

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

July 28, 2017

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

PSF No: 17HD-068
HAWAII

Reconsideration of Rent under General Lease No. S-5523 to Volcano Art Center,
Lessee, for Education, Artistic, and Community Related Activities Purposes
located at Olaa, Puna, South Hilo, Hawaii, TMK: (3) 1-9-005:009.

APPLICANT

Volcano Art Center,¹ a Hawaii non-profit corporation and Internal Revenue Code Section 501(c)(3) entity.

LEGAL REFERENCE

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION

Portion of Government Lands of Olaa, Puna, South Hilo, Hawaii, TMK: (3) 1-9-005:009,
as shown on Exhibits A, B, and C, attached.

AREA

7.411 acres, more or less.

ZONING

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS

Section 5(b) lands of the Hawaii Admissions Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

¹ Pursuant to the unrecorded Fourth Amendment of General Lease No. S-5523, by name change filed at the State of Hawaii, Department of Commerce and Consumer Affairs on July 15, 2010, the Lessee is now known as Volcano Art Center, a Hawaii non-profit corporation.

Yes ____ No X.

CHARACTER OF USE

Educational, Artistic, and Community Activity Purposes.

LEASE TERM

Sixty-Five (65) years, commencing on May 1, 1997 and expiring on April 30, 2062.

ANNUAL RENT

\$480.00 per annum, as amended, for the period of May 1, 2007, April 30, 2017.

RENTAL REOPENINGS

At the 10th, 20th, 30th, 40th, 50th, and 60th years of the lease.

DCCA VERIFICATION

Place of business registration confirmed:	Yes <u>X</u>	No ____
Registered business name confirmed:	Yes <u>X</u>	No ____
Applicant in good standing confirmed:	Yes <u>X</u>	No ____

BACKGROUND:

Volcano Art Center (VAC) was founded in 1974 and has provided various programs and workshops to Volcano and the rest of the East Hawaii communities with the mission of developing, promoting, and perpetuating art, culture, and environmental heritage. Since opening, VAC has provided 54 programs that included monthly hula presentations, Aloha Friday cultural craft programs, cultural programs from learning traditional arts, documentary presentations, movies and hands on classes, workshops, and events. Besides a few free programs, the VAC charges small fees to participants just to cover costs for supplies, instructor fees and general overhead expenses. VAC is also funded by private donations and State & Federal grants. They only have a handful of paid employees and the rest of the staff is volunteers.

The annual operating budget for VAC is \$1.2 million, which included operational income from the Volcano Art Center Gallery in Hawaii Volcanoes National Park (HVNP). In addition to some the programs mentioned above, VAC Gallery in the HVNP also sells art as part of its revenue stream. In previous years, VAC has operated at a loss, but is forecasted to be close to breaking even or having a small gain leading into 2018. According to VAC, the upturn has been a result of increased effort from administration,

cost controls and an increase of active participation with board members, thus increasing activities, private donations, grants from the State and Federal entities.

At its meeting of April 26, 1996, under agenda item D-13, the BLNR approved the withdrawal of approximately 7.32 acres from the Olaa Forest Park Reserve and the direct issuance of a 65 year lease, General Lease No. S-5523 (GL S-5523) to Volcano Art Center for educational and artistic activities, commencing on May 1, 1997 up to and including April 30, 2062. Pursuant to Section 171-43.1, Hawai'i Revised Statutes, as amended,² the annual rent was approved by the Chairperson to be nominal, with nominal being defined as twenty-five (25%) of the fair market annual lease rental to be determined by an independent appraisal.

REMARKS:

At its meeting of May 13, 2005, under agenda item D-19, the BLNR established a Minimum Rent Policy that subjects all new dispositions to a minimum rent of \$40.00 per month, \$480.00 per year, or \$500 (one-time payment) depending on the payment term.

At its meeting of March 9, 2007, under agenda item D-1, the BLNR approved the reconsideration of rent under GL S-5523 to Volcano Art Center, a Hawai'i non-profit corporation, to \$480.00 per annum pursuant to the Minimum Rent Policy mentioned above, for the ten-year term effective May 1, 2007 to April 30, 2017.

The latest rent term period ended on April 30, 2017. VAC requests a further amendment of its lease to continue same minimum annual rent for the next ten-year term.

VAC is in compliance with all lease terms and conditions. Rent of \$480.00 is paid through April 30, 2018. Liability insurance expires on September 5, 2017. VAC has posted a \$960.00 cash performance bond. In the past two years, there have been no outstanding compliance issues. Staff has no objection to the request.

RECOMMENDATION: That the Board:

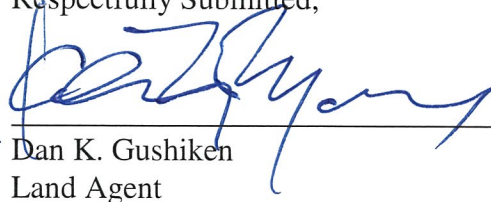
1. Amend Paragraph A of General Lease No. S-5523 to Volcano Art Center to add: "Effective May 1, 2017 to April 30, 2027 rent shall be FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00) per annum," subject to:
 - a. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time;

² HRS 171-43.1, as amended, states, "The board may lease, at nominal consideration, by direct negotiation and without resource 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."

