

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

May 9, 2008

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

Hawaii

Consent to Assign General Lease No. S-5569, Alfred Seabury, Assignor, to Mark Allen and Jonaliza Allen, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-4-49:01.

APPLICANT:

Alfred Seabury, as Assignor, to Mark Allen and Jonaliza Allen, husband and wife, Tenants by the Entirety, whose business and mailing address is P.O. Box 6772 Hilo, Hawaii 96720, as Assignee.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Panaewa Farm Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-4-49:01, as shown on the attached map labeled Exhibit A.

AREA:

10.579 acres, 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: NO

CHARACTER OF USE:

Intensive agriculture purposes.

TERM OF LEASE:

30 years, commencing on 12/09/1998 and expiring on 12/08/2028. The first rental reopening is scheduled for 12/09/2008.

ANNUAL RENTAL:

\$740.00.

CONSIDERATION:

\$ 40,000.00.

RECOMMENDED PREMIUM:

\$ 18,000.00. (Refer to Exhibit B attached.)

DCCA VERIFICATION:

Assignor and both Assignees are individuals and, as such, are not required to register with DCCA.

REMARKS:

General Lease No. S-5569 was sold at public auction on December 9, 1998 to Alfred Seabury for the upset price of \$740.00 per annum. The lease is for intensive agriculture purposes only.

The Lessee has completed very little in the way of improvements to the property in the years he has held the lease. In February 2006, staff conducted an inspection and found several derelict vehicles, containers and other equipment in disrepair on the property. In addition, staff did not find any evidence of agricultural activity other than a few pineapples planted in plastic containers. On February 15, 2006, a notice of default was sent via certified mail to the Lessee advising him of several defaults regarding the compliance of the lease term of agreements. Among these defaults or violations were, sanitation, character of use, hazardous materials, full utilization of land, boundary fences and abandoned vehicles. The notice gave the Lessee sixty days to comply.

On March 29, 2006, staff conducted a follow-up inspection and found the Lessee was making progress in resolving some of the violations noted in the February 15, 2006 letter

of default. Some vehicles had been removed and a single wire-strand fence had been erected. However, there was no indication of compliance with the existing conservation plan regarding the planting of crops. The property has since been cleared of most of the remaining debris.

The Lessee is compliant with the terms and conditions of the lease regarding rent, insurance and performance bond. The Lessee has recently completed the cleaning of the remaining debris on the property but has still not complied with the utilization requirement of the lease.

The Lessee has written to the department indicating that he has a debilitating health problem and he is unable to do the necessary work to improve the lease land (Exhibit C). He has entered into negotiations for the sale of the lease land to an established nursery.

The Assignees are owners of a wholesale/retail nursery business currently located in the Kurtistown area of Puna. They wish to expand their growing area and will be utilizing the subject property for the growing of assorted cut flowers and foliage, most of which are being grown by other nurseries within the same location.

The Assignees have 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. Assignees will be required to apply as cooperators with the Waiakea Soil and Conservation District within thirty (30) days after the consent to assignment of lease has been signed.

The lease is subject to its first rental reopening on 12/09/2008. As a result, there are no outstanding rental reopening issues at this time.

RECOMMENDATION:

That the Board consent to the assignment of General Lease No. S-5569 from Alfred Seabury, as Assignor, to Mark Allen and Jonaliza Allen, 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. The Assignees shall apply as a cooperator with the Waiakea Soil and Water Conservation District within thirty (30) days, and shall submit the plan for approval by the Chairperson;
3. Review and approval by the Department of the Attorney General; and

4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



 Gordon C. Heit
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

April 4, 2008

MEMORANDUM

TO: Laura H. Thielen, Chairperson

THROUGH: *JA* Morris M. Atta, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager *Cyrus Chen*

SUBJECT: In-House Valuation Recommendation – Assignment of General Lease S-5569 from Alfred Seabury to Mark & Jonaliza Allen

