

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

May 25, 2018

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

Ref: GL 5851

OAHU

Approval of Annual Rent at \$9,416 and Denial of Request to Set the Annual Lease Rent at \$480 from February 1, 2018 to January 31, 2028 for General Lease No. S-5851, Windward Retreat Center, Lessee; Kaaawa, Koolaulua, Oahu, Tax Map Key: (1) 5-1-014:051.

APPLICANTS:

Windward Retreat Center, a domestic non-profit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kaaawa, Koolauloa, Oahu identified by Tax Map Key: (1) 5-1-014:051¹ as shown on the attached map labeled **Exhibit 1**.

AREA:

3.880 acres, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

¹ Portions of the leased premises were withdrawn from the lease and sold to the abutting private owner as remnant. The 5-foot wide trail connects the former observation post in the mountain to the main leased area.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by General Lease No. 5851 issued to Windward Retreat Center for retreat center for religious, social (community), and charitable eleemosynary purposes.

LEASE TERM:

35 years commenced on February 1, 2008

CURRENT ANNUAL RENT:

\$480.00.

REENTAL OPENINGS:

10th and 20th years of the lease,

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Good standing confirmed:	YES <u>x</u>	NO <u> </u>

REMARKS:

At its meeting of December 15, 1995 (Item F-10), the Board authorized the issuance of a direct lease to the applicant for the religious, social, and charitable eleemosynary purposes. However, the 1995 approval did not materialize into a lease due to ongoing discussions regarding the leased area and community concerns.

At its meeting of June 9, 2005 (Item D-17), the Board approved as amended the staff recommendation by rescinding the 1995 action and authorizing the issuance of the subject lease. Eventually, the lease was signed in January 2008 with the commencement date on February 1, 2008, with “(community)” added to the character of use.

2018 Rental Reopening

In 2017, Land Division procured the services of an independent appraiser for the first rental reopening of the lease to be effective on February 1, 2018. According to the lease language, the rental reopening “... shall be the fair market rental at the time of reopening.” The appraiser determined the annual fair market rent at \$9,416 after having applied 1% rate of return in consideration of the Lessee’s eleemosynary and non-profit status. Lessee was requested to accept or reject the new rent. If lessee rejects the rent, then the mediation/ arbitration process pursuant to the lease would be followed.

Lessee, at a meeting with the Division, took the position that the past Board actions, in particular, the June 9, 2005 action in which the Board “made a commitment that the lease rent would never be higher than \$6000.00 a year” should be taken into consideration in the reopening process. By a letter dated March 30, 2018 (**Exhibit 2**), the Lessee asked the Board amend the lease to state that the annual rent from February 1, 2018 to January 31, 2028 shall be \$480.

June 9, 2005 Board meeting

For the Board’s reference, a copy of the 2005 submittal and Board minutes are attached as **Exhibits 3-A** and **3-B** respectively.² In 2005, the Board decided that the rent shall not be more than \$500 per month and asked staff to bring the determination of the rent back for the Board’s decision.

October 13, 2006 Board meeting

Staff returned to the Board with the request in October 2006. Page 2, 3rd full paragraph of the 2006 submittal described “nominal rent under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.” Staff recommended the Board set the minimum rent as adopted by the Board on May 13, 2005. Eventually, the Board accepted the staff’s recommendation of \$480 per year. Copies of the Board submittal of October 13, 2006, item D-12 and its minutes are attached as **Exhibits 4-A** and **4-B**.

Land Division Response

1. The lease specifies that reopenings are at fair market value. The lease was agreed to and signed by the Lessee in 2008. The lease contains no “commitment” by the Board to set rent by any other means.
2. The 2005 Minimum Rent Policy intended to reimburse staff costs in maintaining a lease. Since 2005, there has been no adjustment in such policy, whereas the staff costs have escalated. In fact, the 2005 policy does allow staff to bring any cases that require deviation from the policy to the Board for further approval.
3. In Land Division’s view, the reopening appraisal mentioned above fairly considers the relevant aspects of the subject lease, including character of use, usable acreage, presence of caretaker’s dwelling etc., before establishing the fair market value.