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- b. Review and approval by the Department of the Attorney General.
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



GL S-5523: The Volcano Art Center

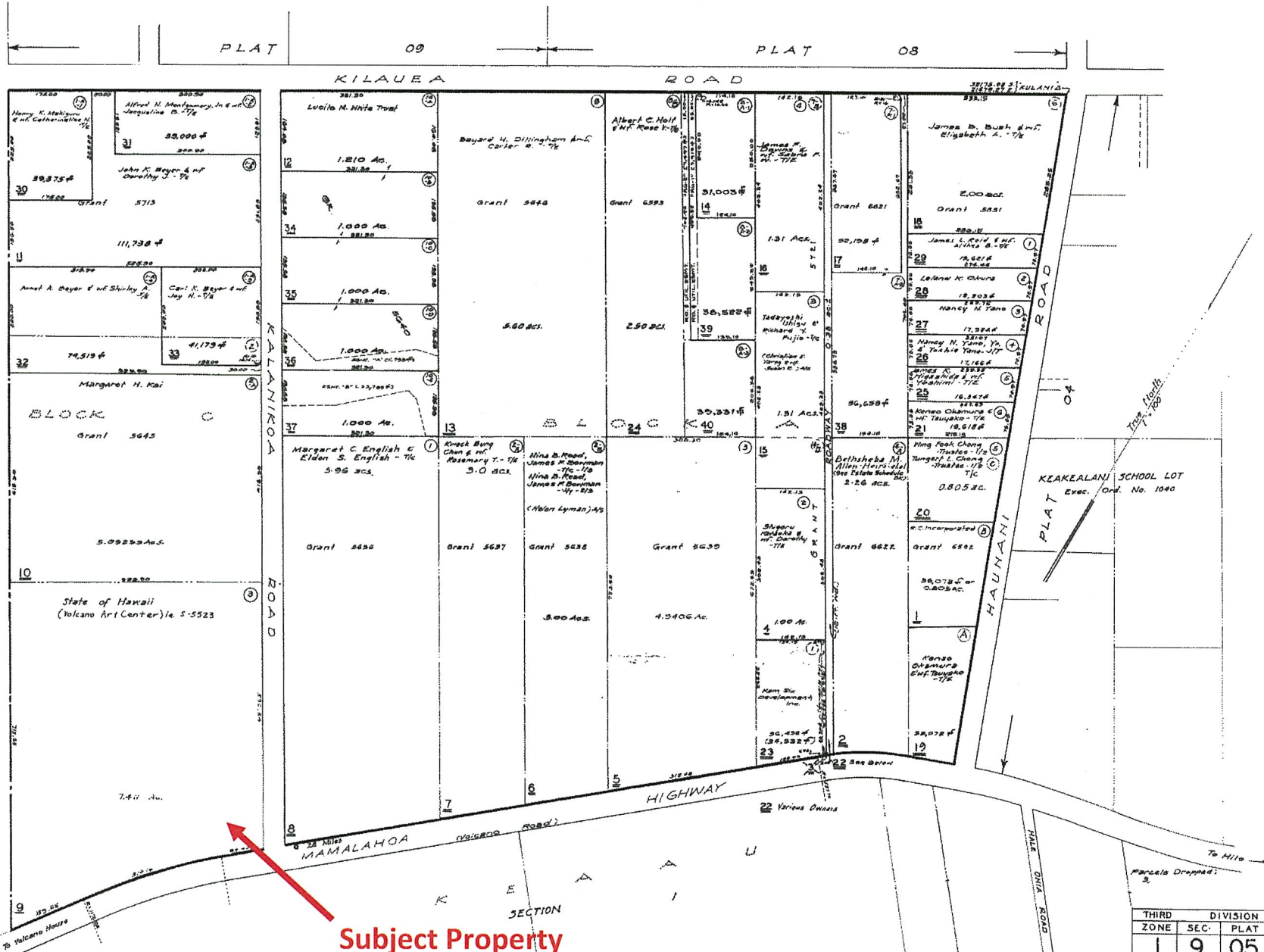
Olaa, Puna, South Hilo, Hawaii

TMK: (3) 1-9-005:009

Exhibit A

1 9 05

DISTRICT OF KAU
KILAUEA FOREST RESERVE
ZONE 9 SEC 9



Subject Property

THIRD DIVISION		
ZONE	SEC.	PLAT
1	9	05
CONTAINING 1 PARCELS		
SCALE: 1 in = 100 ft.		

General Lease No. S-5523 The Volcano Art Center

Exhibit B



The Volcano Art Center (GL S-5523)

Exhibit C

June 16, 2017





