school and/or educational purposes. The Board of Land and Natural Resources canceled the lease on October 24, 2008, under agenda item D-6 for failure to provide the required liability insurance.¹

The Applicant, Ka'analike is a non-profit corporation servicing the local community in the Kalaoa area of Kona. The Applicant intends to utilize the existing buildings and land area to promote educational, cultural and community based programs, classes and events. To encourage the facility to be used as a community gathering place for meetings and sharing of knowledge to include topics of native languages, genealogy, local art and skills and the areas local history and historic values.

The Applicant is a qualified non-profit corporation, has provided evidence of 501(c) (3) status (Exhibit C), and therefore qualifies for a direct lease.

The Applicant 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. The proposed use is allowable in the county zoning.

DISCUSSION:

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraiser. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

¹ MZC refused to move out of the premises, but was ultimately evicted in August 2011.

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c202, §1; am l 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to eleemosynary organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for lease be no less than \$480 per year. Land Division generally issues leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under section 171-43, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480. There should be a reasonable and fair market annual rent for all Land Division non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.00.

Request for comments regarding this disposition were sent to various agencies. The County of Hawaii, Planning Department noted the subject parcel is located within State Land Use Agriculture district and is zoned Agriculture, 1 acre (A-1a). The previous Lessee was allowed to utilize the property for educational purpose through the use of a special permit.² Staff is recommending the applicant consult with the County Planning Dept. to determine whether the proposed activities/uses are consistent with the Special Permit or if an amendment is required for the proposed uses.

Staff is recommending the Board approve the issuance of a thirty (30) year lease to Ka'analiike for educational purposes.

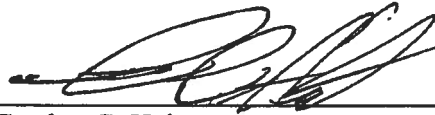
RECOMMENDATION: That the Board:

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 The State Land Use Commission granted Special Permit No. 79-344 on August 29, 1979 to the previous Lessee, Mauna Ziona Church for school and auxiliary purposes on the subject land.

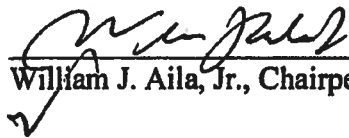
2. Authorize the issuance of a direct lease to Ka'analike covering the subject area for cultural related educational purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. Except for those terms and conditions cited above, the lease shall be in accordance with the standard terms and conditions of the most current non-profit lease form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

