Amend Prior Board Action of January 12, 2018, Item D-7, Resubmittal: Determination of Rent upon Reopening for Milolii-Hoopuola Residential Leases, Phase III, Consisting of Five (5) General Leases for Residential Purposes at Milolii and Hoopuola, South Kona, Hawaii, Tax Map Keys: (3) 8-9-014: 050, 053, 056, and 060-061

The Purpose of the Amendment is to correct the general lease numbers referred therein to General Lease Nos.: S-5226, S-5227, S-5230, S-5235, and S-5236.

BACKGROUND:

On January 12, 2018, under Item D-7, the Board approved the Resubmittal: Determination of Rent upon Reopening for Milolii-Hoopuola Residential Leases, Phase III, Consisting of Five (5) General Leases for Residential Purposes at Milolii and Hoopuola, South Kona, Hawaii, Tax Map Keys: (3) 8-9-014: 050, 053, 056, and 060-061. A copy of the approved submittal is attached as Exhibit 1.

REMARKS:

Staff noticed typographical errors made in the affected general lease numbers ("GL Nos.") throughout the submittal and need to correct the affected GL Nos. The GL Nos. are critical in modifying the rents approved by the Board during the Rent Reopening process as specified in the lease terms.

Staff is therefore recommending that the Board amend its prior action of January 12, 2018, agenda item D-7, by correctly identifying the general lease numbers noted therein as GL Nos.: S-5226, S-5227, S-5230, S-5235, and S-5236.
RECOMMENDATION: That the Board:


2. Acknowledge that, except as amended hereby, all terms and conditions listed in the Board’s action of January 12, 2018 shall remain the same.

Respectfully Submitted,

Darlene Nakamura
Real Estate Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson
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:

LOCATION:
Portion of Government lands of Milolii-Hoopuloa House lots, 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

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

January 12, 2018

D-7

EXHIBIT 1
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:

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

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-Hoopuloa 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-Hoopuloa 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-Hoopuloa 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-Hoopuloa 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
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-Hoopuloa 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-Hoopuloa 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-Hoopuloa, 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 Hoopuloa, South Kona, Hawaii.


Community Association:

A Milolii-Hoopuloa 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-Hoopuloa community under the name of the Milolii-Hoopuloa 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-Hoopuloa:

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-Hoopuloa 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-Hoopuloa 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) leases 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 Filomeno Sesson, 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-Hoopuloa Residential Leases (Leases which are the Subject of this Submittal):

Five (5) additional Milolii-Hoopuloa 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-Hoopuloa 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-Hoopuloa 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-Hoopuloa 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-Hoopuloa House lots, 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 (Maps 1 and 2) and A-2 (Maps 3 and 4)
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
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-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.

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

LEGAL REFERENCE:

LOCATION:
Portion of Government lands of Milolii-Hoopuloa Houselots, Phase I, situated at Milolii and Hoopuloa, 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

January 17, 2018

D-12
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:

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<thead>
<tr>
<th>TAX MAP KEY NO.</th>
<th>GENERAL LEASE NO.</th>
<th>LESSEE</th>
<th>AREA (Square Feet)</th>
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<tr>
<td>(3) 8-9-004: 016</td>
<td>S-4967</td>
<td>CHANG, Clement Sr.</td>
<td>10,000</td>
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<td>(3) 8-9-014: 001</td>
<td>S-4956</td>
<td>AKIU, Antonio M.</td>
<td>7,627</td>
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<td>(3) 8-9-014: 002</td>
<td>S-4957</td>
<td>KUAHUIA, Louis Jr.</td>
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<td>(3) 8-9-014: 003</td>
<td>S-4958</td>
<td>BILLINGS, Pacita</td>
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<td>FORCUM, Mabel K. (deceased)</td>
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<td>S-4960</td>
<td>KAHELE, Leilani M. (deceased)</td>
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<td>S-4962</td>
<td>OLSEN, Rose</td>
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<td>S-4963</td>
<td>CASUGA, Amoe (deceased)</td>
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<td>BANIAGA, Sheldyn E.</td>
<td>5,000</td>
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<td>KUAHUIA, Raymond K. Sr.</td>
<td>4,980</td>
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<td></td>
<td></td>
<td></td>
<td>Total: 70,488</td>
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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 Hoopuloa Fishing Village Association, a Domestic Non-profit Corporation, registered with DCCA on June 17, 2011.

REMARKS:
Milolii-Hoopuloa 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-Hoopuloa 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-Hoopuloa, 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 Hoopuloa, South Kona, Hawaii.


A Milolii-Hoopuloa 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-Hoopuloa community under the name of the Milolii Ho'opuloa 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
BLNR – Rental Renegotiation for Milolii hoopuloa Fishing Village Assoc.

