

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

January 22, 2016

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

Hawaii

Consent to Assignment of General Lease No. S-5700, from Frederick Giannini, Foreclosure Commissioner, as Assignor, to Conen Nakamura, as Assignee; and

Consent to Assignment of General Lease No. S-5700, from Conen Nakamura, as Assignor, to Kealakehe Freight, LLC, as Assignee, Kealakehe, North Kona, Hawaii, Tax Map Key: (3)7-4-020:018 & 020

APPLICANT:

Frederick Giannini, Foreclosure Commissioner, as Assignor, to Conen Nakamura, husband of Phyllis Nakamura, Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kealakehe, North Kona, Hawaii, identified by Tax Map Key: (3)7-4-020:018 & 020, as shown on the attached map labeled Exhibit A.

AREA:

4.015 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:

Industrial, commercial and transportation purposes and uses accessory thereto.

TERM OF LEASE:

55 years, commencing on February 16, 1972 and expiring on February 15, 2027. Last rental reopening occurred on February 16, 2007; next rental reopening is scheduled for February 16, 2017.

ANNUAL RENTAL:

\$160,000.00.

CONSIDERATION:

\$ 795,000.00.

RECOMMENDED PREMIUM:

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

PERFORMANCE BOND:

The lease requires a performance bond in an amount equal to 1/6 of the annual rent of \$160,000.00, which is \$26,666.66.

DCCA VERIFICATION:

Frederick Giannini, Foreclosure Commissioner, and Conen Nakamura are both individuals, and as such are not required to register with the DCCA.

Kealakehe Freight, LLC

Place of business registration confirmed: YES NO

Registered business name confirmed: YES NO

Good standing confirmed: YES NO

REMARKS:

In 1970, the Department of Transportation, Harbors Division (DOTHAR), in order to relocate its terminal freight shed from the Kailua-Kona Wharf, requested the set aside of the subject property.

At its meeting of August 14, 1970, agenda item F-4, the Board approved a set aside to DOTHAR for its freight terminal site. Approximately 4.015 acres (subject site), together with two non-exclusive easements for access purposes were set aside by Governor's

Executive Order No. 2565 (EO2565) and executed June 14, 1971.

At the BLNR meeting of July 9, 1971, agenda item J-3, DOTHAR requested approval to put the subject property out for lease via public auction. The lessee would be required to build a 20,000 square foot warehouse and then sublease the property back to DOTHAR for use as their freight terminal shed. The Board approved and DOTHAR issued Lease No. H-71-1 (Harbor Lease) to American Factors (AMFAC) as the sole and successful bidder. The lease was for a period of 45 years commencing on February 16, 1972 and expiring on February 15, 2027 for industrial, commercial and transportation purposes and uses accessory thereto.

The sublease to DOTHAR was executed January 15, 1974 for the same purpose as the lease and was to be coterminous with the master ground lease.

By 1980, DOTHAR had determined that the subject property was “in excess of their needs” and requested cancellation of EO2565, which could not be done immediately due to the existing 45 year lease between DOTHAR and AMFAC.

At its meeting of April 23, 1982, agenda item J-8, the BLNR approved an amendment to the Harbor Lease. The amendment acknowledged the mutual cancellation of the sublease between AMFAC and DOTHAR effective July 5, 1981, a new sublease between AMFAC and George Tamashiro effective July 6, 1981 and an increase to the annual rent also effective July 6, 1981.

At its meeting of February 11, 1983, agenda item J-11, the BLNR consented to the assignment of the Harbor Lease from AMFAC to AMFAC Property Development Corp. The assignment was due to a reorganization of the corporation.

At its meeting of October 21, 1983, agenda item J-22, the BLNR consented to the assignment of the Harbor Lease from AMFAC Property Development Corp to Richard Minoru Jitchaku and George Y. Tamashiro.

At its meeting of December 5, 1986, agenda item J-3, the BLNR consented to the assignment of the Harbor Lease from Richard Minoru Jitchaku and George Y. Tamashiro to George Y. Tamashiro and Suzuko Tamashiro.

