

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

March 24, 2016

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

PSF No.: 13HD-072

HAWAII

Withdrawal of Approximately 2 Acres from General Lease No. S-5570, Michael C. Tulang, Lessee, Set Aside to the County of Hawaii for the Kawaihoni Fire Station and Issuance of a Right-of-Entry, Waiakea Homesteads, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-51: portion of 01.

APPLICANT:

County of Hawaii, for withdrawal and set aside of approximately 2 acres of land from General Lease No. S-5570 and set aside to the Fire Department for the relocation of the Kawaihoni Street Fire Station:

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waiakea Homesteads, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-51: 01, as shown on the attached maps labeled Exhibit A.

AREA:

2 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Hawaii CZO: RS-15/open

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:

Encumbered under General Lease No. S-5570 to Michael C. Tulang, for pasture use. Lease expires on December 8, 2018.

PURPOSE:

Public safety purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on December 8, 2014.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Complete a survey of the proposed boundary alignment for the withdrawn area at its own cost;
2. Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
3. Process and obtain subdivision of the withdrawn area at Applicant's own cost;
4. Fence off the withdrawn area at its own cost along the agreed alignment; and
5. Pay to the Lessee under General Lease No. S-5570 the fair market value of any improvements made by the Lessee in the withdrawn area that have been approved by the State, in accordance with the terms of the lease.

REMARKS:

General Lease No. S-5570 was sold at public auction on December 9, 1998 to Michael C. Tulang for a period of 20 years for pasture purposes. The effective date of the lease was December 9, 1998 for a period of 20 years ending on December 8, 2018.

The County of Hawaii is requesting approximately two (2) acres of land be withdrawn from General Lease No. S-5570 (Exhibit B), to be set aside for the Waiakea Uka fire station as the Hawaii Fire Department has outgrown the existing station located on Kawaiiani Street. In addition, emergency services provided by the Hawaii Fire Department from the Kawaiiani Street Station now include Emergency Medical Services and the required personnel, vehicles and equipment can no longer be accommodated at the current location. Furthermore, an ongoing Kawaiiani Street widening project will bring the working area of the station driveway and building closer to the active roadway which may lead to a dangerous situation.

The proposed set aside location is most favorable due to it being centrally located and able to serve the same population that the existing Kawaiiani Street Station serves, inclusive of the area from Panaewa makai up to Waiakea Uka and will provide the additional space required for the Emergency Medical Services personnel.

The County of Hawaii is also requesting a management right-of-entry onto the lease land so that it may begin preliminary construction of the new facilities. This right-of-entry will terminate upon the issuance of the Executive Order.

Staff is recommending that the requested withdrawal be granted. Under HRS 171-37, the withdrawal of land from a lease requires a rent reduction. The statute provides in relevant part as follows:

upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; . . . and provided further that upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. . . .<sup>1</sup>

The withdrawal of the 2 acres from the premises will require General Lease No. S-5570 to be amended to reflect the decreased acreage of the premises and to adjust the rent amount accordingly.

Also under HRS § 171-37(3), when the State withdraws lands from a lease, the State is required to compensate the lessee for any improvements taken as a result of the withdrawal. In this case, the only improvements taken are a section of stock-proof fencing on the southern boundary of the withdrawn parcel. Staff is including an applicant requirement above that County of Hawaii installs stock-proof fencing on the west and south boundaries of the withdrawn parcel at its expense before County of Hawaii breaches any existing fencing.

Pursuant to HRS § 171-37.5, staff has discussed with the Lessee, the impact of withdrawing 2 acres of land will have on the size of the herd of cattle presently grazing on the property. Lessee has indicated that the reduction of pasture land will have no effect on number of cattle grazing and therefore will not have to relocate any breeding livestock.

At its meeting of September 13, 2013, agenda item D-4, the Board approved in concept, the withdrawal of approximately 2 acres from General Lease No. S-5570 and the subsequent set aside to the County of Hawaii for the relocation of the Kawaiiani Fire Station upon the applicant submitting an environmental assessment and the publication of a Finding of No Significant Impact (FONSI). Such findings were published in the Office of Environmental Quality Control (OEQC) bulletin on December 8, 2014.

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<sup>1</sup> Section 45 of General Lease No. S-5570 contains a similar provision regarding withdrawal.

