

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

January 12, 2018

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

Reference Nos:
GL nos.: S-5226
S-5227, S-5230,
S-5235 and S-5236

HAWAII

Resubmittal: Determination of Rent upon Reopening for Milolii-Hoopuloa Residential Leases, Phase III, Consisting of Five (5) General Leases for Residential Purposes at Milolii and Hoopuloa, South Kona, Hawaii, Tax Map Keys: (3) 8-9-014: 050, 053, 056, and 060-061

APPLICANT:

Department of Land and Natural Resources, Land Division

LEGAL REFERENCE:

Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, Act 362; Session Laws of Hawaii 1987, as amended by Act 363, Session Laws of Hawaii 1987 and Chapter 171, Hawaii Revised Statutes.

LOCATION:

Portion of Government lands of Milolii-Hoopuloa Houselots, Phase III, situated at Milolii and Hoopuloa, South Kona, Hawaii, identified by Tax Map Keys: (3) 8-9-014: 050, 053, 056, 060-061, as shown on the attached maps labeled **Exhibit A-1 and A-2**.

AREA:

50,000 square feet, more or less, comprised of 10,000 square feet for each of the five (5) leased lots for General Lease numbers S-5226, S-5227, S-5230, S-5235, and S-5236.

ZONING:

State Land Use District:	Conservation (Milolii Village Special Subzone)
County of Hawaii CZO:	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:

TAX MAP KEY NO.	GENERAL LEASE NO	LESSEE NAME	Area (Square Feet)
(3) 8-9-14:050	GLS-5236	KAUPU, JR., SAM K.	10,000
(3) 8-9-14:053	GLS-5235	FERNANDEZ, ORASA KAIULANI	10,000
(3) 8-9-14:056	GLS-5230	SESSON, FILOMON	10,000
(3) 8-9-14:060	GLS-5226	AKI, FIDELIS S.S.	10,000
(3) 8-9-14:061	GLS-5227	BILLINGS, LEILANI-SUE	10,000
TOTAL			50,000

CHARACTER OF USE:

Residential purposes as the lessee's principal domicile purposes.

LEASE TERMS:

General Lease number S-5230, Sixty-five (65) years, commencing on December 1, 1992, and expiring on November 30, 2057, with first rental reopening scheduled for November 30, 2017.

General Lease numbers S-5226-5227 and S-5236-5237, sixty-five (65) years, commencing on March 3, 1994, and expiring on March 2, 2059, with first rental reopening scheduled for March 2, 2019.

ANNUAL RENTAL:

Current:

\$132.00 per annum, payable in advance, in semi annual installments of \$66.00, due on the 1st of January and July of each and every year.

Proposed:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005), payable in advance, in semi annual installments of \$240.00, due on the 1st of January and July of each and every year.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 25th and 45th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Not applicable.

DCCA VERIFICATION:

Not applicable.

REMARKS:

Milolii-Hoopulua Residential State Leases:

Phase III, General Lease numbers S-5226, S-5227, S-5230, S-5235, and S-5236.

Recap of the Legislation and Board Decisions that Prompted Milolii-Hoopulua Residential State Leases:

The January 13, 2012, agenda item D-12 (see attached **Exhibit B**) and March 9, 2012, agenda item D-3 (see attached **Exhibit C**) Board submittals summarize the legislation that was enacted, and the past Board decisions, and explain how the Milolii-Hoopulua community leases were promulgated. Some of the pertinent Legislation and Board Decisions are recapped here.

Session Laws of Hawaii Legislation

Act 62, Session Law of Hawaii 1982 was enacted into law by then Governor Ariyoshi on May 10, 1982. The law was enacted to provide lands to relocate village residents or descendents of the Milolii-Hoopulua community, which was destroyed as a result of the 1926 Mauna Loa eruption. Act 62 authorizes the Department of Land and Natural Resources to award long-term residential leases to residents of Milolii and provides criteria whereby residency can be established for those who were actually displaced by

the 1926 lava flow.

During the 1984 Legislative session, an amendment to Act 62 was passed, giving the Milolii Development exemption from “all statutes, ordinances, charter provisions, and rules of any government agency relating to zoning of land, and the construction of units thereon.” Act 62 of the 1982 session (later amended by Act 83 of the 1984 session) was set to expire on January 1, 1987. However, Act 362 of the 1987 legislative session was enacted to reauthorize the negotiation of long-term leases between DLNR and the Milolii-Hoopulua residents, retroactive to January 1, 1987, and to also aid in an extension of the Act’s purposes. Thereafter, Act 363 of Session Laws of Hawaii 1987 was enacted, and provided that the authority granted by the Act expired either when the leases were negotiated and recorded in the bureau of conveyances, or on January 1, 1989, whichever occurred first.

With the authority of Act 363 of Session Laws of Hawaii 1987 now expired, DLNR-Land contends that the provisions of Chapter 171, Hawaii Revised Statutes now apply.

Summary of Board Decisions During Initial Phase of the Milolii-Hoopulua Residential Leases

At its meeting of June 22, 1984, Item H-2, the Board of Land and Natural Resources approved Amendment to Administrative Rules, Title 13, Chapter 2 and Conservation District Use Application for establishment of the Milolii Village Special Subzone, Subzone Boundary Amendment, and Subdivision for Residential Purposes at Milolii-Hoopulua, Hawaii.

At its meeting of December 28, 1984, Item F-3, the Land Board approved the issuance of direct leases for residential purposes, Milolii and Hoopulua, South Kona, Hawaii.

At its meeting of April 26, 1985, Item F-2, the Land Board awarded twelve (12) grandfathered residences residential leases at Milolii, Phase I, pursuant to Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984.

Community Association:

A Milolii-Hoopulua community association was originally formed under the name of Paa Pono Milolii. For over 20 years, Paa Pono Milolii served as a representative of the community association. Most recently, Paa Pono Milolii experienced some internal problems and was involuntarily dissolved. In February 2003, a Paa Pono Milolii was reestablished, but research indicated that its purpose was not the same as originally created or intended as a representative of the Milolii residential lessees. As a result, by letter dated June 30, 2011, staff was notified of the formation of a “new” association to represent the lessees of the Milolii-Hoopulua community under the name of the Milolii-Hoopulua Fishing Village Association (MHFVA), a domestic non-profit corporation, which registered with DCCA on June 17, 2011, but later dissolved.

The same named corporation was registered once again on January 22, 2014, and continues in effect as a registered corporation to this current day, yet it is not an active representative of the individual lessees. As such, DLNR-Land will make its lease rent offer directly to each of the five (5) respective parcel lessees regarding General Lease numbers S-5226, S-5227, S-5230, S-5235, and S-5236, which leases are the subject of this submittal.

Agency Comments:

No government agencies or community interest groups were solicited for comments, as there will be no new dispositions or change in land use.

DLNR Reconsideration of Rent /Rent Reopening Practice for Milolii-Hoopulua:

Although the Land Board could establish a higher rent, the Land Board's current minimum rent policy that was established to cover the administrative cost in managing a lease on an annual basis is \$480 per year or \$40 per month.

The Phase I and II Milolii-Hoopulua Residential lease language specifies that during the lease rent reconsideration process, rent values other than fair market rent should be used. Accordingly, DLNR-Land sought and obtained Board approval to offer lease rents using the DLNR May 13, 2005 Minimum Rent Policy of \$480 per annum (i.e. \$40 per month). For example, at its meeting of January 13, 2012, under agenda D-12, the Land Board approved the reconsideration of rent for eleven (11) State residential leases under Phase I of the same development, using the minimum rent policy at \$480 per year, or \$40 per month. (see **Exhibit B**).

