

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

October 8, 2021

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

HL No. 52

Oahu

Consent to name Lowell K. Nahoopii as lessee of record on Homestead Lease
No. 52; Hauula, Koolauloa, Island of Oahu, Tax Map Key (1) 5-4-007:028.

APPLICANT:

Lowell K. Nahoopii

LEGAL REFERENCE:

Sections 171-97 to 100, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Hauula, Koolauloa, Island of Oahu, identified by
Tax Map Key: (1) 5-4-007:028, as shown on the attached map labeled Exhibit 1.

AREA:

Lot 10A	=	0.23 acre
Lot 37	=	0.53 acre
Total	=	0.76 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:

Homestead purposes.

TERM OF LEASE:

999 years, commencing on April 17, 1930 and expiring on April 16, 2929.

ANNUAL RENTAL:

Not applicable.

CONSIDERATION:

Not applicable.

RECOMMENDED PREMIUM:

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

Background:

Certificate of Occupation No. 92 was issued to Hilda K. Nihipali (Occupier) on April 17, 1924 covering the subject State Lands. The Occupier was entitled to a Homestead Lease with a term of 999-years if, after six years from the date of the Certificate of Occupation, the Occupier had observed and performed all the stipulations and conditions contained therein, including residing on the land.

On April 16, 1947, Homestead Lease (HL) No. 52 was issued to the heirs of Hilda K. Nihipali (deceased) by her husband, Edward K. Nihipali. The Lease specified a beginning date of April 17, 1930, corresponding with the six-year occupancy period. Mr. Nihipali continued to reside on HL 52 until his death on August 22, 1949.

By letter dated October 21, 1959, the Commissioner of Public Lands recognized Annie M. N. Kamakeeaina and Herbert H. Nihipali as the heirs of Edward K. Nihipali. On October 29, 1980, Herbert disclaimed his interest in HL 52. Herbert's Disclaimer of Right, Title and Interest is attached hereto as Exhibit 2. On September 10, 1993, Annie M. N. Kamakeeaina passed away. The Death Certificate of Annie M. N. Kamakeeaina is attached as Exhibit 3.

Applicant, Lowell K. Nahoopii is Annie M. N. Kamakeeaina's son. Mr. Nahoopii is one of eight children of Ms. Kamakeeaina. He has lived on HL 52 since his birth in 1953 and continues to live on the property with his wife, Antonette Nahoopii. Mr. Nahoopii has maintained the property and paid the property taxes. Additionally, Mr. Nahoopii has complied with the terms of the 999-year Homestead Lease.

Act 166, Session Laws of Hawaii 2000, became effective on June 6, 2000. Act 166 changed the way an interest in a homestead lease could be transferred. Prior to the effective date of Act 166, HRS section 171-99(e) had set forth a detailed order of succession for the 999-year homestead leases. The new law amended HRS section 171-99(e) to allow a lessee to convey, devise, or bequest to any member(s) of the lessee's family, as "family" was defined in the new law, or to pass the homestead lease on by intestate succession. The

current version of the law governing 999-year homestead leases is attached as Exhibit 4.

Pursuant to the change in the law brought about by Act 166, Lowell K. Nahoopii, through his attorney, now requests the Board's approval of Herbert H. Nihipali's disclaimer and consent to name Lowell K. Nahoopii as lessee of record.

Discussion:

The subject request triggered a need for a determination of the effect of Herbert H. Nihipali's Disclaimer of Right, Title and Interest in HL 52. On October 29, 1980, Herbert signed a Disclaimer of Right, Title and Interest in HL 52. Effective June 6, 2000, Act 166 changed the succession laws regarding 999-year homestead leases. The legislature found that the descendant provisions "are overly restrictive and can prevent the orderly transfer of homestead leases. Some homestead leases have terminated due to the inability of the lessee to comply with these descendant provisions." The legislature thus amended HRS § 171-99(e) for the stated purpose to: "...make the leases more freely available to members of the lessee's family."

Herbert H. Nihipali passed on August 3, 2000, three months after the legislature amended the homestead lease provisions. Even if his descendants had an expectation of inheritance, their rights did not vest until the decedent died. At the time Herbert H. Nihipali passed, the statute allowed him to disclaim his interest in HL 52. The Board of Land and Natural Resources should honor Herbert H. Nihipali's wishes and approve his disclaimer, which is executed prior to the Act 166 amendment.

