

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

June 28, 2019

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

HAWAII

Consent to Assign General Lease No. S-5234, Catherine Chua, Assignor, to Yvonne Tuihalafatai, Assignee, Milolii-Hoopulooa Houselots Phase I & II, Hoopulooa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014:052.

APPLICANT:

Catherine Chua, as Assignor, to Yvonne Tuihalafatai, married, tenant in severalty, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Milolii situated at Hoopulooa, South Kona, Hawaii, identified by Tax Map Key: (3) 8-9-014:052, as shown on the attached map labeled Exhibit A.

AREA:

0.23 acre, more or less.

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

CHARACTER OF USE:

Residential purposes as the lessee's principle domicile, provided that the lessee may also store nets, boats, fishing related implements and catch and further, provided that with the prior approval of the Board and upon such condition as the Board may impose, other uses may be permitted.

TERM OF LEASE:

65 years, commencing on June 1, 1992 and expiring on May 31, 2057. Last rental reopening occurred on June 1, 2017; next rental reopening is scheduled for June 1, 2037.

ANNUAL RENTAL:

\$480.00 per annum.

CONSIDERATION:

\$ 10.00.

RECOMMENDED PREMIUM:

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

DCCA VERIFICATION:

Not applicable, as both Assignor and Assignee are individuals and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Assignee shall be required to provide proof of liability insurance required under the lease as a condition to the Chairperson's execution of the consent to assignment.

REMARKS:

On May 10, 1982, the Governor of Hawaii signed Act 62 into law, authorizing the Department of Land and Natural Resources (DLNR) to negotiate long-term residential leases (65-year maximum) with residents of Miloli'i Village and other refugees of the small coastal fishing village of Ho'opuloa, which used to be located approximately half of a mile north of the current Miloli'i settlement until it was inundated by the Ho'opuloa lava flow of 1926 (Mauna Loa).

In 1984, Act 83 was signed, amending Act 62 by exempting the proposed residential subdivision "...from all statutes, ordinances, charter provisions and rules of any

governmental agency relating to zoning and construction standards for subdivision, the development and improvement of land and the construction of units thereon; provided that the DLNR finds the project is consistent with the purposes and intent of this Act and meets minimum requirements of health and safety.” Also included in the amendment was a granted extension of DLNR’s leasing authority under Act 62, SLH 1982, from January 1, 1986 to January 1, 1987.

At its meeting of June 22, 1984, under agenda item H-2 (as amended), the Board approved Conservation District Use Application (CDUA) HA-1/12/84-1653, adopting the designation of the Miloli`i Village Special Subzone and approving the residential subdivision on State lands identified by Act 62, SLH 1982, as amended.

At its meeting of April 26, 1985, item F-2, the Board approved the Direct Awarding of Phase I Leases to “grandfathered” residences in Miloli`i-Ho`opuloa Houselots, Phase I, awarding twelve (12) leases.

At its meeting of October 24, 1986, item F-2, the Board approved the Direct Awarding of Phase II Leases, awarding twenty-one (21) leases.

On July 2, 1987, the Governor signed Act 362 SLH 1987, after the Fourteenth (14th) Legislature passed House Bill No. 428, to re-authorize the negotiations of long-term residential leases between the DLNR and displaced Miloli`i-Ho`opuloa lots. The Act also imposed a sunset clause of either January 1, 1989, or when leases have been negotiated and recorded in the time to process Phase III of the Miloli`i-Ho`opuloa Houselots.

On July 22, 1988, item F-3, the Board approved and authorized the public notice for a registration period for persons who feel that they qualify for residential leases pursuant to Act 62 SLH 1982, as amended. This approval also authorized the establishment of a screening committee for purposes of reviewing the completed registration forms. The committee included two members selected by the Pono Miloli`i Community Association, and one representative selected by each of the following agencies: Legal Aid Society, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, Alu Like, and the DLNR. This screening committee then selected the eligible awardees of the Phase III leases. Eligibility requirements were as follows:

- 1.) Persons who were displaced by, or are descendants of the refugees of the 1962 Ho`opuloa lava flow and who resided and continued to reside in the area set aside by Executive Order No. 473 (EO473) at some point prior to December 31, 1949;
or
- 2.) Persons awarded a lot in some manner under the County management of EO473, and who did not relinquish such right to together or back to the County, and who reside in the area set aside by EO473 at some point prior to December 31, 1949;
or

- 3.) Persons who resided in the area by virtue of assignment of lot by those persons who were awarded a lot in some manner under the County management of EO473; or
- 4.) Any heir, consanguineous or affined, of any person qualifying under Paragraph (1), (2), or (3) of this section who has established residence in the area described in Section 3 of this Act; or
- 5.) Persons who on the effective date of this act reside on the parcel(s) of land listed in Section 4, have permits allowing them to reside on those parcels; and who can prove their claims to the DLNR under the provisions of this act.

The Assignor, Catherine K. Chua, completed an application for the direct awarding of general leases for Phase III of the Miloli'i-Ho'opuloa Houselots subdivision on May 5, 1989 and received by the DLNR Division of Land Management (Land Division) on June 27, 1989.

On February 21, 1992, as a descendent of a refugee who was displaced by the 1962 Ho'opuloa lava flow and actually resided in the area set aside by EO473 at some point prior to December 31, 1949 the Assignor, Catherine K. Chua, was chosen amongst other qualified applicants interested in being awarded a residential lease on Lot No. 11 in Phase III of the Miloli'i-Ho'opuloa Houselots for a term of sixty-five (65) years, commencing on June 1, 1992 and ending on May 31, 2057.

The Assignee, Yvonne Tuihalafatai, sister of the Assignor, Catherine K. Chua. As Assignor's age and health become a factor in the maintenance of the lease, she has decided to assign the lease to Assignee. The two have submitted an executed assignment of lease to staff.

Since the beginning of the lease, the Assignor has had numerous defaults with performance bond and liability insurance. All past defaults have been resolved but is currently in default with liability insurance. Both the Assignor and Assignee have been informed that the assignment of lease cannot be completed without current liability insurance. Staff has included an Applicant Requirement above that Assignee provide proof of liability insurance before as a condition to the Chairperson signing the consent to assignment. Failure to provide proof of liability insurance will result in the possible forfeiture of lease due to excessive defaults on liability insurance.

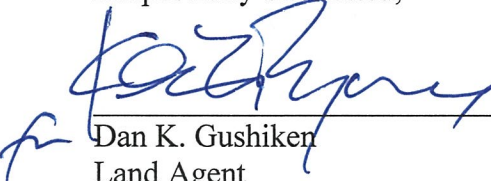
The Assignee has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The next rental re-opening is not until June 1, 2037.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5234 from Catherine Chua, as Assignor, to Yvonne Tuihalafatai, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne B. Case, Chairperson

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“Miloli`i-Hoopuloa Houselots” Phase I & II, Hoopuloa, South Kona, Hawaii



Assignment of GLS-5234 (Catherine Chua to Yvonne Tuihalafatai)

TMK: (3) 8-9-014:052

“Miloli`i-Hoopuloa Houselots” Phase I & II, Hoopuloa, South Kona, Hawaii



Exhibit B