Based on the above-mentioned, it is the staff position that the annual rent for the period from February 1, 2018 to January 31, 2028 should be \$9,416 as determined by the independent appraiser. Therefore, staff recommends the Board deny the Lessee’s request set forth in Exhibit 2. The Lessee can still opt for mediation/arbitration pursuant to the lease and applicable law.

² Exhibits to the 2005 and 2006 submittals will only be attached herein if they are relevant to the subject matter.

RECOMMENDATION: That the Board:

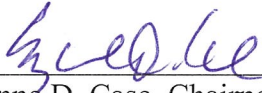
- A. Approve the annual rent of \$9,416 as described above for General Lease No. S-5851 covering the period from February 1, 2018 to January 31, 2028; and
- B. Deny the request from Windward Retreat Center regarding the annual rent from February 1, 2018 to January 31, 2028 as shown on Exhibit 2.

Respectfully Submitted,

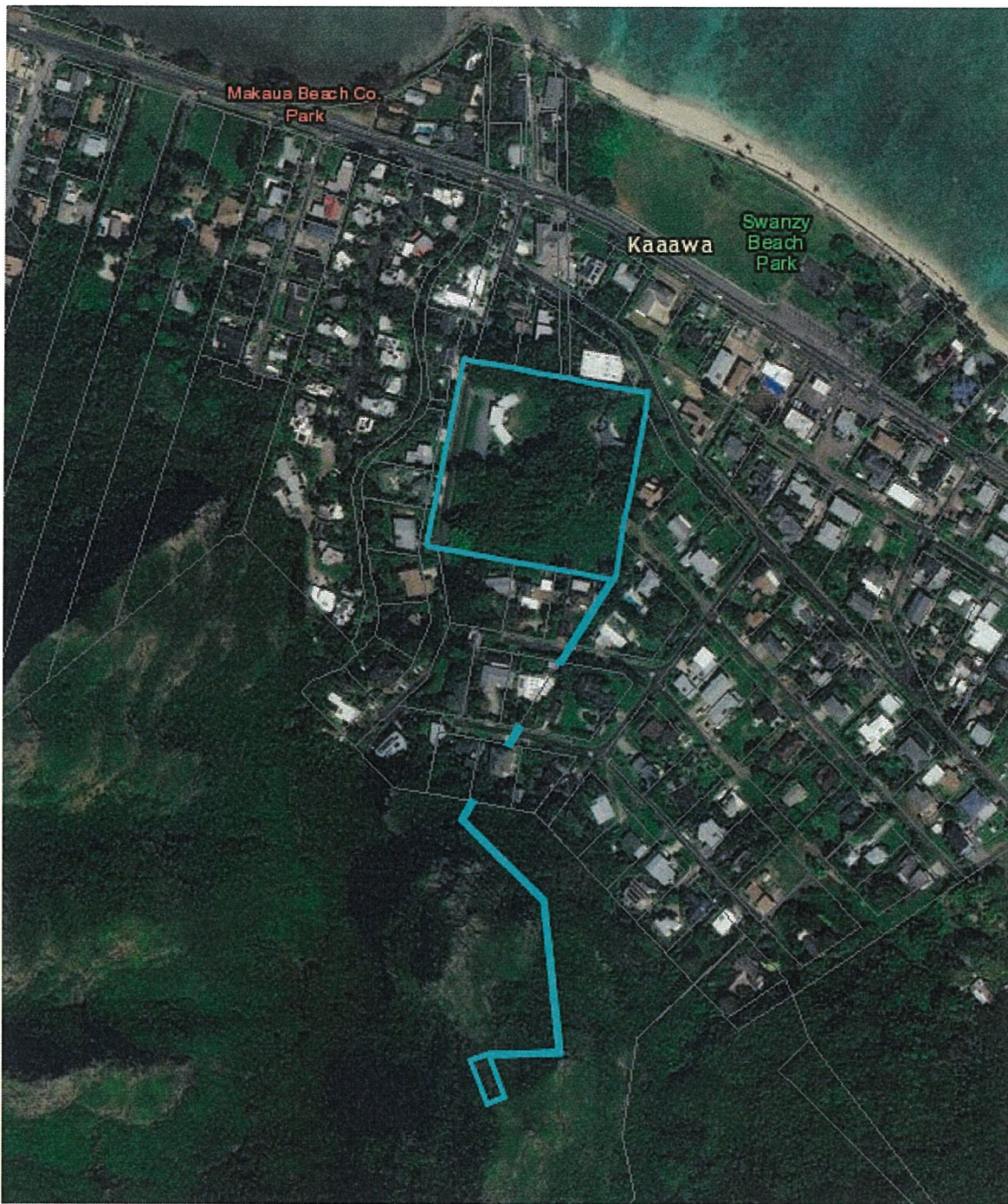


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Tax Map Key: (1) 5-1-014:051

EXHIBIT 1

March 30, 2018

Chairperson Suzanne Case
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

re: Request for Reconsideration of Rent under General Lease No. S-5851 to Windward Retreat Center, Lease for Religious, Social (Community), and Charitable Eleemosynary Purposes.

APPLICANT

Windward Retreat Center, eleemosynary organization which has been certified to be tax exempt under section 501(c)(3) of the Internal Revenue Code. The I.R.S. has additionally recognized the organization as a church under section 170(b)(1)(A)(i) of the I.R.S. Code.

LEGAL REFERENCE

Section 171-43.1 Hawaii Revised Statutes, as amended.

LOCATION

Kaaawa Oahu, Hawaii; TMK(1) 5-1-014:051 (formally 5-1-014; 047)

AREA

3.9 acres, more or less

CHARACTER OF USE

Retreat center for religious, social (community), and charitable eleemosynary purposes.

LEASE TERM

Thirty-five (35) years commencing on February 1, 2008 and expiring January 31, 2043

ANNUAL RENT

\$480.00 per Annum, for the period of February 1, 2008 to January 31, 2018

RENTAL REOPENINGS

10th and 20th years of lease.

BACKGROUND