The subject request also triggered a need for a determination of the effect of Act 166 on existing tenants holding an interest in a HL. Staff previously received advice letters from the Department of the Attorney General. Upon the effective date of Act 166, the statutory (not common law) joint tenancies in homestead leases were severed and each co-tenant acquired the ability to pass on that co-tenant's equal fractional share by conveyance devise, or bequest to a "family" member (as defined in the statute), or by intestate succession, with the prior approval of the Board of Land and Natural Resources.

Therefore, in the case of HL 52, on June 6, 2000 Act 166 severed the statutory joint tenancy of the living children of Annie M. N. Kamakeeaina, and each acquired the ability to pass on his or her share in the homestead lease by conveyance, devise, or bequest to "family" members, as "family" is defined in HRS section 171-99(e), or by intestate succession, with prior approval of the Board. Attached as Exhibit 5 is the genealogy of Hilda K. Nihipali.

The applicant, Lowell K. Nahoopii is elderly and has lived on HL 52 since his birth in 1953. Applicant wishes to be recognized as lessee of record and has submitted substantial documentation. Staff has reviewed the voluminous records submitted; however, applicant has not probated the estate of Annie M. N. Kamakeeaina.

Applicant has been made aware the Board's action is solely for its own internal purposes to name Lowell K. Nahoopii as a lessee of record. The Board will not issue an assignment conveying HL 52 to Lowell K. Nahoopii. Additionally, Lowell K. Nahoopii and any others claiming an interest in HL 52 are cautioned that the Board has no jurisdiction to quiet title to HL 52 or fully determine the property rights of any person.

Staff has no objection to the subject request to recognize Lowell K. Nahoopii as lessee of record for HL 52.

The 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.

RECOMMENDATION:

That the Board consent to naming Lowell K. Nahoopii as lessee of record in Homestead Lease No. 52, subject to the following:

1. The Board's own internal records be amended to name Lowell K. Nahoopii as lessee of record;
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,

an Tell

Andrew R. Tellio
Appraisal and Real Estate Specialist

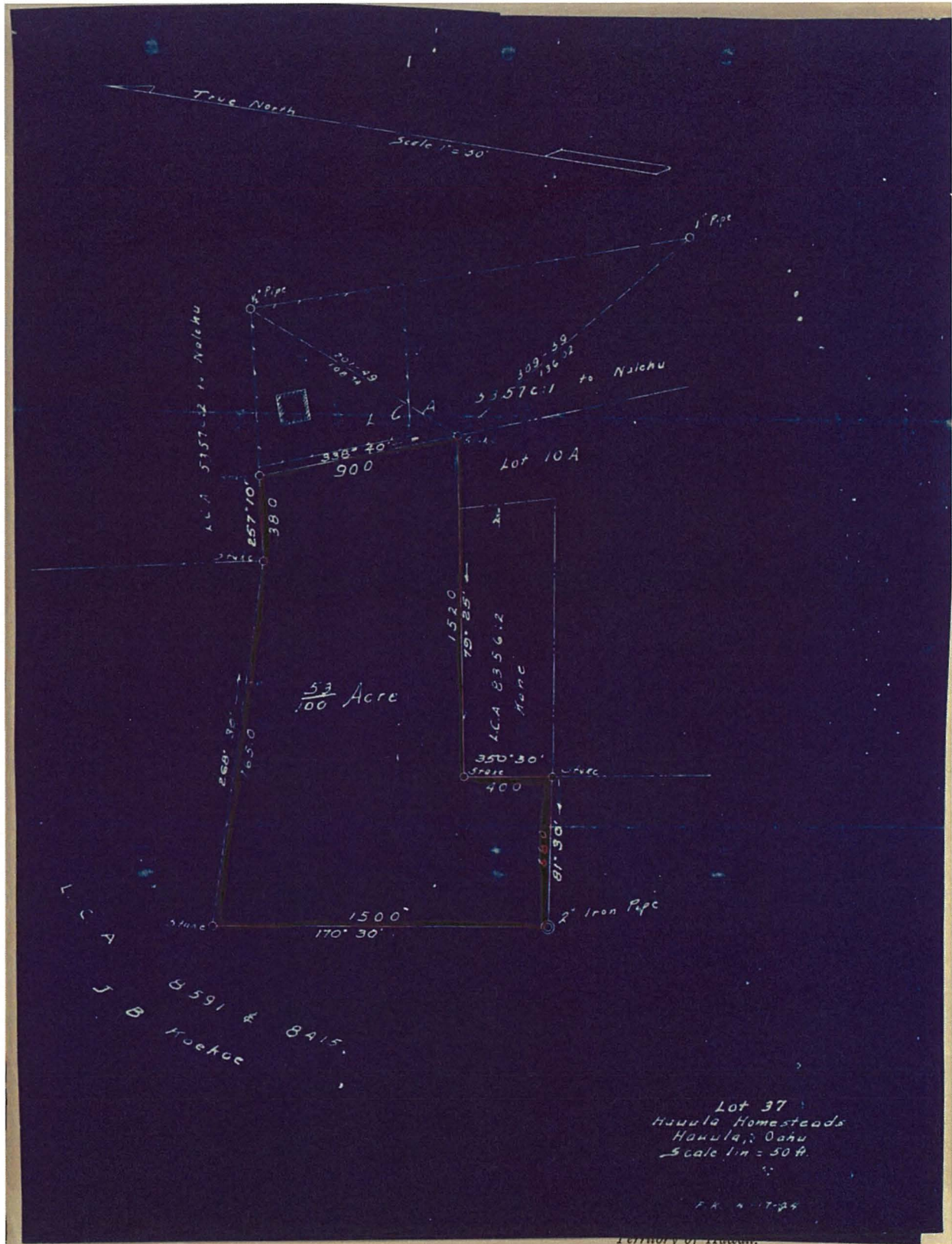
APPROVED FOR SUBMITTAL:

