

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

March 24, 2017

Ref. No.: GL S-5823

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

KAUAI

Authorize the Mutual Cancellation of General Lease No. S-5823 to Jonathan Akita, Lessee; Kuwaawaa Pasture Reserve, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-4-003:001.

APPLICANT:

Jonathan Akita, as Lessee.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Kuwaawaa Pasture Reserve, Kalaheo, Koloa, Kauai, identified by Tax Map Key: (4) 2-4-003:001, as shown on the attached map labeled Exhibit A.

AREA:

163.842 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:

Pasture purposes.

TERM OF LEASE:

20-years, commencing on October 1, 2005 and expiring on September 30, 2025. Last scheduled rental reopening was October 1, 2015.

ANNUAL RENTAL:

\$4,590.00 Payable in advance, in semi-annual installments of \$2,295.00 on the First Day of April and October of each and every year.

CONSIDERATION:

Not Applicable.

RECOMMENDED PREMIUM:

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

APPLICANT REQUIREMENTS:

None

REMARKS:

At its meeting of June 14, 2002, Item D-3, the Board of Land and Natural Resources, authorized the awarding of lease at public auction for Kuwaawaa Pasture Reserve, Kalaheo, Koloa, Kauai. A public auction was held on July 29, 2005, and Jonathan Akita was awarded a 20-year pasture lease, under General Lease No. S-5823. The initial rent for the lease was set at \$650.00 per annum.

On April 13, 2015, an appraisal was completed by Hastings, Conboy, Braig & Associates, Ltd., at expense to the State, to determine the fair market rent for a ten-year rent reopening on October 1, 2015. The appraised value of the land was calculated to be \$4,590.00 per annum.

On May 18, 2015, a reopening offer letter was sent to Mr. Akita informing him of the new appraised fair market value of \$4,590.00 per annum. Mr. Akita rejected the offer and hired Dennis Nakahara to reappraise the fair market value of rent. Mr. Nakahara was granted 45 days from his appointment, June 16, 2015, to provide an appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice to the Central Land Division Office.

On July 17, 2015, Mr. Akita wrote a letter to Land Division Administration requesting additional time for Mr. Nakahara to complete his report beyond his appointment date.

On August 18, 2015, a letter was sent to Mr. Akita acknowledging his letter and asking how much more time, in addition to the original 45 day deadline, he required to complete the appraisal report.

On September 9, 2015, Mr. Nakahara wrote a letter to Land Division Administration that he would “do everything possible to complete this assignment by the beginning of December.”

On November 19, 2015, Land Division Administration sent Mr. Akita and Mr. Nakahara a letter explaining that they would be granted an extension until December 2015 to submit an appraisal report. However, Mr. Nakahara later failed to make the deadline that he had committed to.

On August 15, 2016, Mr. Akita wrote a letter to Land Division Administration informing them that Mr. Nakahara told Mr. Akita that the appraisal would be completed in three weeks. Again, Mr. Nakahara failed to complete his appraisal as assured.

On January 11, 2017, a letter was sent to Mr. Akita stating that “the rent, as determined by the Lessor’s appraiser, will not be subject to further contest.” This decision was based on Paragraph C of General Lease No. S-5823 which states:

“However, Lessee or Lessee’s appraiser’s failure to comply with the procedures set forth above shall constitute a waiver of Lessee’s right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor’s appraiser without any retroactive adjustments.”

On January 27, 2017, Mr. Nakahara sent an email and called Land Division Administration offering to provide the State with an appraisal report on behalf of Mr. Akita.

On January 30, 2017, Land Division Administration sent a letter to Mr. Nakahara informing him that Mr. Akita’s “opportunity to contest the new rent has passed. The State notified the lessee of the new rent on May 18, 2015. Despite this notice, and the five separate notices sent to the lessee thereafter, the lessee failed to comply with the clear terms of the lease agreement regarding rent reopenings. Lessee’s failure to respond is deemed to be a waiver of his opportunity to dispute the new rent.”

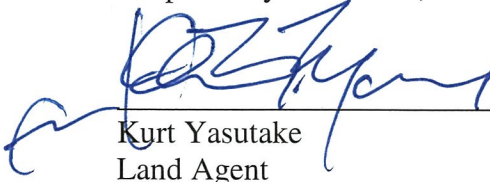
On January 31, 2017, Kauai Land Division Office received a letter from Mr. Akita requesting the cancellation of General Lease S-5823. As of March 24, 2017, Mr. Akita is current in paying rent at the new appraised value of \$4,590.00 per annum, which is significantly higher than the original rent of \$650.00 per annum. According to Mr. Akita’s letter, due to the terrain, the leased parcel only contains about 50 acres of usable land out of the total 163.842 acres. As a result, he is only able to graze about 30 head of cattle on the leased parcel. Mr. Akita also noted that his hired appraiser, Mr. Nakahara, was not able to complete the appraisal in a timely manner.

No comments were solicited as there will be no new dispositions or change in land use.

RECOMMENDATION: That the Board:

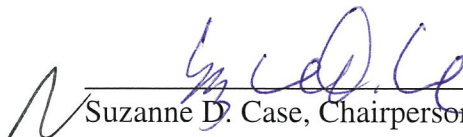
1. Authorize the mutual cancellation of General Lease No. S-5823, as previously approved at its meeting of June 14, 2002, Item D-3;
 - A. The standard terms and conditions of the most current cancellation of lease document form, as may be amended from time to time;
 - B. Effective date of cancellation shall be March 24, 2017.
 - 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.

Respectfully Submitted,



Kurt Yasutake
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

