

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

March 27, 2020

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

Ref. No.: 09KD-148

KAUAI

Amend Prior Board Action of September 9, 2010, Item D-2, Sale of Lease at Public Auction and Issuance of a Revocable Permit for Pasture Purposes, Portion of Kapaa Homesteads, First Series, Kapaa, Kawaihau, Kauai, Hawaii; Tax Map Keys: (4) 4-6-03:22, 23.

The purpose of the amendment is to obtain Board approval for the annual renewal of the revocable permit after-the-fact from January 1, 2011 through December 31, 2020, together with appropriate rent therefor.

BACKGROUND:

The subject property was originally leased to Edwin Martins, Trustee of the Edwin Martins Revocable Living Trust, under General Lease No. S-5484 for general agriculture purposes. Mr. Martins passed away and his daughter, Jeannett Martins, then took over as trustee and assumed the lease. The lease expired on August 30, 2010. On November 18, 2009, Ms. Martins officially requested a Revocable Permit (RP) for the property from the Kauai District Land Office (KDLO). The Board approved the RP on September 9, 2010. See attached Exhibit 1.

For reasons that are unclear from a review of the file, an RP was never issued pursuant to the approved Board action. Ms. Martins provided KDLO with the required County and State tax clearances, \$30 document fee and a certificate of insurance. Although she never received a bill, according to Ms. Martins, she paid the rent towards the approved RP for 2010-2011 and 2011-2012. Due to Fiscal not having an account to apply the monies to, it was refunded in 2018. She also said she contacted the KDLO and was told numerous times by former Land Agent/District Land Agent Marvin Mikasa "not to worry about it" and assumed the paperwork was being processed. According to the Project Status Form in the file, an entry dated January 10, 2013 states "CLOSE PSF FILE PER MARVIN MIKASA - LEASE EXPIRED & CONVERTED TO RP WHICH WAS CANCELLED @ TENANT'S REQUEST."

REMARKS:

According to Ms. Martins, she never requested to close the file and she has been in contact with KDLO for the last several years trying to resolve this issue. She has remained on the property this entire time but had not made a payment until September 30, 2019. According to the September 9, 2010 Board submittal, the monthly rent due was \$153.00. Following the approach used for annual RP renewals in the relevant period, the rent was calculated by Land Division and the Fiscal Office by starting with the \$153.00 per month in 2010 and increasing the 2010 rent by 10.5% for 2017. The 2018 rent was then increased by 1.5% over the 2017 rent, the 2019 rent was increased by 3% over the 2018 rent, and the 2020 rent was increased by 3% over the 2019 rent. A ledger showing the amounts due through December 31, 2019 is attached as Exhibit 2.

The RP back-rent is currently being paid in installments and there are no compliance issues or pending litigation. A large portion of the subject lands is located in the Conservation District. As with other revocable permits located in the Conservation District, staff will direct Ms. Martins to contact the Office of Conservation and Coastal Lands to determine whether a Conservation District Use Permit is required for Ms. Martins' use of the land.

In the meantime, staff believes it is in the best interest of the State to amend the Board's prior action to approve the last 10 years of renewals at the rent set forth in Exhibit B, with the current monthly rent under the permit for 2020 in the amount of \$182.06. Staff will work on the public auction of this parcel as resources allow (priority is being given to preparing auctions for commercially zoned parcels currently under RP).

RECOMMENDATION: That the Board:

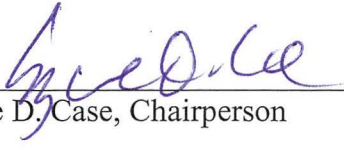

1. Amend its prior Board action of September 9, 2010, under agenda item D-2 by approving the last 10 years of annual renewals for the revocable permit from January 1, 2011 through December 31, 2020 at the rents set forth in Exhibit B, with the current monthly rent for 2020 being \$182.06.
2. Confirm that except as amended hereby, all terms and conditions listed in its September 9, 2010 approval shall remain the same.

Respectfully Submitted,



Alison Neustein
Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

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

September 9, 2010

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

PSF No.: 09KD-148

Kauai

Sale of Lease at Public Auction and Issuance of Revocable Permit to Jeannett V. Martins for Agriculture and Pasture Purposes, portion of Kapaa Homesteads, First Series, Kapaa, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-6-03:22, 23.