GL No.: S-5569
Applicant: Alfred Seabury
Location: Panaewa Farm Lots, Waiakea, S. Hilo, Hawaii
Land Area: 10.58 acres
Tax Map Key: (3) 2-4-49: 1
Char. of Use: Intensive agriculture

We have been requested to calculate the assignment of lease premium, if any, pursuant to the Assignment of Lease Evaluation Policy. The policy calls for the lessee to provide information and/or evidence on actual costs of construction of all improvements or renovations within 30 days after their purchase. The lessee has provided a hand-written ledger of expense items, which does not fulfill the requirements of the policy. All lessees are required to furnish the State with copies of construction contracts, receipts or otherwise. Based on this lack of evidence, the following analysis was performed.

Net consideration		\$40,000
Improvement cost	\$0	
Trade fixture cost	\$0	
Total improvement and trade fixture cost	\$0	
Less depreciation	(\$0)	
Depreciated value of improvements & fixtures	\$0	
Less adjusted improvement cost (inc. trade fixtures)		(\$0)
Excess		\$40,000
Premium % (6-10 years elapsed)		45%
Premium		\$18,000

Based on these calculations, the premium due the State is \$18,000.

Special Conditions and Limiting Assumptions

- 1) The subject property was not inspected by the staff appraiser.
- 2) This memo does not comply with USPAP and is to be used for determining the assignment premium due the State only.

 Approved/Disapproved:



Laura H. Thielen, Chairperson



Date

cc: District Branch Files
Central Files

EXHIBIT C

2008 MAR -7 A 8:39

Alfred Seabury
POB 249
Volcano, H.I.
96785

Department of Land and Natural Resources
State of Hawaii

5 March 08

REF: Assignment of lease NO. S-5569

Dear Sir/Madam,

I have been forced to assign this lease due to a debilitating condition: Meniere's syndrome.

When I experience a Meniere's episode, the vertigo prevents me from standing and I vomit uncontrollably. One such episode occurred at Prince Kuhio Plaza and I was rushed to the Emergency Room. Doctors originally thought I had a brain tumor, but this was ruled out after a CAT Scan and a MRI. I am presently being treated for Meniere's.

I have seen the following doctors in a search for a cure:

- Dr. Sabnani, Hilo HMSA
- Dr. Linden, Hilo HMSA
- Dr. Rowe, Moanalua Kaiser
- Dr. King, Hilo Medical Center, Emergency Room
- Dr. Newman, Maui Kaiser
- Dr. Labetz, Maui Kaiser
- Dr. Winschell, Hilo Kaiser

I appreciate your compassion in this medical issue which I am facing.

Mahalo for your understanding and kokua.

Sincerely,
Alfred Seabury
Alfred Seabury

INSPECTION REPORT

Intensive Ag/Special Livestock/Pasture/Commercial Timber

COPY**General Information**Document Number: GLS 5569 or RPS _____Character of Use Intensive AgricultureInspection Date: 2/14/06 Inspection Time: 2:00pmLand Agent: Gordon Heit **TENANT INFORMATION**Name: Alfred SeaburyHome Phone: 968-6917Address: P.O. Box 249Business Phone: 981-5600Volcano, Hawaii 96785

Fax: _____

Contact Person: Alfred Seabury

Contact Phone: _____

SITE INFORMATIONTMK: 3rd/2-4-49:01Area: 10.579 acresSite Address: Panaewa Farm Lots, 2nd Series, Lot 17South Hilo, Hawaii**FISCAL INFORMATION**

ITEM	NOT APPLICABLE	CURRENT = COMPLIANCE	DEFAULT = NON-COMPLIANCE
Rent		X	
Liability Insurance		X	
Fire Insurance	X		
Bond		X	
Mortgage	X		

ANNUAL INSPECTION REPORT
Intensive Ag/Special Livestock/Pasture/Commercial Timber