Windward Retreat Center (WRC) was founded in 1993 as a nonprofit organized in a manner consistent with the traditions, testimonies, faith and practice of the Religious Society of Friends (the Quakers). The center was created as a place of retreat and learning for our members, families, and Friends from around the

EXHIBIT " 2 "

world. A special place where we could come together to practice the tradition of silent worship, along with promoting a safe and healthy community based on strong family values by furthering religious education, hosting educational symposiums, and fostering a greater understanding and appreciation of the many different cultures and faiths within the community.

On December 15, 1995 the Land Board approved a direct lease to Windward Retreat Center. Subsequent Land Boards reaffirmed the Land Board approvals on June 9, 2005 and again October 13, 2006. On each of these occasions the Land Board approved a direct lease for 35 years at nominal rent. At the 2005 Land Board meeting the board made a commitment that the lease rent would never be higher than \$6000.00 a year. In the past ten years WRC has invested over \$500,000.00 in improvements. Outside of Sunday services the center has hosted numerous religious, non-profit groups from the community, along with educational opportunities. (listed below)

WRC became a Red Cross emergency shelter and has invested in a backup water supply, power, and first aid training. WRC became one of the founding members of the Ka'a'awa Emergency Leadership Preparedness group. WRC is an all-volunteer organization with no paid staff or salaries. All contributions from groups who use the facility go to the mortgage, insurance, and maintenance/overhead of the center. WRC has an annual operating budget of \$85,000, which is mostly the mortgage payments and maintenance. In the previous ten years WRC has operated at a loss. Future forecasts look to breaking even as the center matures. Every year, in the past five years that the center has been open, WRC builds more relationships with more organizations utilizing the center. WRC believes the Center is a community resource that is growing each year.