Furthermore, at its meeting of March 9, 2012, under agenda D-3, the Land Board approved the reconsideration of rent for twenty-two (22) State residential leases under Phase II of the same development, using the minimum rent policy at \$480 per year, or \$40 per month. (see **Exhibit C**).

Moving forward to 2017, ten (10) leases in Phase III of the Milolii-Hoopulua Residential house lots contain different lease rent reopening language than the language in the Phase I and Phase II lease language. Significantly, in the ten (10) leases, rent on reopening is to be set at fair market value. Accordingly, Land Division procured an appraiser, ACM Consultants, Inc. (ACM), for those ten (10) leases¹ who determined the fair market rent to be \$480 per year, with the exception of one lease with a larger land area (\$520 per year for 10,881 square feet).

1- One of the five leases that is the subject of today's action, General Lease No. S-5230 to Filomon Session, was inadvertently included in the appraisal contract and the appraiser determined the fair market rent for that lease to be \$480 per year.

Rent Reopening for Five (5) Additional Phase III Milolii-Hoopulua Residential Leases
(Leases which are the Subject of this Submittal):

Five (5) additional Milolii-Hoopulua Phase III leases have rent renegotiation clauses with language similar to the Phases I and II lease language wherein the fair market value is not utilized in the rent re-opening process.

This submittal seeks the determination of rent upon reopening of annual lease rent for the following five (5) additional Phase III, leases: General Lease Nos. S-5126, S-5127, S-5230, S-5235, and S-5236 (for lease parcel maps, see **Exhibit A-1 and A-2**).

Since the Board approved using the DLNR Minimum Rents Policy of \$480 per annum for the Phase I and II leases, for uniformity and fair treatment of the Milolii-Hoopulua Residential Lessees, Land Division now seeks Board approval to also apply the DLNR Minimum Rent policy of May 13, 2005, in the amount of \$480 per annum, as to these five (5) additional Phase III leases of General Lease Nos. S-5126, S-5127, S-5230, S-5235 and S-5236.

ANALYSIS:

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for New Dispositions shall be \$480 per year for leases. Leases are typically issued via public auction to for profit organizations or directly to non-profits. The subject leases were issued directly as a result of Act 62, Session Laws of Hawaii 1982, and all other laws to the contrary notwithstanding, including Chapter 171, Hawaii Revised Statutes.

However, with the authority of Act 62, under Act 363 of Session Laws of Hawaii 1987, now expired, DLNR-Land contends the provisions of Chapter 171, Hawaii Revised Statutes now apply.

At its meeting of January 13, 2012, under agenda D-12, the Land Board approved the reconsideration of rent over eleven (11) State residential leases under Phase I of the same development, using the minimum rent policy at \$480 per year, or \$40 per month. (see **Exhibit B**).

Additionally, at its meeting of March 9, 2012, under agenda D-3, the Land Board approved the reconsideration of rent for twenty-two (22) State residential leases under Phase II of the same development, using the minimum rent policy at \$480 per year, or \$40 per month. (see **Exhibit C**).

Furthermore, ACM's nine (9) fair market value appraisals of \$480 per annum for the Milolii-Hoopulua Phase III leased parcels with 10,000 sqft support Land Division offering \$480 per annum for the five (5) additional Phase III leases that also contain 10,000 square feet each.

Finally, the ACM value of \$480 per annum is the same annual rent value that the Land Board established in 2005 under its Minimum Rent Policy of \$480 per annum.

Conclusion:

Staff recommends the Land Board establish the rental-reopening rate at the minimum amount of \$480 per year for the (5) Five additional Milolii-Hoopulua Phase III leases, based on the Land Board's current minimum rent policy.

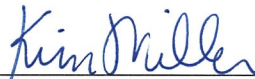
Staff believes the minimum rent of \$480 per year for Phase III is fair and equitable, especially in light of the Land Board's reaffirmation of the Board's minimum rent policy on those Leases of the Phase I reopening, Item D-12, January 13, 2012 (**Exhibit B**), and on those Leases of the Phase II reopening, Item D-3, March 9, 2012 (**Exhibit C**).

Finally, \$480 per annum is consistent with the Phase III nine (9) leases with similar 10,000 sqft parcels wherein the lessees of those leases have been offered in 2017 lease rent of \$480 per annum (and \$520 to lessee with the parcel of 10,881 sqft).

RECOMMENDATION: That the Board:

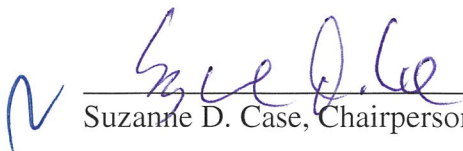
- A. Regarding General Lease number S-5230, sixty-five (65) years, commencing on December 1, 1992 and expiring on November 30, 2057, and with the first rental reopening scheduled for November 30, 2017, and General Lease numbers S-5226-5227 and S-5236-5237, sixty-five (65) years, commencing on March 3, 1994 and expiring on March 2, 2059, and with the first rental reopening scheduled for March 2, 2019, determine that the lease rent shall be:
1. \$480 per year, in advance, in semi-annual installments of \$240, due on the First of January and July of each and every year;
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Kim E. Miller
Supervising Land Agent