File Review

LICENSES/PERMITS/CONSENTS

ITEM	DLNR Approval Docs in File			COMMENTS/NOTES/LISTS
	N/A	YES	NO	
Removal of Minerals/Waters	X			
Prehistoric/Historic Remains	X			
Cutting/Removal of Trees	X			
Hazardous Material Storage/Use	X			
Subletting	X			attach list or map if applicable
Improvement Construction Buildings	X			note deadlines for % completion
Improvement Construction Other structures	X			note deadlines for % completion
Conservation Plan		X		review plan and schedule; make copy of plan map and text table for use during inspection

Field Inspection

ITEM	CRITERIA FOR COMPLIANCE	MEETS COMPLIANCE			COMMENTS/NOTES
		N/A	YES	NO	
Subletting	consents approved use adheres to lease purpose	X			
Buildings/ Residences: roof, paint, exterior, interior	clean, sanitary, orderly suitable & well maintained DLNR construction consent adheres to completion schedule *check for hazardous materials	X			prior improvements need to be maintained by current tenant
Structures: roads, walkways, fence lines, pipelines, others	cross check w/ conservation plan clean, sanitary, orderly well maintained adheres to completion schedule *check for hazardous materials			X	Prior improvements need to be maintained by current tenant Fencing in poor condition or non-existent. Metal debris throughout the property

ITEM	CRITERIA FOR COMPLIANCE	MEETS COMPLIANCE			COMMENTS/NOTES
		N/A	YES	NO	
Conservation Plan: conservation structures and plantings	adheres to plan map & schedule well maintained			X	refer to SWCD if plan application & maintenance not in compliance Conservation plan on file. No evidence of compliance or implementation of plan.
Premises	clean, sanitary, orderly			X	
Hazardous Material Storage/ Use	controlled and adheres to consent			X	Possible hazardous materials throughout the property.
Character of Use	adheres to lease purpose			X	No apparent agricultural use.
Other				X	Property appears as a storage for derelict vehicles and general debris. There is no evidence of any type of agricultural activity.





02.14.2006



02.14.2006



02.14.2006



02.14.2006



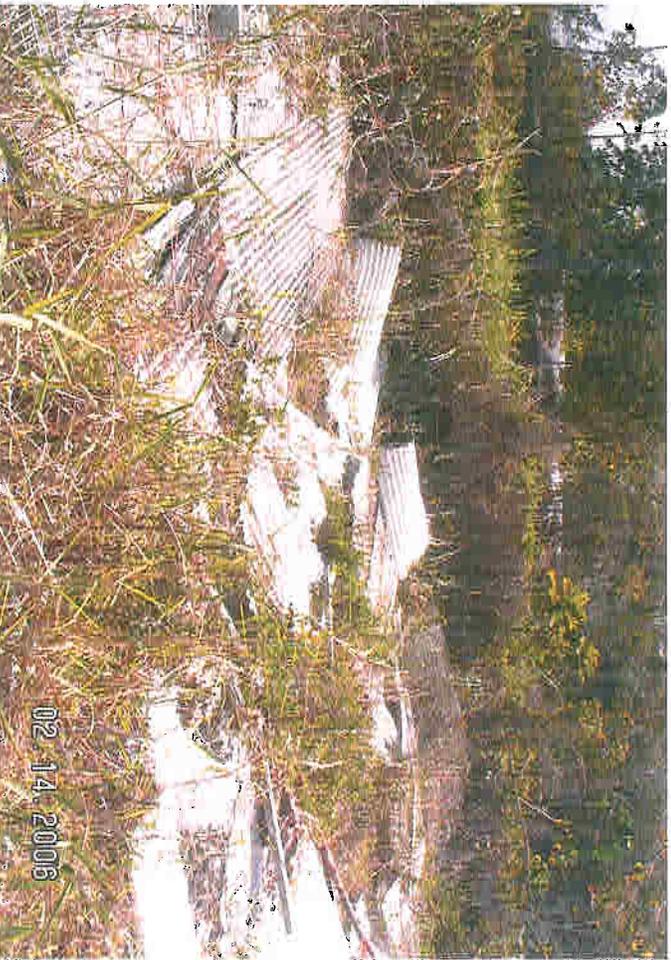
02.14.2006



02.14.2006



02.14.2006



02.14.2006