Sampling of groups that have used the center in the past 18 months:

Honolulu Friends Meeting
Windward Worship Group-Quaker
Epic Ministry (Our Lady of Sorrows)
Ola Lokahi (Hawaiian cultural education)
Contemplative Outreach Hawaii
Hawaii Nature Conservancy
Hawaii Korean Cultural Center
Hawaii Presbyterian Church
University of Hawaii – School of Hawaiian Knowledge
Habitat for Humanity Hawaii
Epic Ohana Inc. (Foster children advocates)
Hawaii People's Fund
Ka'a'awa Roads Association
Leeward Community Church
Institute Human Services
Hawaii Learning Tree
Hawaii Realtors Association
Red Cross of Hawaii
Ka'a'awa Emergency Leadership Preparedness Group
University of Hawaii – Women's Studies
Hawaii Junior Chamber of Commerce
Natalie Cruz- Meditation & Yoga
Mind & Body Aloha retreat
Hawaii Central Presbyterian Church – Korean Ministry
Kirtan Retreat with Gina Sal'a (Sound healing from India)
Dr. Elizabeth Kashinski (environmental grief)
Tibetan Buddhist Meditation retreat
Central Union Church
Hawaii Presbyterian Church
Rite of Illumination
M.P.H. Woman's retreat
Warriors at Ease
Hongwanji Minister's Spouses Association
Amanda Hess, LMHC (mental health counseling)
Karen Korona, M.S., Holistic Health and Wellness Practitioner

Photographic workshop with Stormy Solis
University of Hawaii – STDT Leadership Development Program
Hula Retreat- Ola Lokahi
Art with Gregory Radionov
Spartan Race
Oahu Modern Quilt Guild
Kailua AA therapy
Third Vessel Retreat
Yoga training with Katy Shaw
New Hope Church
Living Healthy Hawaii
Quilting with Annie Nguyen
East West Center at the University of Hawaii
Dr. Satya (brain injury recovery)
Yoga/meditation with Kathleen Sheets
Four Women Radical Retreat (female empowerment)
Hamoea Healing Arts (Lomi Lomi massage training)
Council for Native Hawaiian Advancement

REQUEST: That the Board

1. Amend General lease S-5851 to Windward Retreat Center to add: "Effective February 1, 2018 to January 31, 2028 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.
- 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,

Brett Pruitt
Volunteer Executive Director
Windward Retreat Center
P.O.Box 37247
Honolulu, Hawaii 96837

cc. Land Administrator, Russell Tsuji

AMENDED

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

June 9, 2005

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

PSF No.: 99OD-139

OAHU

Resubmittal - Rescind Prior Board Action of December 15, 1995, (Item F-10) and Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-14:por. 47 and 5-1-11:por. 55

APPLICANT:

Windward Retreat Center, whose business and mailing address is 51-019 Lau Place, Kaaawa, Hawaii 96730.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands at Kaaawa, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-1-14:47, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 3.670 acres, more or less, to be confirmed by DAGS Survey.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: R-5

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:

Vacant and unencumbered.

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON MC
T. 0 2005

Jun 9, 2005
-submittal

EXHIBIT "3-A"

ITEM D-17

CHARACTER OF USE:

Retreat center for religious, social (community), and charitable eleemosynary purposes.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the end of the 10th and 20th years of the lease term, by staff or independent appraisal.

MINIMUM IMPROVEMENTS:

Within 5 years from the commencement date of the lease, the Lessee shall have completed the construction of improvements having a value of not less than \$284,400. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

IMPROVEMENT BOND:

\$175,617.00

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 1993 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u> x </u>	NO	<u> </u>
Registered business name confirmed:	YES	<u> x </u>	NO	<u> </u>
Applicant in good standing confirmed:	YES	<u> x </u>	NO	<u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent and
- 2) Pay for the costs of public notice pursuant to section 171-16.

BACKGROUND:

This submittal was deferred by the Land Board at its meeting of August 13, 2004, under agenda item D-8. Applicants requested a deferral.

REMARKS:

On November 23, 2004, Applicants submitted a list of concerns that we have attached as Exhibit B and they are:

Item 2, the annual rent: Staff explained to the Applicant that the past practice was in error. As previously stated: "The Department of the Attorney General has corrected our Department and stated that it is improper to transfer to OHA 100% of the 20% of fair market rent we are collecting." Furthermore, to eliminate favoritism and lack of expertise by our staff, our submittals will now recommend fair market rent and the Board, who has the authority, can determine what the annual rent should be for the non-profit group. In this case, Applicant is requesting that the Board consider that annual rent should stay at 25% of fair market value or the rent should be made nominal. We defer to the Land Board on this.