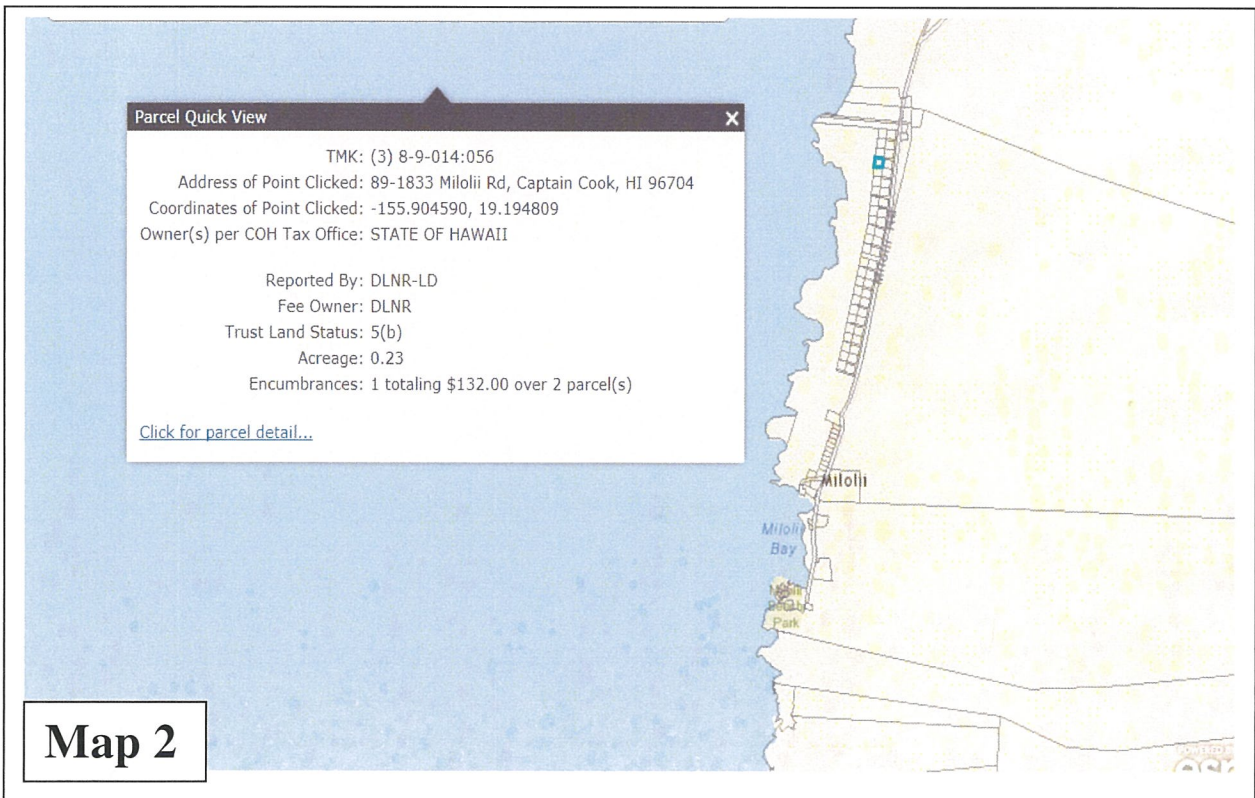
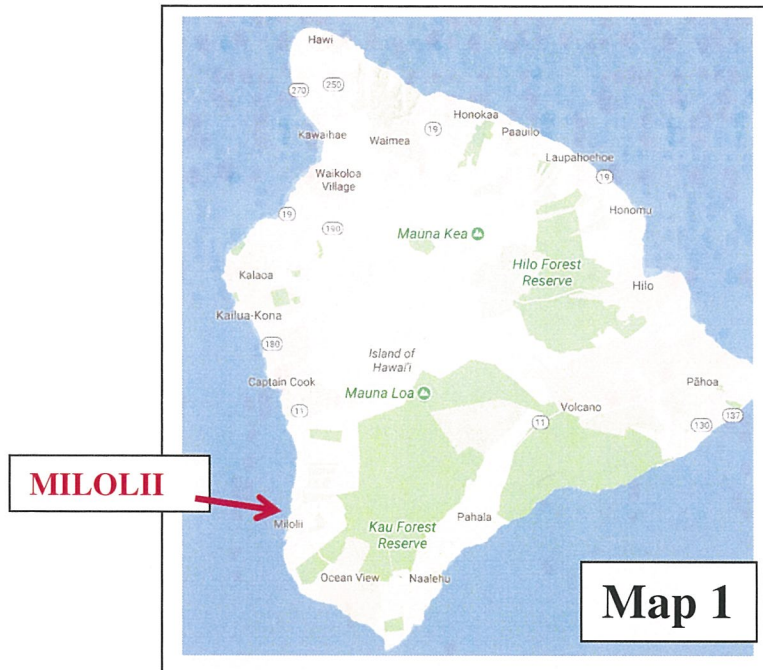
APPROVED FOR SUBMITTAL:

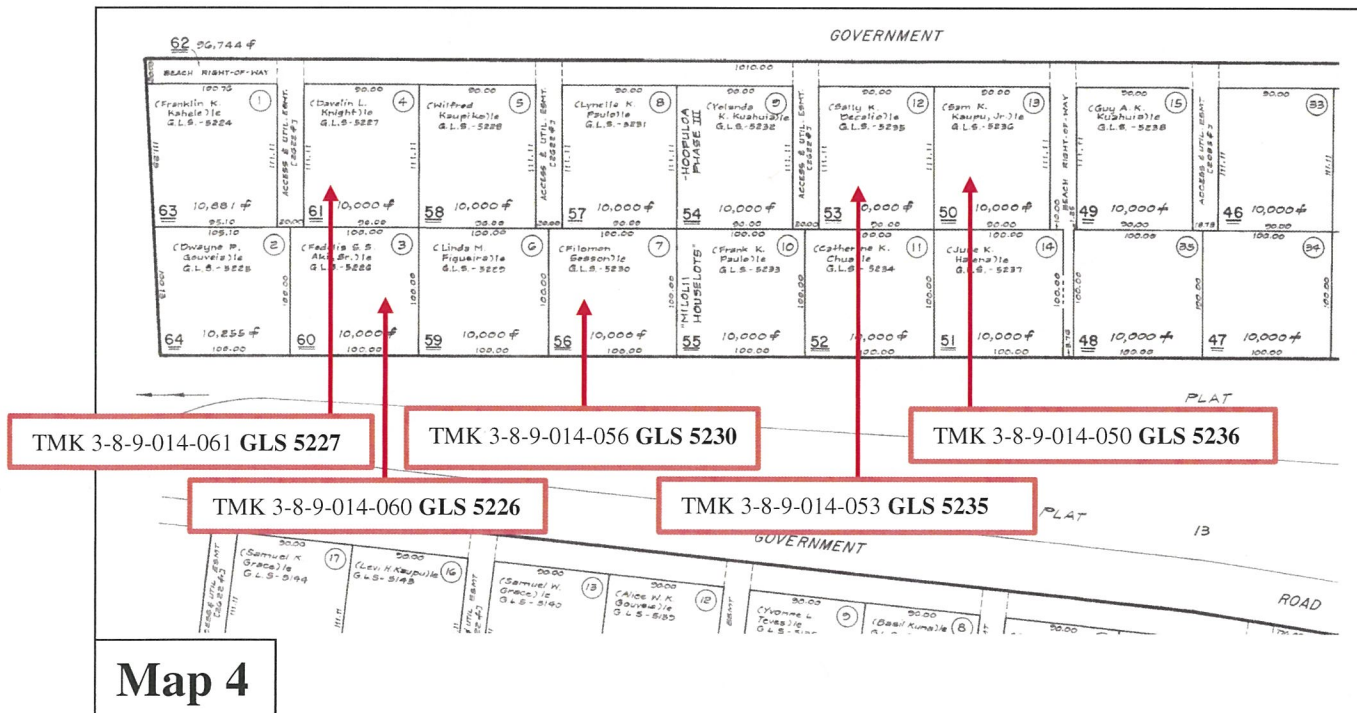
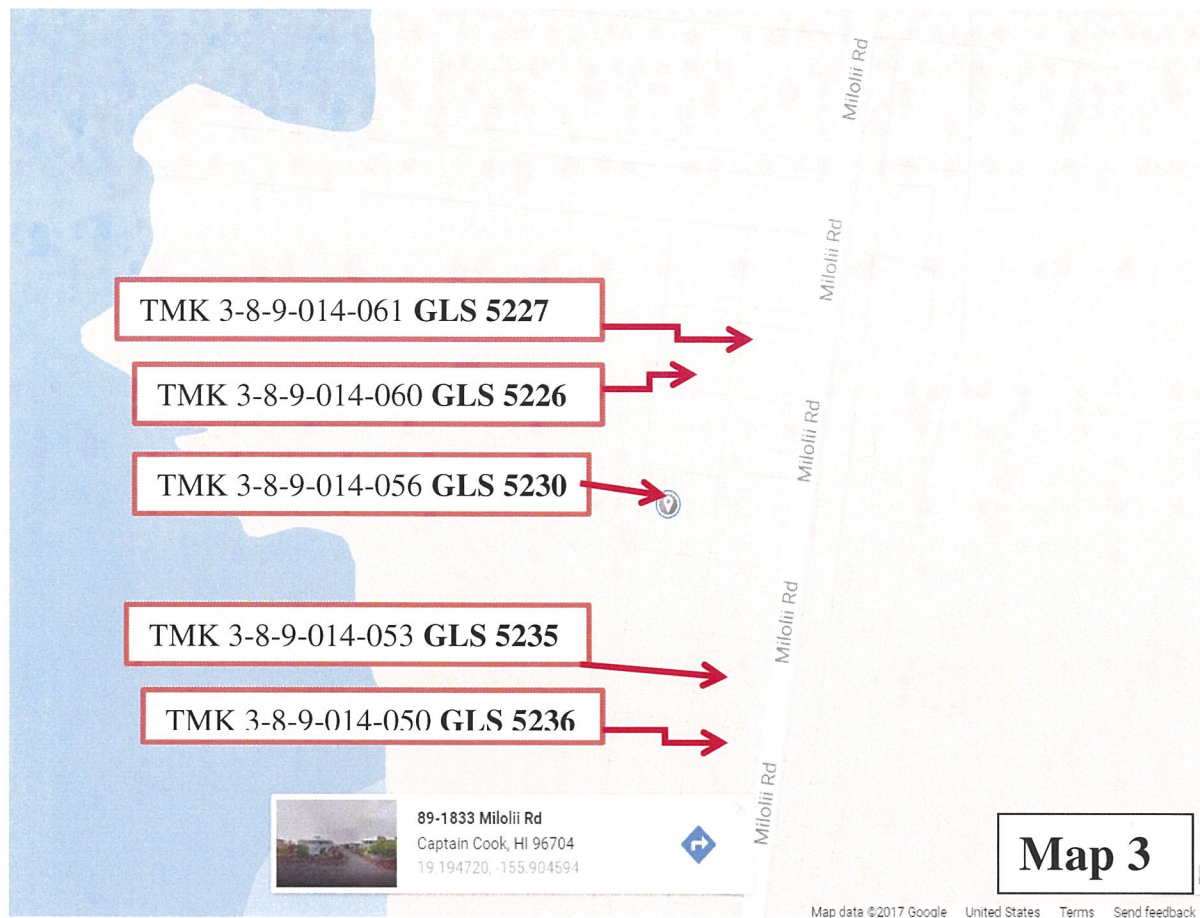


