

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

March 24, 2017

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

Ref. No.: GLS-5131

HAWAII

Consent to Assign General Lease No. S-5131, Cheyenne Kuahuia, Assignor, to Chelsey Lokalia Kuahuia Faavesi, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014:017

APPLICANT:

Cheyenne Kuahuia, Assignor, to Chelsey Lokalia Kuahuia Faavesi, aka: Chelsey Faavesi, Chelsey L. Faavesi, Chelsey L.K. Faavesi, Assignee, Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands of Milolii-Hoopuloa Houselots, Phase II, Lot 4, situated at Milolii-Hoopuloa, South Kona, Hawaii, identified by Tax Map Key: (3) 8-9-014:017, consisting of approximately 10,588 square feet, as shown on the attached map labeled Exhibit A.

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:

Residential and storage of boats and other fishing implements purposes.

TERM OF LEASE:

65-years, commencing on December 31, 1986 and expiring on December 30, 2051. Last rental reopening was on December 31, 2011. Next rental reopening is scheduled for December 31, 2031.

ANNUAL RENTAL:

\$480.00. Due in semi-annual installments of \$240.00, on the First of January and July, of each and every year.

CONSIDERATION:

Unspecified valuable consideration

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

ASSIGNOR:

Not applicable, Assignor is an individual and is not required to register with DCCA.

ASSIGNEE:

Not applicable, Assignee is an individual and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

Provide a homeowner's insurance policy or a Certificate of Liability Insurance for the property as required under the lease, within sixty (60) days of this approval.

REMARKS:

Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, authorized the Department of Land and Natural Resources to negotiate and enter into long term leases to persons residing in Milolii who were dispossessed or displaced as a result of the 1926 volcanic eruption of Mauna Loa on the Island of Hawaii. Act 362, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1989, and Act 86, Session Laws of Hawaii 1991, extended the sunset date to January 1, 1989, providing sufficient time to process Phase III of the Milolii-Hoopuloa Lots.

Although Act 62 (SLH 1982) and Act 83 (SLH 1984) do not specifically address restrictions against assignments of leases, the acts do set forth the criteria for qualifying as a lessee under those leases. The general leases issued under the Act require prior written approval of the Board of Land and Natural Resources for assignments, and further require prospective Assignees to meet the qualification criteria under the Act.

At its meeting of June 22, 1984, and December 28, 1984, the Board under agenda Item H-2 and F-3, as amended, respectively, authorized the disposition by direct negotiation of residential leases at Milolii and Hoopuloa.

On September 27, 1986, a drawing was held for 21 lots in Phase II of Milolii-Hoopuloa residential lots. Shonna Rosalie Nani Kuahuia Taetuna was one of the persons whose name was chosen in the drawing. On December 31, 1986, General Lease No. S-5131, identified as Phase II, Lot 4 of the Milolii-Hoopuloa Lots, was awarded to Mrs. Taetuna.

On July 21, 1989, Mrs. Taetuna secured financing for the subject property from First Hawaiian Bank (FHB). Then, on October 26, 1998, the Chairperson approved the refinancing of the FHB loan to BNC Mortgage, Inc. (BNC), whose mortgage on the property was recorded in the Bureau of Conveyances of the State of Hawaii on November 13, 1998 as Document No. 98-169908. Shortly thereafter, BNC assigned the mortgage to First National Bank of Chicago (FNB) as trustee, by Assignment of Mortgage dated November 18, 1998.

Mrs. Taetuna subsequently defaulted on the mortgage and FNB foreclosed under a power of sale. A public auction was held on February 4, 2000, and FNB was the successful bidder for the property with a winning bid of \$83,000.00. By Assignment of Lease dated July 19, 2000, FNB purported to remise, release and quitclaim all of the right, title and interest in the lease to itself. However, the lease restricts purchasers of the property at foreclosure to persons who are qualified to lease the land under the provisions of Act 62, Session Laws of Hawaii 1982.