Suzanne D. Case

ST

Suzanne D. Case, Chairperson

Exhibit 1



579'10" 34
 LCA 8356 Kane
 581'20" 18
 511'30" E
 11A 23 Q
 10A
 535'10" N
 Naichu
 57' 25 E
 LCA 8337
 Kaitumiti

HAUULA HMSTD. WATER LOTS
 Hauula, Koolauloa, Oahu
 Scale 100 ft. = 1 inch

RECORDATION REQUESTED BY:

GALIHER & JERVIS
Attorneys at Law

AFTER RECORDATION, RETURN TO:

GALIHER & JERVIS
Suite 800, 333 S. Queen St.
Honolulu, Hawaii 96813

RETURN BY: PICKUP

DISCLAIMER OF RIGHT, TITLE AND INTEREST

For reasons that are satisfactory to me and are known to my sister ANNIE MAUNALOA NIHIPALI KAMAKEEAINA, the two of us being the only heirs of HILDA K. NIHIPALI and EDWARD K. NIHIPALI, I, HERBERT HAILAMAKAILUA NIHIPALI²⁹⁴ of 1435 Lusitana Street, Honolulu, Hawaii, being over 25 years of age and of sound mind, do hereby, free from any coercion or duress, forever renounce and disclaim all of my leasehold estate in HOMESTEAD LEASE NUMBER 52 encumbering those certain parcels of land designated as Lot Number 37 and Lot Number 10A (as more fully described in "Exhibit A" attached hereto and incorporated herein by reference), and as shown on Government Survey Registered Map Number 2000, situated at Hauula, City and County of Honolulu, State of Hawaii, and all right, title and interest of whatever nature given to me by the provisions of the aforementioned HOMESTEAD LEASE NUMBER 52.

I declare that I will not accept, either at present or in the future, any portion of the lease interest aforementioned which may be sought to be given to me in accordance with any right, title or interest arising out of said aforementioned HOMESTEAD LEASE NUMBER 52. It is my intention in executing this disclaimer to fully and completely terminate my interest in

HOMESTEAD LEASE NUMBER 52 together with any and all interests
of whatever nature of my heirs, devisees and/or assigns.

I witness whereof, I have executed this disclaimer
on the 29 day of Oct, 1980.

Herbert Hailamakailua Nihipali Sr.
Herbert H. Nihipali Sr.
HERBERT HAILAMAKAILUA NIHIPALI Sr.

Subscribed and sworn to before
me this 29th day of October, 1980.