Suzanne D. Case, Chairperson

Portion of Government lands of Milolii-Hoopulua Houselots,
Phase III, situated at Milolii and Hoopulua, South Kona, Hawaii,
identified by Tax Map Keys: (3) 8-9-014: 050, 053, 056, 060-061,
as shown on the attached maps labeled
Exhibit A-1(Maps 1 and 2) and A-2 (Maps 3 and 4)

EXHIBIT A-1 and A-2





Board Action of January 13, 2012, item D-12,
Reconsideration of Rent for Milolii-Hoopuloa
Residential Leases, Phase I,
Consisting of Twelve (12) General Leases
for Residential Purposes at Milolii and Hoopuloa,
South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 001-013 and 8-9-014:016

EXHIBIT B

AMENDED

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

January 13, 2012

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

PSF No.: 11HD-196

HAWAII

Reconsideration of Rent for Milolii-Hoopulua Residential Leases, Phase I, Consisting of Twelve (12) General Leases for Residential Purposes at Milolii and Hoopulua, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 001-013 and 8-9-014: 016.

APPLICANT:

Milolii Ho'opulua Fishing Village Association (MHFVA), a Hawaii non-profit corporation, representing Lessees in Phase I, of the Milolii-Hoopulua Residential Leases.

LEGAL REFERENCE:

Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, and Chapter 171, Hawaii Revised Statutes.

LOCATION:

Portion of Government lands of Milolii-Hoopulua Houselots, Phase I, situated at Milolii and Hoopulua, South Kona, Hawaii, identified by Tax Map Keys: (3) 8-9-014: 001-013 and 8-9-004: 016, as shown on the attached map labeled **Exhibit A**.

AREA:

1.6182 acres, or 70,488 square feet, more or less.

ZONING:

State Land Use District:	Conservation (Milolii Village Special Subzone)
County of Hawaii CZO:	Open

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DL*
AT ITS MEETING HELD ON
January 17, 2012

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO x

CURRENT USE STATUS:

TAX MAP KEY NO.	GENERAL LEASE NO.	LESSEE	AREA (Square Feet)
(3) 8-9-004: 016	S-4967	CHANG, Clement Sr.	10,000
(3) 8-9-014: 001	S-4956	AKIU, Antonio M.	7,627
(3) 8-9-014: 002	S-4957	KUAHUIA, Louis Jr.	5,000
(3) 8-9-014: 003	S-4958 (cancelled)	BILLINGS, Pacita	5,000
(3) 8-9-014: 004	S-4959	FORCUM, Mabel K. (deceased)	5,000
(3) 8-9-014: 005	S-4960	KAHELE, Leilani M. (deceased)	5,000
(3) 8-9-014: 006	S-4961	HALENA, Dora K.	5,000
(3) 8-9-014: 007	S-4962	OLSEN, Rose	5,000
(3) 8-9-014: 008	S-4963	CASUGA, Amoe (deceased)	5,000
(3) 8-9-014: 010	S-4964	BANIAGA, Sheldyn E.	5,000
(3) 8-9-014: 011	S-4965	KUAHUIA, Raymond K. Sr.	4,980
(3) 8-9-014: 013	S-4966	LLANES, Delfredo J. Jr. (deceased)	7,881
		Total:	70,488

CHARACTER OF USE:

Residential purposes as the lessee's principal domicile purposes.

LEASE TERM:

Sixty-five (65) years, commencing on July 12, 1985 and expiring on July 11, 2050. First rental reopening was scheduled for July 12, 2010.

ANNUAL RENTAL:

Current:

\$132.00 per annum, payable in semi annual installments of \$66.00, due on the 30th of November and 31st of May of each and every year.

Proposed:

1. \$1.00 per annum, MHFVA proposal.
2. \$132.00 per annum, keeping the annual rent unchanged.
3. \$440.00 per annum, In-House valuation by Staff appraiser. **(Exhibit B)**
4. \$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005), payable in semi annual installments of \$240.00, due on November 30th and May 31st of each and every year.
5. Fair market value, to be determined by independent licensed appraiser.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 25th and 45th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Not applicable.

DCCA VERIFICATION:

Not applicable. Applicants as individuals are not required to register with DCCA.

The Milolii Hoopulua Fishing Village Association, a Domestic Non-profit Corporation, registered with DCCA on June 17, 2011.

REMARKS:

Milolii-Hoopulua Residential State Lease:
Phase I, General Lease Nos. S-4956 to 4967.

Act 62, Session Law of Hawaii 1982 was enacted into law by then Governor Ariyoshi on May 10, 1982. The law was enacted to provide lands to relocate village residents or descendents of the Milolii-Hoopulua community, which was destroyed as a result of the 1926 Mauna Loa eruption. Act 62 authorizes the Department of Land and Natural Resources to award long-term residential leases to residents of Milolii and provides

criteria whereby residency can be established for those who were actually displaced by the 1926 lava flow.

During the 1984 Legislative session, an amendment to Act 62 was passed, giving the Milolii Development exemption from “all statutes, ordinances, charter provisions, and rules of any government agency relating to zoning of land, and the construction of units thereon.”

At its meeting of June 22, 1984, Item H-2, the Board of Land and Natural Resources approved Amendment to Administrative Rules, Title 13, Chapter 2 and Conservation District Use Application for establishment of the Milolii Village Special Subzone, Subzone Boundary Amendment, and Subdivision for Residential Purposes at Milolii-Hoopuloo, Hawaii.