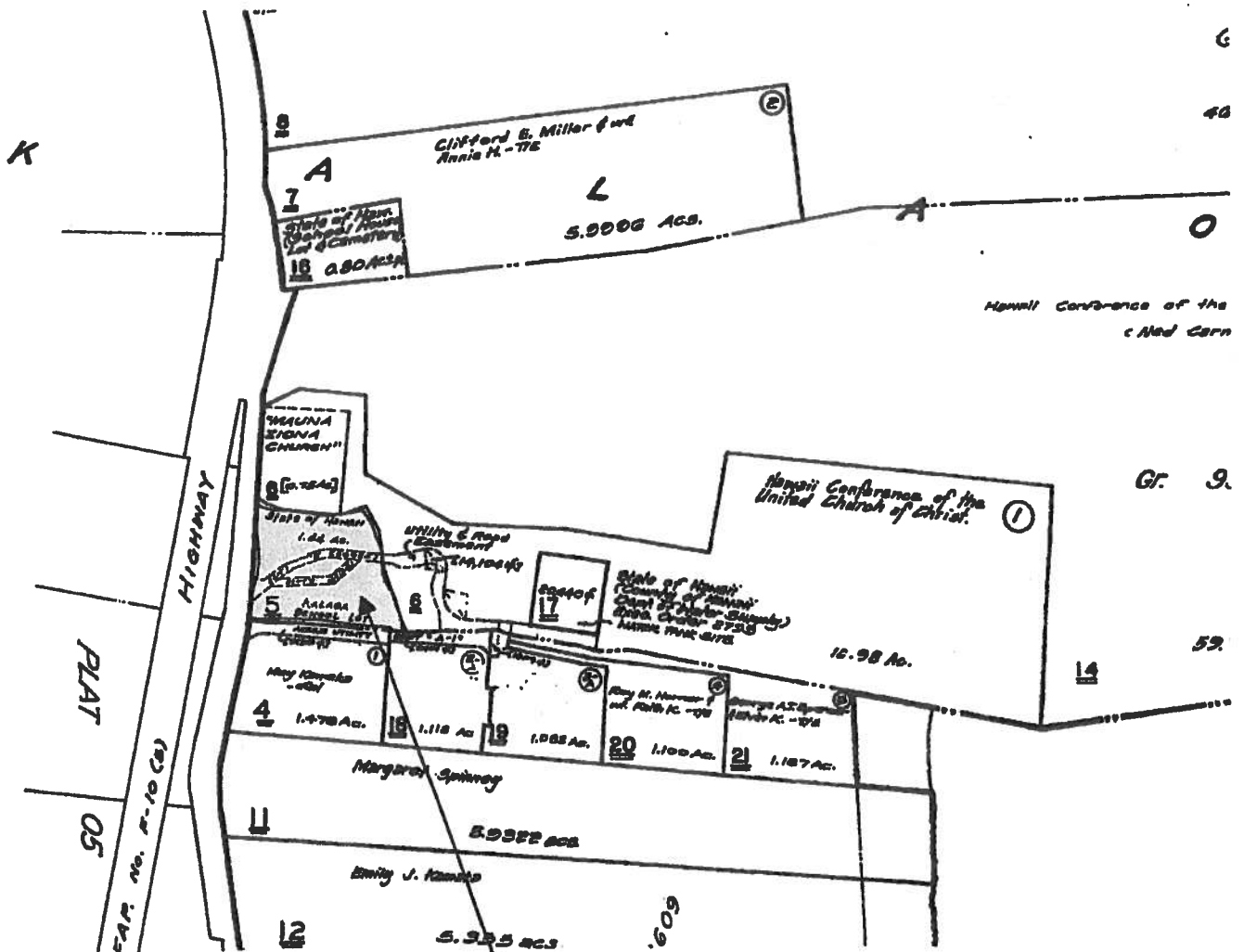
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A

TMK: 3RD/7-3-04:05



SUBJECT PROPERTY



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

GUY H. KAULUKUKUI
DEPUTY CHIEF

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
MANAGEMENT AND OCEAN RECREATION
DIVISION OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND RECREATION DIVISION
HONOLULU
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKAI LAKE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for Direct Lease for Non-profit Educational Purposes.

Project Number: PSF No. 12HD-079

Project Location: Kalaoa 4th, North Kona, Hawaii, Tax Map Key:3rd/7-3-04:05.

Project Description: The parcel was previously leased under GL S-4577 to Mauna Ziona Church for educational purposes. The lease was cancelled on 12/14/10 due to non-compliance with the lease terms. The Applicant, Ka'analike is a non-profit corporation servicing the local community in the Kalaoa area of Kona. The Applicant intends to utilize the existing buildings and land area to promote educational, cultural and community based programs, classes and events.

Consulted Parties: None

Exemption Class No.: 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 under the following:

Exemption Class No. 1, which 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."

EXHIBIT B

Recommendation:

It is anticipated this project will probably 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



INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

Employer Identification Number:

DLN:

KA ANALIKE

Contact Person:

CHRIS BROWN

ID#

KAILUA-KONA. HI 96740-9517

Contact Telephone Number:

Public Charity Status:

170(b)(1)(A)(vi)

Dear Applicant:

Our letter dated January 23, 2002, stated you would be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and you would be treated as a public charity, rather than as a private foundation, during an advance ruling period.

Based on the information you submitted, you are classified as a public charity under the Code section listed in the heading of this letter. Since your exempt status was not under consideration, you continue to be classified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, (800) 829-3676. Information is also available on our Internet Web Site at www.irs.gov.

If you have general questions about exempt organizations, please call our toll-free number shown in the heading.

Please keep this letter in your permanent records.

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Letter 1050 (DO/CG)

EXHIBIT C