Phyllis J. Eguchi
Notary Public, State of Hawaii

My commission expires: 1-27-83

LOT 37
Hauula Homesteads,
Koolauloa, Oahu

Beginning at a 2 inch iron pipe at the South corner of this lot, the coordinates of said pipe referred to Government Survey Trig. Station "Kaipapau" being 3663.69 feet South and 3335.85 feet West, as shown on Government Survey Registered Map No. 2000, and running by true azimuths:-

1. 170° 30' 150.0 feet along L.C.A. 8591 & 8415 to Koekoe;
2. 268° 30' 165.0 feet along L.C.A. 8591 & 8415 to Koekoe;
3. 257° 10' 38.0 feet along L.C.A. 5357C:2 to Nalehu;
4. 338° 10' 90.0 feet along L.C.A. 5357C:1 to Nalehu;
5. 79° 25' 152.0 feet along Lot 10A and L.C.A. 8356:2 to Kane;
6. 350° 30' 40.0 feet along L.C.A. 8356:2 to Kane;
7. 81° 30' 68.0 feet along L.C.A. 8591 & 8415 to Koekoe to point of beginning.
AREA 53/100 ACRE

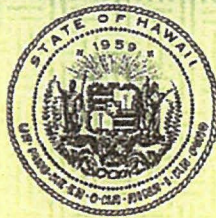
HAUULA HOMESTEAD WATER LOTS
Hauula, Koolauloa, Oahu
Lot 10A

Beginning at the West corner of this lot, the same being the Northeast corner of Lot 11A from which the bearing to Government Survey Station Ka 1 is S. 42° 00' W. true, 700 feet and Au 2 Station is S. 24° 40' E. true, 1640 feet, as shown on Government Survey Registered Map No. 2000, and running by true bearings:-

1. S. 11° 30' E 140.0 feet along Lot 11A;
2. N. 64° 35' E. 87.0 feet along L.C.A. 8337, Kaneumi;
3. N. 21° 10' W. 162.0 feet along L.C.A. 5357, Nalehu;
4. S. 79° 10' W. 32.0 feet along Government;
5. S. 14° 50' E. 42.0 feet along L.C.A. 8356, Kane
6. S. 81° 20' W. 28.0 feet along L.C.A. 8356, Kane, to the point of beginning
AREA 23/100 ACRE

The lots covered by this Homestead Lease were applied for and taken by the deceased under Certificate of Occupation No. 92 with the knowledge and upon the understanding that these lots are not provided with any right-of-way other than a footpath along the kuleana boundaries, which understanding as to the right-of-way serving these lots continue on under this Homestead Lease.

STATE OF HAWAII
DEPARTMENT OF HEALTH



CERTIFICATE NO. [REDACTED]

Name of Decedent

ANNIE MAUNALOA KAMAKEEAINA

City, Town or Location of Death

HONOLULU

County of Death

HONOLULU

Island of Death

OAHU

Actual or Presumed Date of Death Actual or Presumed Time of Death

September 10, 1993 9:42 AM

Date of Birth

[REDACTED]

Age at Death

[REDACTED]

Sex

FEMALE

Race

HAWAIIAN/PORTUGUESE

Citizenship

U.S.A.

Ever in Armed Forces?

NO

Social Security Number

[REDACTED]

Marital Status

WIDOW(ER)

Father's Name

EDWARD NIHIPALI

Mother's Name (Prior to First Marriage)

HILDA PAVAO

Disposition

BURIAL

Cemetery/Crematory: HAUULA HOMESTEAD CEMETERY

Date: September 15, 1993

Location: HAUULA, HAWAII 96717

Permit # [REDACTED]

Funeral Home: BORTHWICK MORTUARY

Certifier: BRIAN T. O'CONNOR, M.D. PRIVATE PHYSICIAN

Date Certified: September 10, 1993

Cause of Death:

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

Part II: [REDACTED]

EXHIBIT 3

Date Filed by State Registrar: September 14, 1993

OHSM 1.2 (Rev. 1/2013)

This copy serves as prima facie evidence of the fact of death in any court proceeding. [HRS 338-13(b), 338-19] 419420

ANY ALTERATIONS INVALIDATE THIS CERTIFICATE

§171-99 Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases, and cash freehold agreements. (a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where the lands have been improved under the certificate or lease, or have been used as a place of residence by the occupier or lessee for an aggregate continuous period of not less than ten years upon payment to the board of land and natural resources of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided that the board may exclude from these patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The lessee of any existing right of purchase lease, at a time and under conditions that are contained in the lease, shall be entitled to a land patent from the board conveying to the lessee a fee simple title to the land described in the lessee's lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter; provided that the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of the lessee's lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement is entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

(1) Payment of the balance of the purchase price in equal installments, in one, two, and three years respectively, from the date of the freehold agreement with interest annually at the rate of four per cent; provided that the freeholder may pay the installment before it is due and thereby stop the corresponding interest;

(2) Cultivation of not less than twenty-five per cent of the area of the premises, and the planting and care of not less than an average of ten timber, shade, or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the premises if pastoral land within that time; provided that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;

(3) Maintenance by the freeholder of the freeholder's home on the premises from the end of the first to the end of the third year;

Exhibit 4

(4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on the premises, or for the destruction of vegetable pests that may be on the premises or the prevention of the future introduction of pests thereon;

(5) Payment of all taxes that may be due on account of the premises.