Item 4, the minimum improvement amount: A revised Business Plan (Exhibit C) has been submitted. The construction cost as of December 19, 2004 is estimated to be \$284,400 for 2 structures totaling 2,844 square feet. Therefore, staff has changed the minimum improvement amount previously from \$775,000 to \$427,000 to now, \$284,400. Staff has corrected our submittal.

Item 5, the improvement bond amount: Our practice is to obtain a bond in the amount of the minimum improvements, not two times the annual rental. The two times the annual rental is for a performance bond. Applicants revised business plan reflects using labor donated by members and materials donated by the construction industry in the amount of \$108,783. Approximately \$175,617 of the construction will be done by a licensed contractor. Applicant is requesting the improvement bond amount reflect \$175,617. Staff has corrected our submittal.

Item 6, not including the road remnants into the lease: Applicant is requesting the remnants not be subdivided out from the larger parcel. Currently, portions of roads (or remnants) are used by the general public as a road and are part of the The Kaaawa Beach Owners Association roadways. The Association has expressed interest in acquiring these portions of road. Also, since August 2004, all of the

abutting property owners have expressed interest in purchasing portions of the remnants adjacent to their lots. Mr. John Morgan, Kualoa Ranch Inc. has indicated he has contacted a licensed land surveyor to complete the subdivision and consolidation. The owners want to complete the acquisition. Applicant is proposing an exception be made to allow the State to withdraw these road remnants and sell the road remnants to the abutting property owners in the future. Currently, all State leases have a withdrawal provision - "The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, 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 shall be paid based upon the unexpired term of the lease." Staff has corrected our submittal.

Item 8, DCCA verification: That matter has been resolved with DCCA. Staff has corrected our submittal.

Items 11, 12, and 13, cover the requirement to complete survey map and description, City permits and approvals, and subsurface archaeological survey prior to execution of the new lease: Applicant is requesting the lease be executed before these items are completed. Applicant has indicated they will obtain these approvals, but will not expend any more monies unless they have assurance they will get the lease from the State. Staff has corrected our submittal. Additionally, staff recommends the breach provision in the new lease be modified for breach of non-financial items; the cure period shall be thirty (30) days instead of sixty (60) days.

Item 17, the lease condition not to use Hiwahiwa Road as a right-of-way or driveway for ingress or egress: Applicant has submitted letter dated December 11, 2004 from Ms. DeeDee Letts, President of the Kaaawa Community Association indicating Humalani Road would be the ingress and egress for the retreat center and Hiwahiwa Road would be the access for caretaker residence (Exhibit D). Staff has corrected our submittal.

Item 18, additional lease conditions: Applicant is requesting the lease conditions approved by the Kaaawa Community Association January 1994 (see Exhibit E) be incorporated into the new lease. For Items i and j, staff contacted the City if such requirement is necessary. The City is concerned that establishing setback requirements in the lease

may conflict with the City's setback ordinances. For Item 1, staff discussed this with State and Oahu Civil Defense and there is no such certification program. Staff has corrected our submittal.

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The rent is established as fair market rent by appraisal. When a rental reopening occurs during the term of the lease an appraiser sets the new rent at fair market value.

However, when the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may lease, at a nominal rent, by direct negotiation. The statute that addresses this option of the Board is summarized as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse 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. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations, the Board has the option to dispose of via public auction at fair market rent or by direct negotiation at nominal rent.

RECOMMENDATION: That the Board:

1. Rescind its prior action of December 15, 1995, under agenda item F-10.
2. Determine that the lease rent for Windward Retreat Center shall be:

Fair market rent

Or

Nominal rent.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the Windward Retreat Center covering the subject area under the terms and conditions cited above,

which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
- B. Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty (60) days.
- C. Submit subsurface archaeological survey by a qualified archaeologist subject to review and approval by the State Historic Preservation Division (SHPD); provided that if historic sites are found, a mitigation plan shall be developed and implemented to the satisfaction of SHPD within sixty (60) days.
- D. There shall be no more than four (4) retreat buildings and an entry building.
- E. There shall be no more than ninety (90) center participants on the premises at any one time.
- F. Ingress and egress to the center shall be from Humilani Street including for emergency purposes. Access for the caretaker cottage shall be from Hiwahiwa Street by a single driveway.
- G. Users of the premises shall be community groups, religious groups, non-profit organizations, government agencies, and people associated with such groups, organizations and agencies.
- H. The center shall not be used for profit purposes.
- I. The center shall not be used for commercial purposes.
- J. Activities at the center shall be of a quiet nature. Weddings, birthday parties, luaus or other similar events shall not be allowed on the premises.
- K. The Kaaawa community individuals and organizations shall be allowed to meet at the center at no charge, as approved by the program committee of the center. The program committee shall include the residents from Kaaawa.
- L. No intrusive bright outdoor lighting shall be employed.
- M. Change the withdrawal provision to allow the State to

June 9, 2005

withdraw the road remnants and sell the road remnants to the abutting property owners.

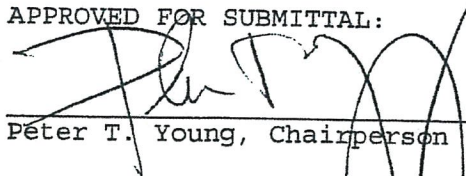
- N. Change the breach provision of non-financial items. The cure period shall be thirty (30) days.
- O. Review and approval by the Department of the Attorney General.
- P. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



 Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

Approved as amended. The Board amended the submittal by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff is to bring this back for Board decision on what the annual rent should be.

Item D-17: Resubmittal – Rescind Prior Board Action of December 15, 1995, (Item F-10) and Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-14: por. 47 and 5-1-11:por. 55.

Charlene Unoki, Assistant Administrator of the Land Division disclosed this permit was issued in 1995 for a direct lease to Windward Retreat Center for thirty-five years. Subsequently there were disagreements over certain portions of the lease between the lessee and staff, which was later, worked out. Staff has incorporated comments into the new lease made by the neighborhood board. Ms. Unoki announced that the applicant is asking the Board that they be considered a non-profit organization. Ms. Unoki recommended the Board Rescind its prior action of December 15, 1995, under agenda item F-10, determine that the lease rent for Windward Retreat Center shall be fair market rent or nominal rent and authorize the issuance of a direct lease to the Windward Retreat Center cover the subject area under the terms and conditions listed in the submittal.

Member Inouye questioned staff as to what is considered "Fair Market" rent and "Nominal" rent and what is the determining factor.

Ms. Unoki pointed out 171-43.1 states the board may lease the subject area at "nominal" rent but it does not define the amount that is considered "nominal."

Board member Inouye disclosed she had no problem issuing a nominal/minimal rent to an organization that provide a direct social service that helps the public on a statewide basis. However, she did have a concern with allowing a nominal/minimal rent to special interest groups.

Brett-Pruett reminded the Board this lease was approved in 1995 as a direct lease at nominal rent plus the statutory twenty (20) percent to the Office of Hawaiian Affairs (OHA). Since that time the Attorney General's Office concluded the twenty (20) percent of the rent given to the Office of Hawaiian Affairs was not legal. Mr. Pruett asked the Board to reaffirm the decision made by the previous Board and charge their organization nominal rent which was determined to be five (5) percent of fair market value plus twenty (20) percent to OHA.

Bob Stauffer, President of Windward Retreat Center let it be known the previous tenants who were a non-profit organization had the subject parcel appraised at \$16,000 a year. He pointed out they've progressed with this lease bearing in mind a lease rent of \$4,200 per month.

The Board approved the direct lease but amended the Recommendation Section to state that the rent shall not be more than \$500 per month. The Board asked staff to bring this item back to the Board on the determination of the annual rent.

Unanimously approved as amended (Inouye/Agor).

Jun 9, 2005
- minutes
EXHIBIT "3-B"

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

AMENDED

October 13, 2006

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

PSF No.: 990D-139
OAHU

RESUBMITTAL - Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Keys (1) 5-1-14:por. 47 and 5-1-11:por. 55

BACKGROUND:

At its June 9, 2005 meeting, under agenda Item D-17, the Land Board approved to rescind its prior approval of December 15, 1995 and issue a direct lease to Windward Retreat Center for religious, social (community), and charitable eleemosynary purposes. The Board further amended its approval by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff was to bring this back to the Board to decide on the amount annual rent to assess the Applicant.