REQUEST:

Sale of lease at public auction for agriculture and pasture purposes; and

Issuance of revocable permit to Jeannett V. Martins, single, Tenant in Severalty.

LEGAL REFERENCE:

Sections 171-14, -14.5, -16, -17, -55 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended

LOCATION:

Portion of Government (Crown) land of Kapaa, situated at portion of Kapaa Homesteads, First Series, Kapaa, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-6-03:22, 23, as shown on the attached maps labeled Exhibit B.

AREA:

18.11 acres, more or less

ZONING:

State Land Use District: Conservation
County of Kauai CZO: Open

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

September 09, 2010

W

D-2

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:

Encumbered by General Lease No. S-5484, Jeannett V. Martins, Trustee for Edwin Martins Revocable Living Trust, for general agriculture. Lease to expire on August 30, 2010.

LEASE TERMS AND CONDITIONS:

CHARACTER OF USE:

General Agricultural and Pasture purposes

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance

RENTAL REOPENINGS:

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

PERFORMANCE BOND:

Twice the annual rental amount

REVOCABLE PERMIT TERMS AND CONDITIONS:

CHARACTER OF USE:

Agriculture and Pasture purposes

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$153.00 per month

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental

PROPERTY CHARACTERISTICS:

Utilities -	Available to lot line
Slope -	0-10%
Elevation -	100 – 1000 feet
Rainfall -	80 inches mean average annual rainfall
SCS Soil Series -	Hanamaulu silty clay (HsB, HsD, & HsE)

Legal access to property – Staff has verified that there is legal access to the property off of Kahuna Road.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that there is one encumbrance existing on the property, Excepting and reserving from the Makaleha Ditch (15.00 feet wide) covered by General Lease S-3827 to East Kauai Water Company, Limited, as shown on plan attached hereto and made part of. Now, Revocable Permit No. S-7310 to East Kauai Water Users Cooperative.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to

Exemption Class No. 1, that states " Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing." See Exhibit C.

DCCA VERIFICATION:

Applicant is sole proprietorship and, as such, is not required to register with DCCA.

REMARKS:

Board of Land and Natural Resources at its meeting held on August 23, 1991, agenda item F-9, approved parcel to go to public auction.

General Lease No. S-5349 was awarded to Louis K. Rego by public auction on December 15, 1993. The term was for fifteen (15) years; commencing on December 15, 1993 and expiring on December 14, 2008, to be used solely for pasture purposes. "Pasture" means the conduct of livestock operation consisting of keeping cattle, primarily, and others, in a minor role such as horses and sheep where animals graze the land for feed produced thereon.

At its meeting held on March 22, 1996 under agenda item D-15, the Board of Land and Natural Resources approved the assignment of General Lease No. S-5349 from Louis K. Rego to Jeannett V. Martins, one of four leases approved.

By phone conversation on November 13, 2008, applicant and lessee of General Lease No. S-5349 requesting a month to month revocable permit once lease expires.

The County of Kauai has zoned the parcel as "Open" which allows agriculture as a permitted use.

Staff feels that parcel can be successfully sold at a future public auction.

Applicant 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.

Applicant is a lessee on General Lease Nos. S-5346, 5349, 5519, 5583, 5659 and Revocable Permit Nos. S-7199 and 7278 and as such qualifies as a bona fide farmer and rancher pursuant to §171-14.5, HRS. As this is a continuation of an existing use of the property, staff is recommending the Board approve the request.

There have been no other applicants requesting use of this parcel.

Comments were solicited from:

State Agencies:

Dept. of Agriculture	No objections
OHA	No comments
OCCL	No objections to continued use

County Agencies:

County Planning Department	No objections
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Federal Agencies:

NRCS	No objections
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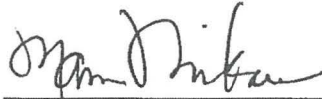
RECOMMENDATION: That the Board:

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the permit or lease.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Authorize the sale of a lease at public auction covering the subject area for pasture purposes 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 pasture general lease form, as may be amended from time to time;
 - b. Within the first year of the lease term, the land under lease shall be utilized for the purposes for which the lease is sold, all in accordance with a conservation plan approved by the Chairperson;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a revocable permit to Jeannett V. Martins covering the subject area for agriculture and pasture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

September 9, 2010

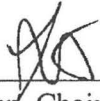
- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Marvin Mikasa
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:

Sale of Lease at Public Auction and Issuance of Revocable Permit to Jeannett V. Martins for Agriculture and Pasture Purposes

Project / Reference No.:

09KD-148

Project Location:

portion of Kapaa Homesteads, First Series, Kapaa, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-6-03:22, 23

Project Description:

Sale of Lease at Public Auction and Issuance of Revocable Permit

Chap. 343 Trigger(s):

Use of State Lands through the issuance of a revocable permit #1

Exemption Class No. and Description:

In accordance with Hawaii Administrative Rules, Section 11-200-8, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1 that states: " Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features involving negligible or no expansion or change of use beyond that previously existing."