RECOMMENDATION:

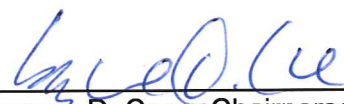
That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve the withdrawal of approximately 2 acres from General Lease No. 5570, Michael C. Tulang, Lessee, and the set-aside of such lands to the County of Hawaii.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - 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.
3. Authorize the issuance of an immediate management right-of-entry permit to the County of Hawaii Fire Department covering the subject area, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

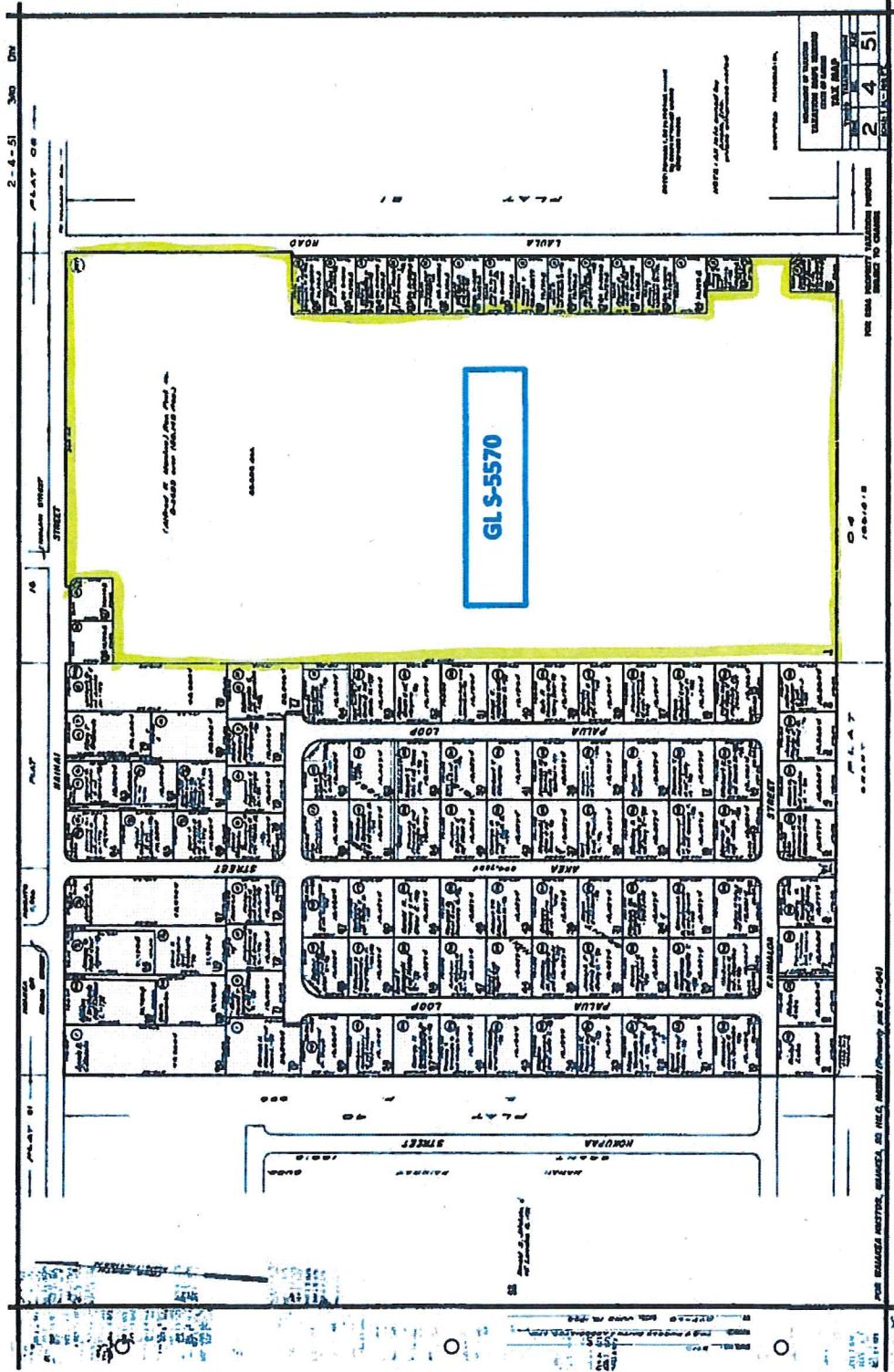
Respectfully Submitted,

  
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Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

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Suzanne D. Case, Chairperson

TMK: (3) 2-4-51:01



# EXHIBIT A



Hilo Municipal Golf Course  
Executive Order No. 1223

Approximate area of  
set aside to County of Hawaii  
2 acres

State of Hawaii  
(3) 2-4-051:001  
General Lease No. S-5570  
to Michael C. Tulang

AJA Veterans Council  
(3) 2-4-021:027

**EXHIBIT B**



EKELA ST

IWALANI ST

HAIHAI ST

PALUA LOOP

LAULA RD

EIKEKE ST

MIKALANI ST