At its meeting of December 28, 1984, Item F-3, the Land Board approved the issuance of direct leases for residential purposes, Milolii and Hoopuloo, South Kona, Hawaii.

At its meeting of April 26, 1985, Item F-2, the Land Board awarded twelve (12) grandfathered residences residential leases at Milolii, Phase I, pursuant to Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984.

A Milolii-Hoopuloo community association was originally formed under the name of Pa’a Pono Milolii. For over 20 years, Paa Pono Milolii served as a representative of the community association. Most recently, Paa Pono Milolii experienced some internal problems and was involuntarily dissolved. In February 2003, a Pa’a Pono Milolii was reestablished, but research indicated that its purpose was not the same as originally created or intended as a representative of the Milolii residential lessees. As a result, by letter dated June 30, 2011, staff was notified of the formation of a “new” association to represent the lessees of the Milolii-Hoopuloo community under the name of the Milolii Ho’opuloo Fishing Village Association (MHFVA), a domestic non-profit corporation, which registered with DCCA on June 17, 2011. **(Exhibit C)**

No government agencies or community interest groups were solicited for comments, as there will be no new dispositions or change in land use.

On December 9, 2010, the Chairperson approved the Staff Appraiser’s In-House Valuation Recommendation of the Milolii, Phase I, Residential Lease rent. The recommended annual rent for the subject leases were determined to be \$440 per annum, effective July 12, 2010.

Staff is of the understanding that there are four feasible options for rental rates to be charged uniformly to all the leases. The options are: (1) \$132 per year, unchanged from current rate, (2) \$440 per year, which is the in-house valuation as approved by the Chairperson, which is just under the current minimum rent for other new leases and permits, (3) minimum rent of \$480 per year, or (4) a rent based on the fair market rate,

however, the State leasehold properties do not have any county sewer, water and/or electricity. The only public utility available in the area is telephone service.

At its meeting of October 24, 2008, under agenda D-10, the Land Board approved the reconsideration of rent over a similar State residential development of the Maunalaha General Leases on Oahu, using the minimum rent policy at \$480 per year.

ANALYSIS:

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for New Dispositions shall be \$480 per year for leases. Leases are typically issued via public auction to for profit organizations or directly to non-profits. The subject leases were issued directly as a result of Act 62, Session Laws of Hawaii 1982, and all other laws to the contrary notwithstanding, including Chapter 171, Hawaii Revised Statutes. This option does not conflict with the lease negotiation clause, which stipulates rents shall not be established from fair market values or comparisons to neighboring properties.

On December 7, 2010, Staff Appraiser's In-House Valuation determined the annual rental to be \$440 per annum.

The MHFVA believes setting the rents at market would present a hardship for many of the residents, especially the elderly on fixed income. Furthermore, setting rents based on comparable land value is not allowable due to a clause in the leases that states that rent, "...shall be established without comparison to the assessed fair market rental value of the leased properties of any neighboring properties at the time of the renegotiations." MHFVA is of the opinion that the In-House Appraisal is not realistic as the comparables used were of sales from nearby subdivisions which have no restrictions to whom it can be sold, whereas the Milolii leases are restricted to only qualified applicants.

The MHFVA proposes an annual lease rent of one-dollar (\$1), in the spirit of being "consistent with the Legislative intent and purpose of Act 62."

In consideration of the foregoing, staff defers to the appraiser's determination and recommends below that the Board approve the In-House valuation at \$440 per annum.

RECOMMENDATION: That the Board:

- A. Determine that the lease rent commencing July 12, 2010, under General Lease Nos. S-4956 to 4967, except for cancelled 4958, shall be:


\$440 per year based on an In-House Valuation as recommended by Staff

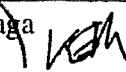
January 13, 2012

Appraiser and approved by the Chairperson of the Board of Land and Natural Resources on December 10, 2010, subject to:

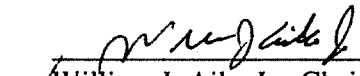
1. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent 

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: January 13, 2012: D-12:

Approved as amended. Recommendation A was amended to increase the amount of the annual rent to \$480 (\$40 per month), which would be in accordance with the Land Board's minimum rent policy (currently set at \$480 per annum that was established to cover the minimum administrative costs in managing a lease or permit on an annual basis.1) Otherwise, all other portions of the staff submittal and recommendations were approved as submitted.

