

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

September 14, 2007

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

PSF No.: 07KD-081

Kauai

Sale of Lease at Public Auction for Pasture Purposes and Issuance of Revocable Permit to Lincoln Ching; Kapaa Rice and Kula Lots, Kapaa, Kawaihau, Kauai, Hawaii, Tax Map Key: (4) 4-5-15:10 & 28.

REQUEST:

Sale of lease at public auction for pasture purposes; and

Issuance of revocable permit to Lincoln Ching, married, whose wife is Isodora Ching, Tenant in Severalty, whose mailing address is 6116 Opaekaa Road, Kapaa, HI 96746.

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) lands of Kapaa, situated at Kapaa, Kawaihau, Kauai, Hawaii, identified by Tax Map Key: (4) 4-5-15:10 & 28, as shown on the attached map labeled Exhibit A.

AREA:

30.353 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban  
County of Kauai CZO: Agriculture

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:

Vacant and unencumbered.

**LEASE TERMS AND CONDITIONS:**

CHARACTER OF USE:

Pasture purposes

LEASE TERM:

Twenty (20) 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 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:

Pasture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

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

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

PROPERTY CHARACTERISTICS:

- Utilities - Both parcels contain easements for utility purposes.  
Slope - Both parcels are approximately level with a gradual slope toward the ocean (east) side of lot.  
Elevation - Approximately 7 feet.  
Rainfall - Average annual rainfall is 1000 to 1500 millimeters.  
SCS Soil Series - Kapaa silty clay (KkB)  
Land Study Bureau (including carrying capacity) – 1 acre per animal unit.

Legal access to property – Street access for Parcel 10 is via Apopo Road and for Parcel 28 is via Alenae Street.

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

Encumbrances – Staff has verified that the following encumbrances exist on the property:

TMK: (4) 4-5-15:28 – Subject, however, to:

1. Telephone Pole and Wire Line Easement to Hawaiian Telephone Company (LOD S-24,580).
2. Portion of a Perpetual Non-Exclusive Easement for Utility purposes to Citizens Utilities Company and Hawaiian Telephone Company (LOD S-27,404).
3. Portion of Perpetual Non-Exclusive Transmission Line Easement to Citizens Utilities Company (LOD S-27,380).

TMK: (4) 4-5-15:10 – Reserving to the State of Hawaii, the free flowage of water for the existing drainage ditch.

Subject, however, to the following:

- A. Kapaa Ocean Outfall Sewer Easement, Part 3 to County of Kauai (LOD S-24,790).
- B. Portion of a Perpetual Non-Exclusive Easement for Utility purposes to Citizens Utilities Company and Hawaiian Telephone Company (LOD S-27,404).

#### 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."

#### REMARKS:

General Lease No. S-5245 was awarded to applicant Lincoln Ching by public auction held on June 19, 1992. The term was for 15 years; commencing on June 19, 1992 and expiring June 18, 2007, to be used solely for pasture purposes.

Whereas, by Governor's Executive Order No. 3534 dated February 11, 1992, 1.364 acres, together with Easements 1 and 2, was set aside for sewage treatment plant and disposal system facilities to the Department of Human Services. On January 21, 2005 Executive Order No. 4099 cancelled Governor's Executive Order No. 3534, thus extinguishing Easements 1 and 2.

The current pasture use is consistent with the county agriculture zoning permitted use. Therefore, staff feels that parcels can be successfully sold at a future public auction.

By letter dated March 6, 2007, applicant and former lessee of General Lease No. S-5245 is requesting a month-to-month revocable permit to continue the current pasture use. A site inspection on April 3, 2007 confirms the State lands are well maintained and the character of use adheres to pasture purposes.

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. There have been no other applicants requesting use of these parcels.

Applicant was former lessee on expired General Lease No. S-5245 and as such qualifies as a bona fide farmer 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.

The following agencies were solicited for comments:

AGENCIES	COMMENTS
DHHL	No Response
DLNR – Forestry and Wildlife	No Objection
DLNR – Historic Preservation	No Response
DOT	No Response
NRCS	No Response
Kauai County Planning Dept.	No Response
Kauai County Public Works Dept.	Susceptible to flooding from Moikeha Canal.
OHA	No Response

Still pending are the completion of the set-aside of Well #3 to the Department of Water Supply and the set-aside of 20,000 square feet to the Housing and Community Development of Hawaii, now known as Hawaii Housing Finance and Development Corporation. Staff understands the subject land area and rent will need to be revised to reflect the loss of area to the Permittee.