Subsequently, the Applicants have decided that the rent of \$500 per month (or \$6,000 per year) is acceptable.

Staff requested the Attorney General's office to prepare the new lease. The Attorney General's office has informed us there are several items that need to be approved by the Land Board. First, confirm that the rent shall be \$500 per month or \$6,000 per year. Second, Recommendation N states: Change the breach provision of non-financial items. The cure period shall be thirty (30) days. This lease provision conflicts with Section 171-20, Hawaii Revised Statutes. The cure period for non-financial items to be within sixty (60) days. This needs to be deleted in its entirety.

Subsequently, at its June 9, 2006 meeting, under agenda Item D-13, staff requested the Land Board to defer this matter.

OUTSTANDING ISSUES AND ANALYSIS:

As background, the Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by

Oct 13, 2006
- Submittal

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

October 13, 2006

EXHIBIT "4-A"

an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse 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. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues Leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

Applicant's have no objections to the \$6,000 per year rent as determined by the Land Board at its meeting of June 9, 2005. Staff notes that the Applicant's qualify for reconsideration by the Land Board as a non-profit.

To comply with instructions from the Attorney General's office, staff is requesting the Board to delete Recommendation N (Change the breach provision of non-financial items. The cure period shall be thirty days.) As it is written, this provision conflicts with Section 171-20, Hawaii Revised Statutes. The statutes provide a cure period for non-financial items to be within sixty (60) days.

Applicant completed an environmental assessment and received a negative declaration published in the OEQC Bulletin on July 8, 1993. All that remains outstanding is the Special Management Area permit and Conditional Use Permit. Currently, the process for obtaining City and County of Honolulu permits and approvals is very slow (backlogged). The Applicant would have difficulty in complying with our Recommendation B (Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty

(60) days.) Based on this, staff is recommending this be amended by deleting the word 'Obtain' and replacing it with 'Shall start'. Furthermore, staff believes the Attorney General should put additional wording into the new lease in the event the Applicant is unsuccessful in obtaining a Special Management Area Permit and/or a Conditional Use Permit from the City and County of Honolulu. The new lease shall be automatically terminated without the requirement of a Land Board hearing.

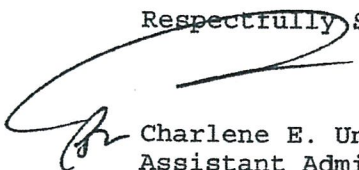
COMMENTS:

Staff is attaching as part of this submittal Mr. Jim Anthony, Ph.D. request that Windward Retreat Center for a direct lease should be denied. Exhibit D.

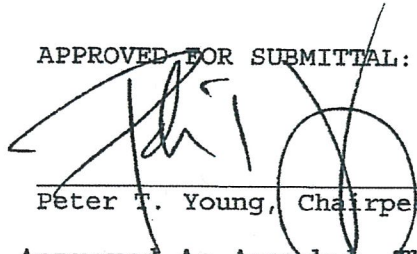
RECOMMENDATION: That the Board

- A. Amend its prior action of June 9, 2005, under Item D-17, by:
1. The annual rental shall be \$480;
 2. Delete Recommendation N;
 3. Amend Recommendation B by deleting the word Obtain and replacing it with Shall start. Add: In the event the Applicant is unsuccessful in obtaining a Special Management Area Permit and/or a Conditional Use Permit from the City and County of Honolulu. The lease shall be automatically terminated without a Land Board hearing; and
 4. All terms and conditions listed in its June 9, 2005 approval to remain the same.

Respectfully Submitted,


Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

Approved As Amended. The Land Board added the following condition B to the recommendation section of staffs' Submittal:

"B. Staff shall write a letter to the Applicant requesting that it obtain official position statements from the Kaaawa Community Association and the Koolauloa Neighborhood Board on whether they support the issuance of a direct lease to the Applicant; and within sixty (60) days of October 13, 2006, staff shall report back to the Land Board with the status and results of the Applicant's efforts to obtain the official position statements from the aforesaid two (2) organizations."