Pursuant to Act 272, Session Laws of Hawaii 1991, the Department of Land and Natural Resources (DLNR) was designated as the agency responsible for overseeing and administering the boating and coastal areas programs under the Division of Boating and Ocean Recreation (DOBOR). The DLNR was to provide for the orderly transitions of the jurisdictional responsibilities for the boating and coastal areas program from DOT to DOBOR. As a result of the Act, EO2565 and the Harbor Lease were transferred to DOBOR.

During the transition, the Director of Transportation confirmed the need to cancel

EO2565 to DOTHAR for a freight terminal site. The subject property no longer benefitted DOTHAR or DOBOR as originally intended due to its distance from the nearest commercial harbor.

At its meeting of December 13, 2002, agenda item D-46, the BLNR approved the cancellation of EO2565. On May 3, 2004, Executive Order No. 4048 was executed cancelling EO2565. The Land Management Division of DLNR would be administering the Harbor Lease which was assigned GLS-5700 as an identifier.

At its meeting of December 1, 2010, agenda item D-2, the BLNR consented to the assignment of GLS-5700 from George Y. Tamashiro and Suzuko Tamashiro to Hiram Rivera. The lease was purchased with \$500,000.00 in seller financing. At the time of the assignment, a consent for the private mortgage funding was not done. The term of the mortgage was 3 years.

In 2013, when the mortgage was due and payable, Mr. Rivera was unable to come up with the balance due and defaulted on the mortgage.

On August 6, 2014, George Y. Tamashiro and Suzuko Tamashiro filed a motion for Summary Judgment and Interlocutory Decree of Foreclosure. The motion was granted on March 25, 2015 and Frederick Giannini was appointed Commissioner to sell the leasehold interest in the subject property.

The Commissioner held a public auction on June 9, 2015. Conen Nakamura was the high bidder at \$795,000.00 and on July 20, 2015 the court approved and confirmed the sale of the subject property. The Commissioner, as assignor, was ordered to make good and sufficient conveyance of the subject property.

The subject action includes an assignment of lease from Frederick Giannini as Commissioner to Conen Nakamura followed by an assignment of lease from Conen Nakamura to his newly formed corporation, Kealakehe Freight, LLC.

Mr. Nakamura has been operating a successful freight business in Hilo and Kona for more than 20 years. The acquisition of GLS-5700 will allow a diversification and expansion of his Kona operations.

The lessee, Hiram Rivera, is not in compliance with the terms and conditions of the lease with respect to rent, bond and insurance. The Commissioner has brought the rent current, however, the performance bond and insurance are still in default. The assignee will be required to deposit a performance bond equal to 1/6th of the annual rent and provide a certificate of insurance for liability and fire insurance policies satisfying the terms of the lease prior to execution of the consent documents.

Neither Conen Nakamura nor Kealakehe Freight, LLC has had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-

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compliance with such terms and conditions.

RECOMMENDATION:

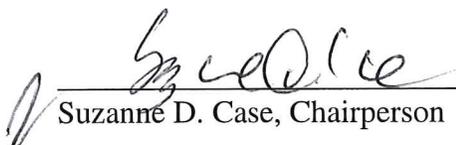
- A. That the Board consent to the assignment of General Lease No. S-5700, from Frederick Giannini, Foreclosure Commissioner, as Assignor, to Conen Nakamura, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. That the Board consent to the assignment of General Lease No. S-5700, from Conen Nakamura, as Assignor, to Kealakehe Freight, LLC, as Assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Provide a Performance Bond in an amount equal one sixth (1/6) the annual rent due prior to the execution of this document;
 3. Provide a Certificate of Insurance for Liability and Fire Insurance policies that satisfies the lease terms prior to the execution of this document;
 4. Review and approval by the Department of the Attorney General; and
 5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