Subsequently, FNB became Bank One, N.A. Bank One N.A.'s interest in the property purportedly passed to JPMorgan Chase Bank, N.A as trustee successor in interest. JPMorgan Chase Bank, N.A.'s interest in the property purportedly passed to The Bank of New York. All these banks neglected to obtain the prior written consent of the Board to any of these assignments or transfers of their interests in the subject property. In any event, the banks could not qualify as lessees of the property under the provisions of the lease and applicable law. Ocwen Federal Bank, FSB, Tax Escrow Department ("Ocwen"), had been acting as the loan servicing agent for these banks as to the subject property since at least March 2003.

Mrs. Taetuna and Cheyenne Kuahuia, who along with The Bank of New York, recognized the restrictions on ownership of the leasehold interest in the property and desired to restore title of the leasehold interest to a person qualified to be a lessee under applicable law. Ms. Kuahuia being Mrs. Taetuna's daughter, is qualified to be a lessee of

the property at Milolii-Hoopuloa. The parties involved closed escrow by which The Bank of New York quitclaimed its interest in the property to Mrs. Taetuna, and Mrs. Taetuna assigned her interest in the lease to Ms. Kuahuia.

The Bank of New York executed a Cancellation of Assignment of Lease and Reassignment by which the bank quitclaims its interest in the property to Mrs. Taetuna. Additionally, Mrs. Taetuna executed an Assignment of General Lease No. S-5131, assigning her interest in the property to Ms. Kuahuia. The Bank of New York had also executed a Release of Mortgage as to the BNC mortgage dated October 27, 1998.

At its meeting of August 22, 2008, under agenda item D-5, the Land Board approved the assignment to General Lease No. S-5131, Shonna Taetuna, Assignor, to Cheyenne Kuahuia, Assignee.

At its meeting of March 9, 2012, the Board of Land and Natural Resources approved a reconsideration of rent for the Milolii-Hoopuloa residential leases, Phase II, consisting of 22 general leases. The Land Board established the rental reopening rate at the minimum amount of \$480 per year, based on the Land Board's current minimum rent policy. Rental payments is due in semi-annual installments of \$240, due on the first of January and July of each and every year.

By letter received March 25, 2013¹, Ms. Cheyenne Kuahuia requested that General Lease No. S-5131 be assigned to her sister, Chelsey Faavesi. Ms. Kuahuia indicated that she will no longer be residing at the Milolii property as she can't afford to pay the rent and provide the required insurance.

Ms. Faavesi, as assignee, 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 last rental reopening was on December 31, 2011. The next scheduled reopening is for December 31, 2031. There are no outstanding rental reopening issues.

Staff reviewed the file and can report that for the past two (2) years, notices of default were issued on 2/20/15 and 8/05/16 for failure to keep rental payments current. Presently, rental payments are current. There is no certificate of liability insurance in file. No bond is required.

The Office of Hawaiian Affairs was not solicited for comments as this is not a new disposition or change in use.

¹ This request was slated to be presented to the Land Board at its June 12, 2015 meeting. However, it was pulled from the agenda at the request of the Lessee. Currently, both the Assignor and Assignee are in agreement and wish to proceed with the assignment.

Ms. Faavesi is a qualified applicant/assignee for a Milolii residential lease as evidenced by her Birth Certificate, which indicates that she is the daughter of Mrs. Shonna Taetuna, and sister of Ms. Cheyenne Kuahuia, both who qualified under Act 62 (SLH 1982) and Act 83 (SLH 1984) as Lessees.

RECOMMENDATION:

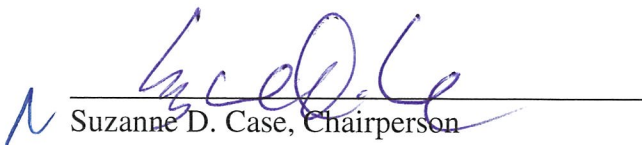
- A. That the Board consent to the Assignment of General Lease No. S-5131, Cheyenne Kuahuia, as Assignor, to Chelsey Lokalia Kuahuia Faavesi, aka: Chelsey Faavesi, Chelsey L. Faavesi, Chelsey L. K. Faavesi, as Assignee, subject to the following:
1. The standard terms and conditions of the most current 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.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



TMK: (3) 8-9-14:17



EXHIBIT A₁