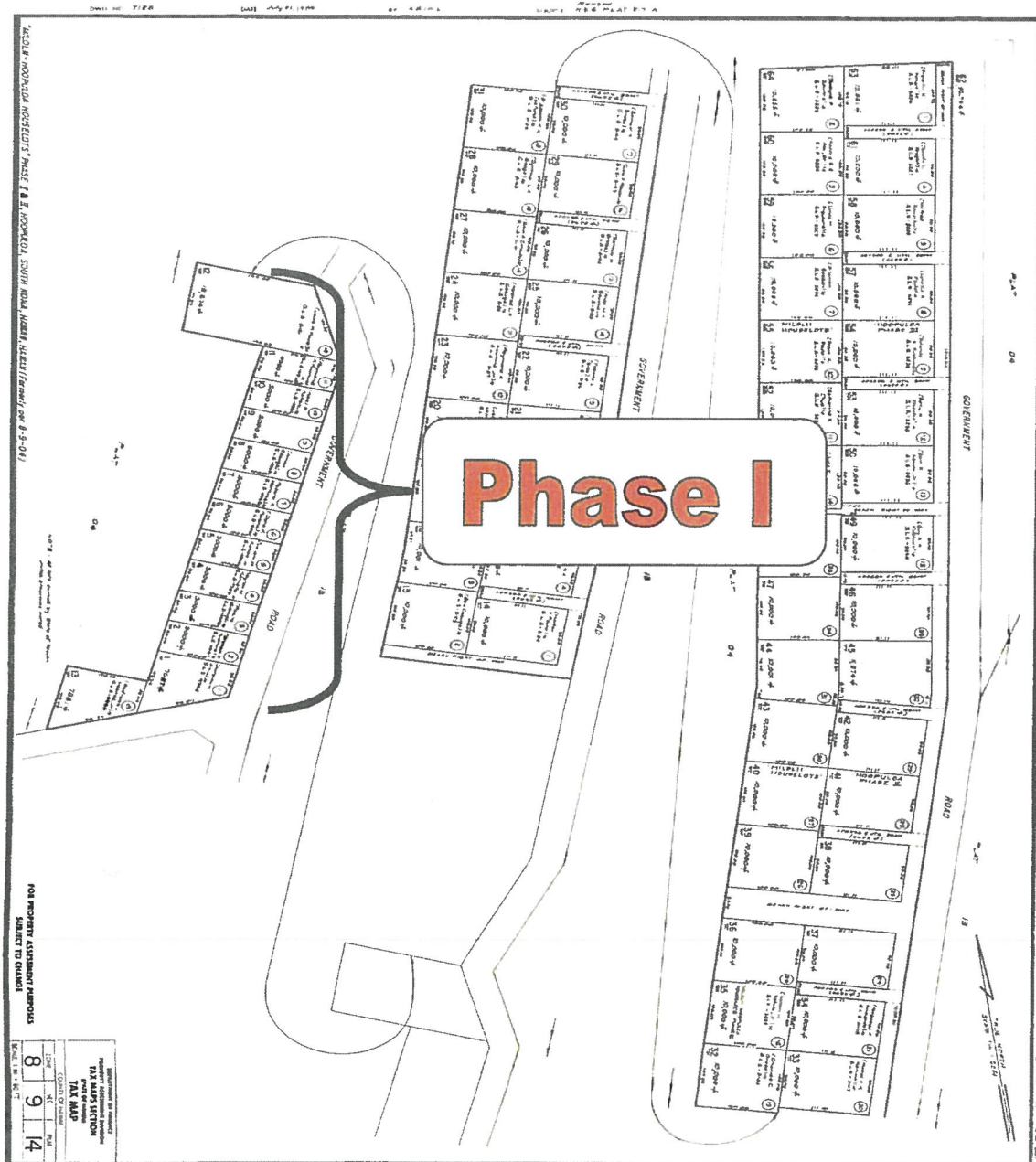


EXHIBIT A

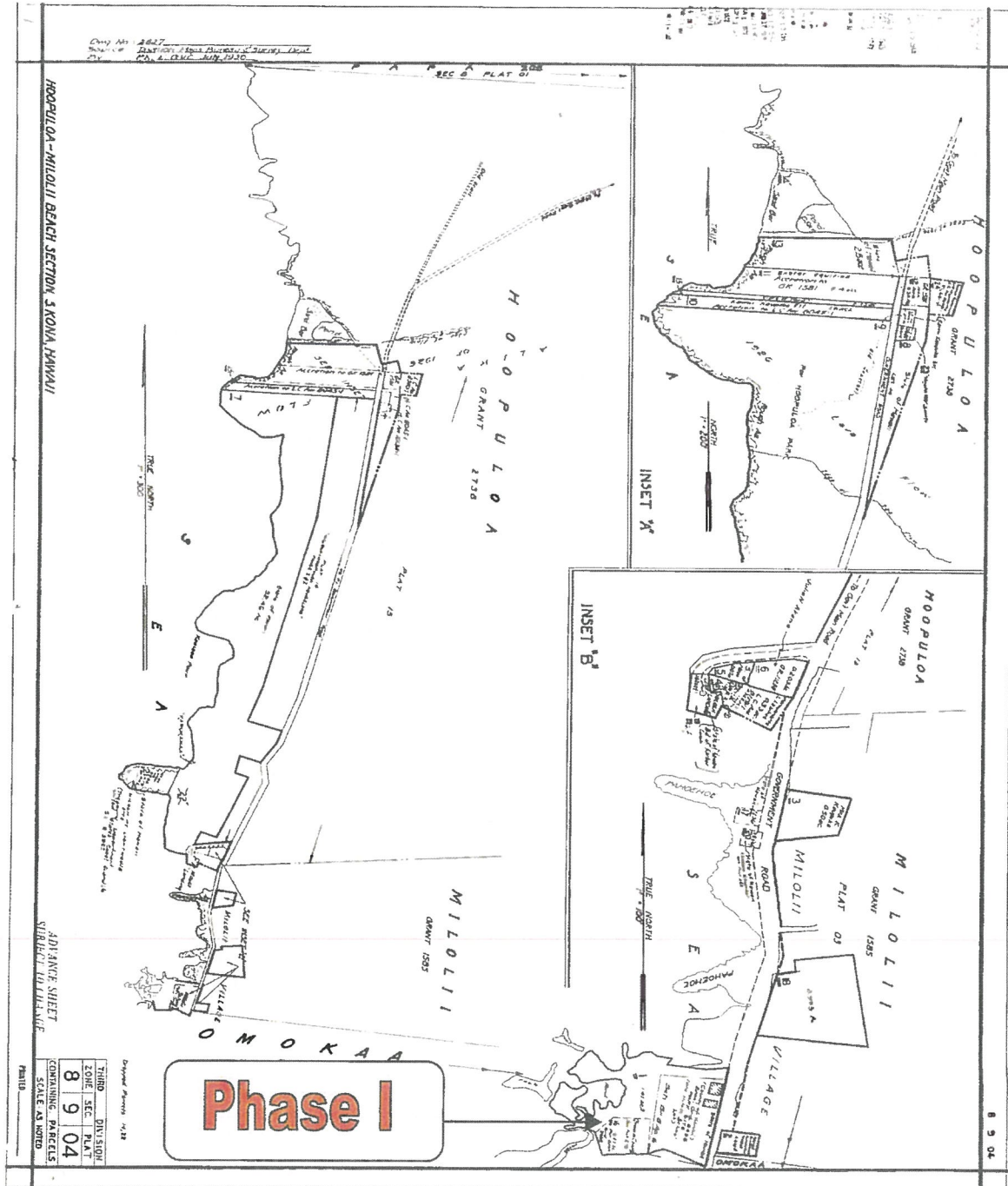


EXHIBIT A

January 13, 2012

MAIL-ABSENT DIVISION
QUICK RESPONSE SERVICE



MAILING LABEL
HAWAIIAN LAND AND NATURAL RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
1555 KALANIANAʻOHE AVENUE, SUITE 200
HONOLULU, HAWAII 96813

GLS-4956; GLS-4957; GLS-4958; GLS-4960;
GLS-4961; GLS-4962; GLS-4963; GLS-4964;
GLS-4965; GLS-4966; GLS-4967

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 511
HONOLULU, HAWAII 96809

December 7, 2010

MEMORANDUM

TO: William J. Aila, Jr., Interim Chairperson
THROUGH: Russell Y. Tsuji, Land Division Administrator
FROM: Cyrus C. Chen, Real Estate Appraisal Manager
SUBJECT: In-House Valuation Recommendation – Rent for Residential Lease Purposes

GL No.: Various (see Table 1)
Lessees: Various (see Table 1)
Location: Milolii Residential Lots, Milolii-Hoopuloa, S. Kona, Hawaii
Land Area: Various (see Table 1)
Tax Map Key: (3) 8-9-14: 1, 2, et al.
Char. of Use: Residential
Effective Date: July 12, 2010

We have been requested to provide annual rent on the properties referenced in Table 1 attached. The residents at Milolii Residential Lots were originally given 65-year residential leases per authority granted by the Legislature of the State of Hawaii in 1985. The rent was fixed at \$132 per annum for the first 25 years of the leases. The subject leases contain reopening provisions, which indicate that rents for the reopening period shall be negotiated between the DLNR and a recognized organization representing the lessees. The leases also state the rent shall be established without comparison to the assessed fair market rental value of the leased properties or any neighboring properties at the time of the negotiations. This document may serve as a guideline to commence negotiations.

The rental reopening date is July 12, 2010 for all the State residential leases at Milolii State Residential Lots. A previous analysis dated November 24, 2010 was approved but had the incorrect effective date. This document corrects the effective date. Staff researched comparable residential lot sales in the surrounding area and several were found at Milolii Beach Lots Subdivision located north of the subject lots. Four comparable sales were analyzed for comparison as shown on Table 2. A 5,000 sq. ft. lot was considered representative of the subject

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EXHIBIT B

January 13, 2012

lots and chosen to represent the subject as a benchmark lot. A land comparable adjustment grid was prepared to derive the lot value for the subject benchmark lot.

According to HDLO staff, the subject lots do not contain basic infrastructure such as county water, sewer or electricity but telephone service is available. Water is provided via catchment system or via a standpipe nearby and sewer service is provided by septic. Generators provide the electricity. According to HDLO staff, the comparables at Milolii Beach Lots Subdivision do have those basic services though MLS data seems to indicate that some of the lots are also on catchment water.