The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. The holder shall not assign or sublet, conditionally or otherwise, the holder's interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on the agreement; and provided further that freeholders having the whole interest in a freehold agreement, at any time when all the conditions thereof to be performed by the freeholder up to that time shall have been substantially performed, may surrender to the government the interest by delivery of the freehold agreement to the land agent, with the intention to surrender the interest clearly indorsed thereon and signed by them and duly attested. The surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no surrender shall be permitted if any freeholders are under the age of eighteen years, unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board, in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for the uses as provided in this chapter. Before the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of the funds.

(e) Transfer or assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's

family or in the case of a homestead lease, to any person or persons designated as a trustee of a land trust.

For the purposes of this section:

"Family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, nephews, a parent's siblings, children of a parent's siblings, and grandchildren of a parent's siblings, of the occupier or lessee.

"Land trust" means a trust created for the purposes of managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. The lessee may be the trustee of the trust.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation, or homestead lease by inheritance or otherwise, any one or more of the persons, less than the whole number, may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price, according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer [is] mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit

the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.

In the event that any funds held by the land agent hereunder are not paid to the persons to whom properly payable, because of the inability of the land agent to locate those persons, the funds, after the expiration of one year, shall be deposited in the department of budget and finance of the State and there abide the claim of any person thereto lawfully entitled; provided that no claim to the funds shall be allowed unless the claim is made within five years after the deposit. Payment of any claim duly filed may be made if the department of budget and finance and the board concur in finding the claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and finance and the board within sixty days of the filing of the claimant's claim, the claimant may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the State, and if the court renders a judgment in favor of the claimant, the department of budget and finance shall pay the amount due without interest.

But if the persons to whom the offer is made, within sixty days from the time of the notification, shall make answer to the land agent that they will buy the interest of the offering parties and shall deposit within sixty days with the land agent the amount required for the purpose according to the terms of the offer, the land agent shall indorse and record the fact of the sale as above provided, and pay to the offering parties the amount according to their individual interest; and the interest of the offering parties shall thereupon vest in the answering parties. In such case, the consideration money deposited by the offering parties shall be returned to them.

(g) Forfeiture; existing certificate of occupation or homestead lease. The violation of any of the conditions of any existing certificate of occupation or homestead lease shall be sufficient cause for the board, upon failure of the occupier or lessee within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, to take possession of the demised premises without demand or previous entry, with or without legal process, and thereby, subject to section 171-21, terminate the estate created.

(h) Forfeiture; cash freeholds. In the case of default in the payment of any of the installments due on any cash

freehold agreement for thirty days after the installments are due, or failure of performance of any other conditions, the board may take possession of the premises, upon failure of the freeholder within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, without demand or previous entry, with or without legal process, and thereby subject to section 171-21, terminate the estate created.

(i) Mortgage of homestead leases. Whenever an existing homestead lease is mortgaged pursuant to section 171-22, the consent to mortgage from the board of land and natural resources may contain a condition exempting the lease from subsection (e) for the duration of the mortgage. [L 1962, c 32, pt of §2; am L 1963, c 114, §1; Supp, §103A-93; HRS §171-99; am L 1980, c 17, §1; am L 1981, c 15, §1; gen ch 1985; am L 1997, c 383, §36; am L 2000, c 166, §2; am L 2004, c 187, §1; am L 2013, c 236, §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Case Notes

Fee simple interest may be purchased under subsection (a) by payment of "fair market price", which, under this section and §171-79, requires appraisers to ignore both the value of improvements erected on the premises and the lease encumbrances. 85 H. 217, 941 P.2d 300.

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Genealogy of HILDA K. NIHIPALI, DECEASED, C.O. 92, H.L. 62
and Edward Kukulawawaloa Nihipali, Deceased.