Page 6

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,

[Signature]
Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:

[Signature]
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
MEMORANDUM

TO: William J. Aiba, Jr., Interim Chairperson

THROUGH: Russell Y. Tanig, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager

SUBJECT: In-House Valuation Recommendation—Rent for Residential Lease Purposes

December 7, 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 lease. 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 3,000 sq. ft lot was considered representative of the subject

EXHIBIT B
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 systems or via a standpipe nearby and sewer service is provided by septic. Generators provide the electricity. According to HDLO staff, the comparables at Miloli 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 camp, a negative 25% adjustment was applied. The agricultural zoning of the camp is determined to be superior to the subject’s Open zoning and adjusted downward. The other factors of comparables 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 Maalaha residential leases in Honolulu in 2006, representatives of the Maalaha lessees expressed concern that since historically all lessees were paying the same rent, offering rents that differed between lessees 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:

William J. Aila, Jr., Interim Chairperson

Date

EXHIBIT B
### Table 1: Molii General Lessee

<table>
<thead>
<tr>
<th>GL No.</th>
<th>Lessee</th>
<th>Use</th>
<th>Effective Date</th>
<th>Tax Map Key</th>
<th>Desired Area (Acres)</th>
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<tr>
<td>4950</td>
<td>Antonio Makana Akku</td>
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<td>8-6-14: 1</td>
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<td>4936</td>
<td>Mehal X. Farrug</td>
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<td>7/1/2010</td>
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<td>4930</td>
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<td>Dethe K. Hele</td>
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<td>Rosse M. Ohu</td>
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<td>4863</td>
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<td>4865</td>
<td>Elizabeth Shealyn Bentigue</td>
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<td>8-6-14: 10</td>
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<td>4900</td>
<td>Raymond Kukula Kupuia, Sr.</td>
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<td>4909</td>
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<td>7/1/2010</td>
<td>8-6-14: 16</td>
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</tbody>
</table>

**EXHIBIT B**
EXHIBIT B
Milolii Fishing Village Association
87-1049 Metulino Highway
Captain Cook, HI 96704
June 30, 2011

Dear Mr. William J. Aills,

On behalf of the residents of the Milolii Fishing Village Association, we are writing to you in regards to the leasehold parcels #4956, #4957 & #4959-4967, which are located within the Milolii Fishing Village Association. The Association is currently in the process of negotiating new lease terms with the Board of Land and Natural Resources (BLNR). We wish to express our concerns regarding the rental renegotiation process.

The Association has informed the residents that the new lease terms will include an increase in rent, from $132 to $440 per annum, which was based on an “In-House Valuation Recommendation” dated December 7, 2010. This increase is due to the following factors:

1. The valuation was not consistent with the legislative intent and purposes of Act 62.
2. The calculation used four comparable sales made in a nearby subdivision.
3. It is like comparing apples to oranges. Leasehold parcels are only sold to descendants of the “Ho’opu’a Refugio,” whereas the owners of the “comps” can sell to anyone. No adjustment was made for this difference.
4. A 4% return on investment was used; why not 1%, 2%, or 3%?

The residents believe that the increase is not justified and is not 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 iu’aha’a,

Mrs. Annie T. See
President
Board Action of March 9, 2012, item D-3,
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.
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:


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

YES [ ] NO [ ]

**CURRENT USE STATUS:**

<table>
<thead>
<tr>
<th>TAX MAP KEY NO.</th>
<th>GENERAL LEASE NO.</th>
<th>LESSEE</th>
<th>AREA (Square Feet)</th>
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<tr>
<td>(3) 8-9-014: 014</td>
<td>S-5128</td>
<td>ARQUETTE, Rochelle</td>
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<td>CASUGA, Ben B.</td>
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<td>KUAHUIA, Cheyenne</td>
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<td>S-5133</td>
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<td>YOUNG, Kristy N.</td>
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<td>KANIHO, Felisa S.</td>
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<td>S-5239</td>
<td>KAHELE, Nelson H. Jr. (cancelled)</td>
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<tr>
<td><strong>Total:</strong></td>
<td></td>
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<td><strong>220,589</strong></td>
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</table>

**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-Hoopuloa Fishing Village Association, a Domestic Non-profit Corporation, registered with DCCA on June 17, 2011.

**REMARKS:**

Milolii-Hoopuloa 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-Hoopuloa 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-Hoopuloa, 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 Hoopuloa, South Kona, Hawaii.


A Milolii-Hoopuloa 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-Hoopuloa community under the name of the Milolii-Hoopuloa 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
Phase II

EXHIBIT A