Consulted Parties:

U.S.D.A. - Natural Resources Conservation Service was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

Jeannett V. Martins currently uses these parcels under General

EXHIBIT "C"

Lease No. S-5484. It will expire in August, 2010. Between the expiration of the lease and public auction, recommending a month-to-month revocable permit to continue with the use of the land. No change of use anticipated.

Recommendation:

The Board is recommended to find that, as it is anticipated this project will probably have minimal or no significant effect on the environment, it is presumed to be exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
ACTING FIRST DEPUTY

LENORE N. OIYE
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:AB

Correspondence: KA-11-11

MEMORANDUM

TO: Marvin Mikasa, Land Agent
Land Division, Kaua'i District

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

JUL 28 2010

A large, stylized handwritten signature in dark ink, likely belonging to Samuel J. Lemmo, is written over the "FROM:" line and extends into the right margin.

SUBJECT: Sale of Lease at Public Auction and Issuance of Revocable Permit for Agriculture and Pasture Purposes

LOCATION: Kapa'a, Kawaihau (Puna), Kaua'i, TMK: (4) 4-6-03:022 & 023

APPLICANT: Edwin Martins

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided regarding the sale of lease at public auction and issuance of revocable permit for agriculture and pasture purposes at Kapa'a, Kawaihau (Puna), Kaua'i, TMK: (4) 4-6-03:022 & 023. According to your information, the property is currently being used as pasture and has been for several decades. The use of the land for pasture purposes appears to be a nonconforming use.¹

The OCCL notes that the subject property appears to be located in the Conservation District, Resource subzone. The OCCL has no objections to the continuance of the land for pasture purposes. However, should the applicant propose any new land use² on the property, the OCCL should be contacted to determine what type of authorization may be required for this action.

Should you have any questions, contact Audrey Barker of our office at (808) 587-0316 or audrey.t.barker@hawaii.gov.

¹ As defined in HAR §13-5-2 Definitions, "nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and no greater than that established immediately prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

² As defined in HAR §13-5-2 Definitions, "land use" means: (1) The placement or erection of any solid material on land if that material remains on the land more than fourteen days, or which cause a permanent change in the land area on which it occurs; (2) The grading, removing, harvesting, dredging, mining or extraction of any material or natural resource on land; (3) The subdivision of land; or (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

09kd148
Jeannett Martins

Month:	Amount
9/1/2010-9/30/2010	153.00
10/1/2010-10/31/2010	153.00
11/1/2010-11/30/2010	153.00
12/1/2010-12/31/2010	153.00
1/1/2011-12/31/2011	1836.00
1/1/2012-12/31/2012	1836.00
1/1/2013-12/31/2013	1836.00
1/1/2014-12/31/2014	1836.00
1/1/2015-12/31/2015	1836.00
1/1/2016-12/31/2016	1836.00

2017 increase 10.5%
(153.00 + 16.07 = 169.07) 1/1/2017-12/31/17 2028.84

2018 increase 1.5%
(169.07 + 2.54 = 171.61) 1/1/2018-12/31/2018 2059.32

2019 increase 3%
(171.61 + 5.15 = 176.76) 1/1/2019-12/31/2019 2121.12

17837.28

-\$353.52 9/30/19 Security Deposit

\$17,483.76 Balance

-\$176.76 10/9/19 Security Deposit

\$17,307.00 Balance

\$17,307.00 Balance

-\$12,000 10/9/19 back rent

\$5307.00 Balance

-\$1000.00 12/9/19 Back Rent

\$4307.00 Balance

-\$1250 1/17/20 Back Rent

\$3057.00 Balance

-\$1250 2/24/20 Back Rent

\$1807.00 Balance

EXHIBIT 2