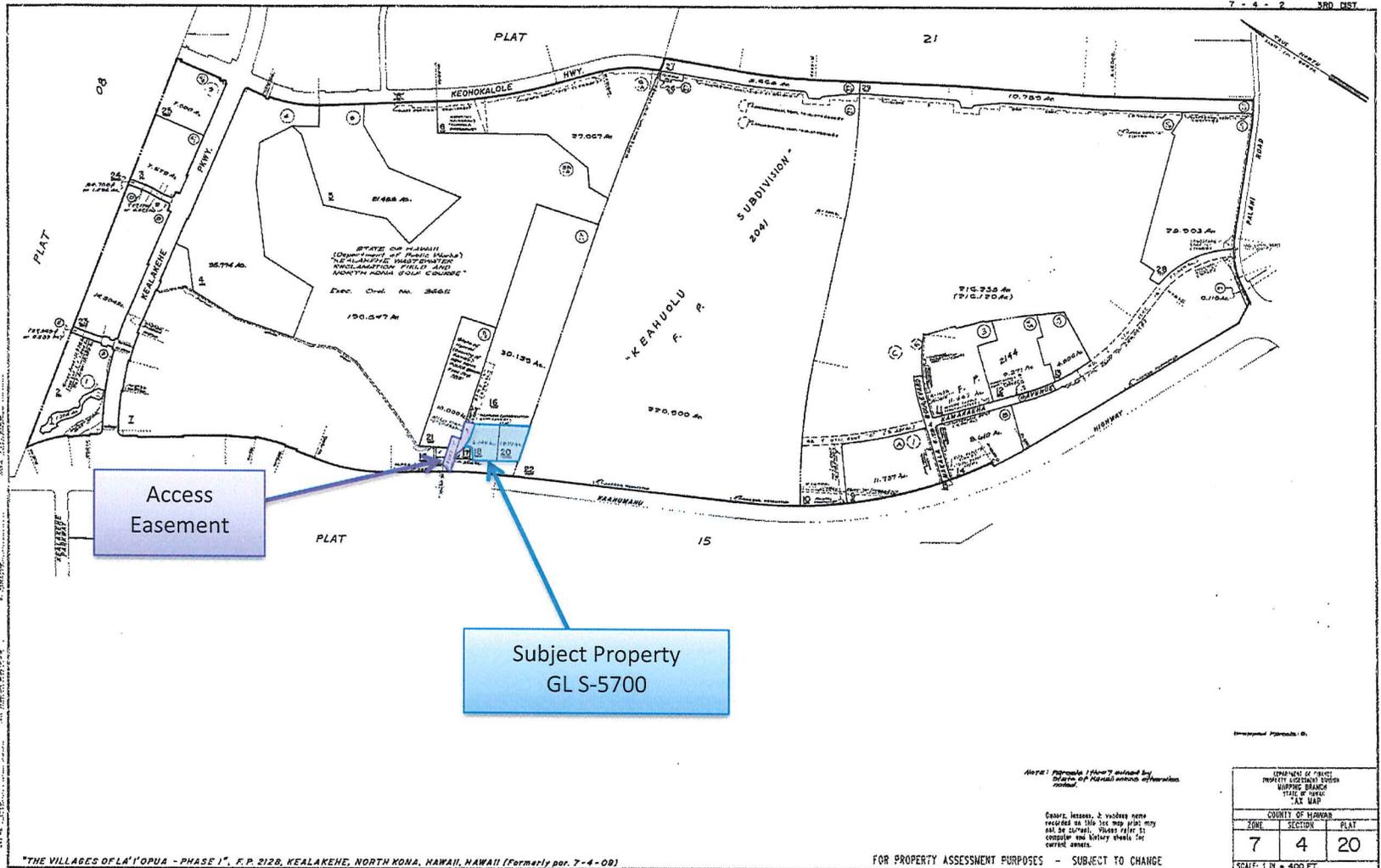
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A



Access Easement

Subject Property
GL S-5700

"THE VILLAGES OF LA'I OPUA - PHASE 1", F.P. 2128, KEALAKEHE, NORTH KONA, HAWAII, HAWAII (Formerly par. 7-4-08)

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

DEPARTMENT OF PUBLIC PROPERTY ASSESSMENT DIVISION MAPPING BRANCH STATE OF HAWAII TAX MAP		
COUNTY OF HONOLULU		
ZONE	SECTION	PLAT
7	4	20

SCALE: 1" = 400 FT

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