D-12: RESUBMITTAL – Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, TMK: (1) 5-1-14:por. 47 and 5-1-11:por. 55 (ADMINISTRATION/Charlene)

Ms. Charlene Unoki, Assistant Administrator for the Land Division, stated that this is a resubmittal to make some changes as suggested by the Attorney General. The community has concerns about the applicant. They would like to know what the applicant is planning to do, would like to have more community meetings with the respective boards, and basically they would just like to have more time. However, the applicant is saying that they have done some of these things and have addressed some of the concerns into the new lease.

Brad Pruitt, from the Windward Retreat Center, stated that on June 9, 2005, the Board approved a 35 year lease to the applicant for a property in Kaaawa. At that time, the Board had set a ceiling \$6,000 annually for the lease rent, but was also working on a policy for what a nominal land rent meant, so, they asked the applicant to come back before the Board when that definition was determined. The applicant was promised that they could move forward once that was complete. They are not ready to do so and the \$6,000 annually seemed reasonable to them, but if the Board would like to reaffirm the previous Land Board action in 1995, which set the rent at a nominal rent, this would assist them greatly. The applicant is aware that they will never have the support of Mr. Anthony nor Mr. Geldermann despite trying for 10 years. They have gotten support, twice from the Kaaawa Community Association and the Koolauloa Neighborhood Board has recommended support of this project twice. They are currently trying to schedule a community forum as a part of the DPP planning process and have always shaped this project with the community in mind.

Dr. Anthony would like to oppose the submittal and stated the applicant had never, in the last 10 years, have a conversation with him about this project. For the last 3 years, the community has been trying to get the applicant to provide for them their 990s that are supposed to be filed with the internal revenue service. He states that this is an organization with no track record for running retreats nor is there any evidence of the funds to develop this project. There is no need for another retreat center. There is already one in existence, 6 houses down the road which more than adequately addresses the needs of people wanting to hold retreats on the Windward coast. Also The United Methodist Church has land in which they have asked permission to build a multi-use retreat center.

Mr. Geldermann, who lives next door to this property, also is greatly opposed to this project. He states that Mr. Pruitt is a volunteer of the church and is doing this only so that he may build a caretakers cottage on the property and live there as the caretaker. Community has never been kept informed about this project; the only meeting they were informed of was the Koolauloa Neighborhood Board Meeting in which the applicant was turned down and told to go back to the Kaaawa Community Association and get their approval first. They went back to the Community Association in February where it was approved and there was no opposition because the community knew nothing about it. Numerous community members were not informed about this Board Meeting as well and therefore are asking for this action to be deferred.

Oct 13, 2006
- minutes

EXHIBIT "4-B"

In response to the comments made, Mr. Pruitt stated that in 2001 the Kaaawa Community Association unanimously voted to support the project. They asked for the applicant to represent the project as they got closer to the lease date and they did so in August 2005. At that time, the Community Association set up a subcommittee of immediate neighbors to discuss the project and concerns. Mr. Gelderman chaired that committee so he must understand what has been happening. Also at one of the Community Association meetings, Dr. Anthony and Mr. Geldermann both testified against the project.

Member Johns and Edlao were concerned with the fact that the community seemed to be in the dark about this project. Therefore, Member Johns made a motion to accept Staff's report, but to add a recommendation B in which the applicant will get a statement of position from both the Kaaawa Community Association and the Koolauloa Neighborhood Board. It will then be placed on the next agenda as a report for the Board's further consideration.

The Board:

Approved As Amended. The Land Board added the following condition B to the recommendation section of staffs' Submittal:

"B. Staff shall write a letter to the Applicant requesting that it obtain official position statements from the Kaaawa Community Association and the Koolauloa Neighborhood Board on whether they support, or do not support the issuance of a direct lease to the Applicant; and within sixty (60) days of October 13, 2006, staff shall report back to the Land Board with the status and results of the Applicant's efforts to obtain the official position statements from the aforesaid two (2) organizations."

Unanimously approved as amended (Johns, Edlao)