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 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;


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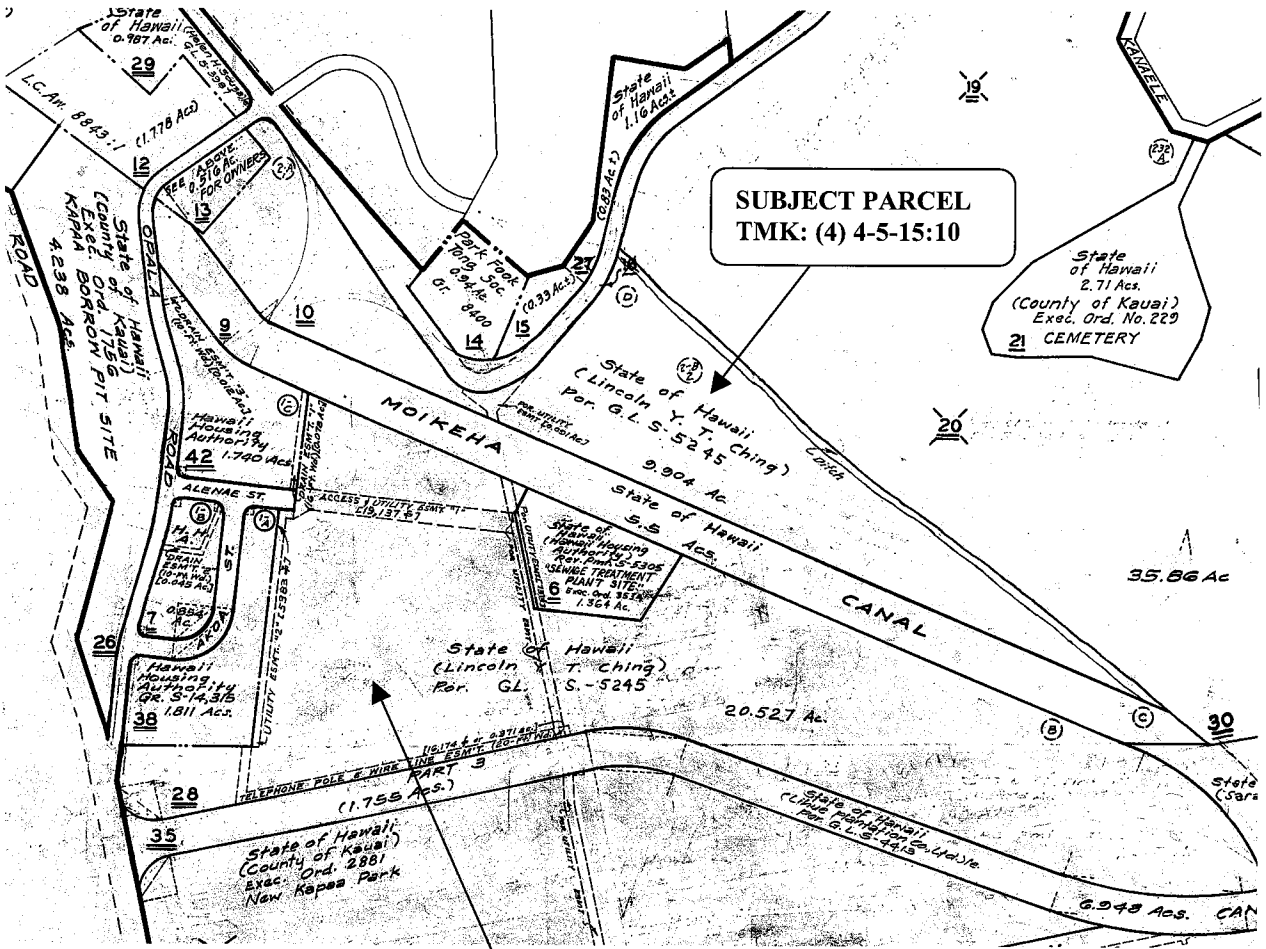
- c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a revocable permit to Lincoln Ching covering the subject area for pasture purposes 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 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.
6. Authorize Land Division to terminate the revocable permit if Lincoln Ching is not the successful bidder for the new lease.

Respectfully Submitted,

  
for Joanne E. McComber  
Land Agent

APPROVED FOR SUBMITTAL:

  
Laura H. Thiel, Interim Chairperson



**SUBJECT PARCEL**  
**TMK: (4) 4-5-15:28**

# EXHIBIT A