Due to the superior infrastructure of the comps, a negative 25% adjustment was applied. The agricultural zoning of the comps is determined to be superior to the subject's Open zoning and adjusted downward. The other factors of comparison such as location, access/frontage, and physical characteristics were considered similar and no adjustments were warranted. A size adjustment was applied last. To derive rent, a 4% residential rate of return was applied to the subject benchmark lot value.


The derived rent is considered applicable to all subject leases regardless of lot size. During a similar reopening negotiation involving Maunaloa residential leases in Honolulu in 2008, representatives of the Maunaloa lessors expressed concern that since historically all lessees were paying the same rent, offering rents that differed between lessors would potentially create resentment, animosity and possible jealousy amongst the lessees. Therefore, staff feels it prudent to derive a rent which would be applied to all subject leases.

Therefore, as of the effective date, the recommended annual rent for the subject leases is determined to be \$440 per annum as presented on the attached Table 2.

Special Assumptions and Limiting Conditions

- 1) This document does not take the place of an appraisal and does not constitute an appraisal, which adheres to the Uniform Standards of Professional Appraisal Practice.
- 2) Neither the subject properties nor comparable properties were inspected by the staff appraiser.

Approved/Disapproved:


for William J. Aila, Jr., Interim Chairperson

12/4/10
Date

cc: District Branch Files
Central Files

EXHIBIT B

Table 1

Milolii General Leases

GL No.	Lessee	Use	Effective Date	Tax Map Key	Deeded Area (acres)
4956	Antonio Makeana Akia	Residential	7/12/2010	(3) 8-9-14: 1	0.175
4957	Louis Kuahuja	Residential	7/12/2010	(3) 8-9-14: 2	0.119
4958	Mabel K. Forcum	Residential	7/12/2010	(3) 8-9-14: 4	0.115
4959	Lolani Maullili Kahala	Residential	7/12/2010	(3) 8-9-14: 5	0.115
4960	Dora K. Halema	Residential	7/12/2010	(3) 8-9-14: 6	0.115
4961	Rose M. Olsen	Residential	7/12/2010	(3) 8-9-14: 7	0.116
4962	Arnos Casuga	Residential	7/12/2010	(3) 8-9-14: 8	0.116
4963	Elizabeth Sheldyn Baniaga	Residential	7/12/2010	(3) 8-9-14: 10	0.115
4964	Raymond Kukulu Kuehaka, Sr.	Residential	7/12/2010	(3) 8-9-14: 11	0.114
4965	Delgado J. Llanes, Jr.	Residential	7/12/2010	(3) 8-9-14: 13	0.101
4967	Clement Chang, Sr.	Residential	7/12/2010	(3) 8-9-14: 16	0.23

EXHIBIT B

COMPARABLE FEE SIMPLE LAND TRANSACTIONS ADJUSTMENT SCHEDULE									
Milolii-Hoopuloa Houeulua Benchmark Milolii-Hoopuloa, South Kona, Hawaii Tax Map (Key C) 8-P-14; various									
Transaction Number	Subject Benchmark	1	2	3	4				
Tract 1000, Tax Map Key	8-P-14(04); various	8-P-14(04); various	8-P-14(04); various	8-P-14(04); various	8-P-14(04); various				
Address/Street	Government Road	Government Road	Government Road	Government Road	Government Road				
Location	Milolii	Milolii	Milolii	Milolii	Milolii				
Land Area - Square Feet	5,000	5,000	5,000	5,000	5,000				
Land Area - Acres	0.115	0.115	0.115	0.115	0.115				
Zoning	Open	Open	Open	Open	Open				
Transaction Date									
Instrument									
Transaction Price/Value									
Cost Equivalent Sale Price									
Indicated Fee Value Per SF									
Terms of Sale Adjustment									
Adjusted Price									
Time Adjustment Factor									
Time Adjusted Price Per SF									
Adjustments (%)									
Location									
Access/Frontage									
Infrastructure									
Zoning									
Physical Characteristics									
Net Adjustments (%)									
Adjusted Unit Value									
Size Adjustment (80% curve)									
Size Adjusted Unit Value									
Weighting Factor									
Product									

Range of Values	\$1.50 to \$2.81
Mean Unit Value	\$2.17 per sq. ft.
Weighted Unit Value	\$2.16 per sq. ft.
Concluded Unit Value	\$2.20 per sq. ft.
Indicated Site Value	\$2.20 per sq. ft. x 5,000 sf = \$11,000
	Rounded \$11,000
	Rent @ 4% \$440

EXHIBIT B

January 13, 2012

70021

Miloli'i Fishing Village Association
87-1049 Mamalahoe Highway
Captain Cook, HI 96704
June 30, 2011

RECEIVED

JUL 11 10 25 AM

Mr. William J. Aila
Chairperson
Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Re: Ground Rent for General Leases Numbers S-4956, 4957, & 4959-4967: Miloli'i Residential Lots, Miloli'i-Hoopuloa, S. Kona Hawaii.

Aloha Chairman Aila:

The residents of Miloli'i have formed the Miloli'i Fishing Village Association and have registered with the State of Hawaii. This Association will be representing the lessees of the Miloli'i Residential Lots in lease rental negotiations with the DLNR. We have the authorization of the eleven (11) lessees who have a rental reopening date of July 12, 2011 (Phase 1), and are in the process of obtaining the authorization of Phase 2 and 3 lessees. We hope this meets with the Board's approval.

Your department is proposing an increase, from \$132 to \$440 per annum, that was based on your "In-House Valuation Recommendation" dated December 7, 2010. We feel that the valuation analysis, and therefore the increase, is too high because:

1. It is not "consistent with the legislative intent and purposes of Act 62."
2. In the valuation, four comparable sales were used from a nearby subdivision. This is like comparing apples to oranges. Lessees can only sell their leases to descendants of the "Ho'opuloa Refugees", whereas the owners of the "comps" can sell to anyone. No negative adjustment factor was applied to account for this major difference in the "comps."
3. A 4% residential rate of return was used; why not 1%, 2%, or 3%?
4. There have been approximately seven (7) lease sales over the past 25 years in the Miloli'i Residential Lots, and they were not mentioned in the analysis.

Miloli'i is the last fishing village in Hawai'i nei. I doubt that any member of your Board has visited the Miloli'i Residential Lots. We would like to invite all of you to visit us, so that you can see for yourselves that the "In-House Valuation" has nothing to do with reality. In the spirit of being "consistent with the legislative intent and purposes of Act 62," we would like to propose an annual lease rent of \$1 per annum.

Me ka hui'aha'a,

Mrs. Annis Tai Sec
President

Annis Tai Sec

RECEIVED
LAND DIVISION
HIL O HAWAII
2011 JUL 21 P 1:39

EXHIBIT C

Board Action of March 9, 2012, item D-3,
Reconsideration of Rent for Milolii-Hoopulua
Residential Leases, Phase II,
Consisting of Twenty two (22) General Leases
for Residential Purposes at Milolii and Hoopulua,
South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 014-035.

EXHIBIT C

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

March 9, 2012

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

PSF No.: 12HD-023

HAWAII

Reconsideration of Rent for Milolii-Hoopuloa Residential Leases, Phase II, Consisting of Twenty two (22) General Leases for Residential Purposes at Milolii and Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 014-035.

APPLICANT:

Milolii Hoopuloa Fishing Village Association (MHFVA), a Hawaii non-profit corporation, representing Lessees in Phase II, of the Milolii-Hoopuloa Residential Leases.

LEGAL REFERENCE:

Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, and Chapter 171, Hawaii Revised Statutes.

LOCATION:

Portion of Government lands of Milolii-Hoopuloa Houselots, Phase II, situated at Milolii and Hoopuloa, South Kona, Hawaii, identified by Tax Map Keys: (3) 8-9-014: 014-035, as shown on the attached map labeled **Exhibit A**.

AREA:

5.0640 acres, or 220,589 square feet, more or less.

ZONING:

State Land Use District:	Conservation (Milolii Village Special Subzone)
County of Hawaii CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

March 9, 2012

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES ____ NO x

CURRENT USE STATUS:

TAX MAP KEY NO.	GENERAL LEASE NO.	LESSEE	AREA (Square Feet)
(3) 8-9-014: 014	S-5128	ARQUETTE, Rochelle	10,000
(3) 8-9-014: 015	S-5129	CASUGA, Ben B.	10,000
(3) 8-9-014: 016	S-5130	PAULO, Madeline M.K.	10,001
(3) 8-9-014: 017	S- 5131	KUAHUIA, Cheyenne	10,588
(3) 8-9-014: 018	S-5132	CASUGA, Pearline L.K.	10,000
(3) 8-9-014: 019	S-5133	CASUGA, Jack Toribio Sr.	10,000
(3) 8-9-014: 020	S-5134	YOUNG, Kristy N.	10,000
(3) 8-9-014: 021	S-5135	KUAHUIA, Louis Sr. (deceased)	10,000
(3) 8-9-014: 022	S-5136	KANIHO, Felisa S.	10,000
(3) 8-9-014: 023	S-5137	KUAHUIA, Raymond K. Jr.	10,000
(3) 8-9-014: 024	S-5138	CASUGA, Mildred, L.K.	10,000
(3) 8-9-014: 025	S-5139	REYES, Priscilla Gouveia	10,000
(3) 8-9-014: 026	S-5140	GRACE, Samuel Waha (deceased)	10,000
(3) 8-9-014: 027	S-5141	NABOA, Leonard Jr.	10,000
(3) 8-9-014: 028	S-5142	BAEZA, Cynthia, L.K.	10,000
(3) 8-9-014: 029	S-5143	KAUPU, Levi Haina	10,000
(3) 8-9-014: 030	S-5144	HUA, Lisa Ann M.	10,000
(3) 8-9-014: 031	S-5145	TAETUNA, Elizabeth K.K.	10,000
(3) 8-9-014: 032	S-5146	GRACE, Charles (cancelled)	10,000
(3) 8-9-014: 033	S-5147	KAHIWA, Mabel (deceased)	10,000
(3) 8-9-014: 034	S-5148	VICENTE, Rebecca K. (deceased)	10,000
(3) 8-9-014: 035	S-5239	KAHELE, Nelson H. Jr. (cancelled)	10,000
		Total:	220,589

CHARACTER OF USE:

Residential purposes as the lessee's principal domicile purposes.

LEASE TERM:

Sixty-five (65) years, commencing on December 31, 1986 and expiring on December 30, 2051. First rental reopening was scheduled for December 31, 2011.

ANNUAL RENTAL:

Current:

\$132.00 per annum, payable in advance, in semi annual installments of \$66.00, due on the 1st of January and July of each and every year.

Proposed:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005), payable in advance, in semi annual installments of \$240.00, due on the 1st of January and July of each and every year.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 25th and 45th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Not applicable.

DCCA VERIFICATION:

Not applicable. Applicants as individuals are not required to register with DCCA.

The Milolii-Hoopulua Fishing Village Association, a Domestic Non-profit Corporation, registered with DCCA on June 17, 2011.

REMARKS:

Milolii-Hoopulua Residential State Lease:

Phase II, General Lease Nos. S-5128 to S-5148, excluding cancelled leases S-5146 and S-5239.

Act 62, Session Law of Hawaii 1982 was enacted into law by then Governor Ariyoshi on May 10, 1982. The law was enacted to provide lands to relocate village residents or descendents of the Milolii-Hoopulua community, which was destroyed as a result of the 1926 Mauna Loa eruption. Act 62 authorizes the Department of Land and Natural Resources to award long-term residential leases to residents of Milolii and provides criteria whereby residency can be established for those who were actually displaced by the 1926 lava flow.

During the 1984 Legislative session, an amendment to Act 62 was passed, giving the Milolii Development exemption from “all statutes, ordinances, charter provisions, and rules of any government agency relating to zoning of land, and the construction of units thereon.”

At its meeting of June 22, 1984, Item H-2, the Board of Land and Natural Resources approved Amendment to Administrative Rules, Title 13, Chapter 2 and Conservation District Use Application for establishment of the Milolii Village Special Subzone, Subzone Boundary Amendment, and Subdivision for Residential Purposes at Milolii-Hoopulua, Hawaii.

At its meeting of December 28, 1984, Item F-3, the Land Board approved the issuance of direct leases for residential purposes, Milolii and Hoopulua, South Kona, Hawaii.

At its meeting of April 26, 1985, Item F-2, the Land Board awarded twelve (12) grandfathered residences residential leases at Milolii, Phase I, pursuant to Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984.

A Milolii-Hoopulua community association was originally formed under the name of Paa Pono Milolii. For over 20 years, Paa Pono Milolii served as a representative of the community association. Most recently, Paa Pono Milolii experienced some internal problems and was involuntarily dissolved. In February 2003, a Paa Pono Milolii was reestablished, but research indicated that its purpose was not the same as originally created or intended as a representative of the Milolii residential lessees. As a result, by letter dated June 30, 2011, staff was notified of the formation of a “new” association to represent the lessees of the Milolii-Hoopulua community under the name of the Milolii-Hoopulua Fishing Village Association (MHFVA), a domestic non-profit corporation, which registered with DCCA on June 17, 2011.

No government agencies or community interest groups were solicited for comments, as there will be no new dispositions or change in land use.

Although the Land Board could establish a higher rent, the Land Board’s current minimum rent policy that was established to cover the administrative cost in managing a lease on an annual basis is \$480 per year or \$40 per month.

At its meeting of January 13, 2012, under agenda D-12, the Land Board approved the reconsideration of rent over eleven (11) State residential leases under Phase I of the same development, using the minimum rent policy at \$480 per year, or \$40 per month.

ANALYSIS:

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for New Dispositions shall be \$480 per year for

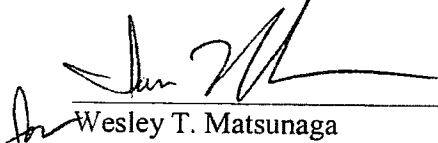
leases. Leases are typically issued via public auction to for profit organizations or directly to non-profits. The subject leases were issued directly as a result of Act 62, Session Laws of Hawaii 1982, and all other laws to the contrary notwithstanding, including Chapter 171, Hawaii Revised Statutes.

Staff recommends the Land Board establish the rental-reopening rate at the minimum amount of \$480 per year for Phase II, based on the Land Board's current minimum rent policy. Staff believes the minimum rent of \$480 per year for Phase II is fair and equitable, especially in light of the Land Board's reaffirmation of the Board's minimum rent policy on those Lessees of the Phase I reopening, Item D-12, January 13, 2012.

RECOMMENDATION: That the Board:

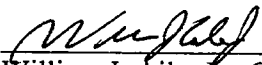
- A. Determine that the lease rent commencing December 31, 2011, under General Lease Nos. S-5128 to S-5148, except for cancelled leases S-5146 and S-5239, shall be:
 1. \$480 per year, in advance, in semi-annual installments of \$240, due on the First of January and July of each and every year;
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

br

