

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

December 13, 2013

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

PSF No.: 12OD-021

OAHU

Issuance of Notice to Vacate Pursuant to Automatic Revocation of Prior Board Approval dated February 10, 2012, Item D-5; General Lease No. 4298; Walter and Ann Liew, Lessee; Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-010:003

BACKGROUND:

GL-4298 was set to expire on March 11, 2013. On February 10, 2012, under agenda item D-5, the Board gave its consent to mortgage and conditionally approved a 12-year extension of the subject lease for the Lessees, Walter and Ann Liew. A copy of the 2012 submittal is attached as **Exhibit 1**.

As described in the 2012 submittal, there were four (4) dwellings on the property, notwithstanding the lease only allows one primary residence plus one employee dwelling on the property. In addition, as noted in the Applicant Requirements in the 2012 approval, the Lessees agreed to remove the 2nd house within 90 days of the Board approval, and either combine the 3rd and 4th houses or remove the 3rd house, with all necessary permits, within 180 days of the Board approval. Furthermore, Recommendation 3 of the 2012 approval provided for the automatic revocation of the approval in the event the Lessees failed to comply with the Applicant Requirements.

On May 9, 2012, staff received an email (**Exhibit 2**) from Bobby Liew, son of the Lessees, informing the Department that “[a]s of 5/9/12 the second house has been removed.” Staff had treated the email as a record of the Lessees’ compliance with the applicant requirement pertaining to the 2nd house. Furthermore, on subsequent visits to the property by Land Division staff, the 2nd house, which had stood among the other houses, was no longer at its former location.

On January 25, 2013, agenda item D-10 (**Exhibit 3**)¹, the Board authorized a 6-month holdover of the subject lease (expiring on September 11, 2013) noting that the Lessees had decided to go into arbitration to set the rent for the 12-year extension period. The Lessees and their attorney

¹ The 2012 submittal referenced in the 2013 submittal is shown as Exhibit 1 in the subject submittal.

had represented to the Department that they misunderstood who would be the proper party between them to communicate with the Department regarding the arbitration, so more time was needed to complete the arbitration. Staff also recommended additional time to allow the Lessees to comply with the Applicant Requirement of the 2012 approval regarding the 3rd and the 4th houses because Lessees said they had to comply with a Department of Health permit. In view of the forthcoming expiration date of the subject lease, March 11, 2013, the Board authorized the 6-month hold over, and authorized the Chairperson to extend the time period for the Lessees to comply with the Applicant Requirement for the 3rd and 4th houses for good cause. The Board's action at its January 25, 2013 meeting did not deal with removal of the 2nd house because the Department had been informed by the Lessees that the 2nd house had been removed from the property as of May 9, 2012.

REMARKS

For purposes of the arbitration of rent for the 12-year extension of the lease, a site inspection of the property was conducted on October 29, 2013. In attendance were Walter Liew and his son, Bobby Liew, Lessees' attorney Enver Painter, the three members of the arbitration panel (one arbitrator brought another person), Russell Tsuji and Barry Cheung from Land Division, and Pamela Matsukawa from the Attorney General's office. No one from the State expected to see the 2nd house still on the property. But the inspection of the property included a walk down a side pathway and at one point walking through water flowing over the path that Bobby Liew claimed came from excess water from the adjoining reservoir. At the end of the path was a small house. This turned out to be the 2nd house that had been relocated from its original location. Photos taken at the site inspection are attached as **Exhibits 4-a** (path leading to the house), **4-b** (external of house), and **4-c to 4-e** (internal of house) for the Board's information. The house is at the back of the property, which is not visible from the public road or as you enter the property.

For comparison purposes, the blown-up photo of the 2nd house as shown in Exhibit B of the 2012 approval, is attached as **Exhibit 5**. Staff believes that, based on **Exhibits 4 and 5**, the images are all of the same house, i.e., the 2nd house. The 2nd house had been relocated from its original location to a remote location on the property, instead of being removed from the property as Department staff had been led to believe by the email from the Lessees' son asserting that the 2nd house had been removed by May 9, 2012. For the Board's information, Lessees' son, Bobby Liew, would send emails regarding his parents' lease to the staff. He was seen on the property multiple times and has admitted that he is helping out on the property.

The Department suspended the arbitration proceedings upon learning of the 2nd house not being removed as required by the Board as a condition of approval of the 12-year lease extension. Because the Board's approval included an automatic revocation of that approval upon the failure of the Lessees to comply with the specified requirements, including the removal of the 2nd house from the property within 90 days of the Board's approval, the Board's approval of the 12-year lease extension has been automatically revoked. Staff is now asking that the Board issue a Notice to Vacate to the Lessees.

Staff notes that the Liewes do not dispute that the 2nd house is now located on another part of the property. Deputy Attorney General Pamela Matsukawa received an email from Enver Painter, Esq., Lessees' attorney, explaining why the 2nd house was still on the property, as follows:

I think the DLNR is overreacting. I just got off the phone with Walter. As far as he is concerned the house was removed from the property, at least from where it could have been used as a residence in violation of the 1 +1 residence limitation for the property. He was storing the hose at the back of the lot with the intention of cannibalizing the "2nd house" to combine the other two houses as was his option to do per the lease extension.

A copy of Mr. Painter's email is attached as **Exhibit 6**.

We believe the email to be incorrect. First of all, it was clear that the house had to be removed from the property within 90 days. The house was not removed from the property, it was instead relocated to a different part of the property. Relocation of the house did not satisfy the Board's condition. Furthermore, the house does not look as though it was going to be "cannibalized." As the photos of the house show, the wood panels covering the windows were removed and the entire house has been recently painted. The house, both outside and inside, is painted white. The photos of the interior show painter's blue tape in the kitchen and in one of the bedrooms. A railing at the front of the porch had been removed and placed on the side of the porch. Work is being done on the house, but it does not appear to involve dismantling of the structure or any of the fixtures.

The 2013 approval authorized the Chairperson to further extend the time required for the Lessees to comply with the Applicant Requirement regarding the 3rd and 4th houses. This was the only Applicant Requirement that was addressed in the submittal to the Board. The 2nd house was not addressed because staff had been led to believe by the Liewes that the 2nd house had been removed from the property. The extension of time granted by the Board did not apply to the removal of the 2nd house.

Having considered the overall situation, staff notes the following:

1. There is no lease existing, since the original lease expired in March 2013 and its 6-month holdover expired in September 2013; and
2. Lessee failed to comply with the Applicant Requirement to remove the 2nd house from the property within 90 days of the 2012 Board approval date for the 12-year extension. The 2nd house was seen on the property on October 29, 2013, which is long after the 90-day period expired on May 10, 2012. Failure to comply triggered the automatic revocation of the approval of the 12-year extension of lease.

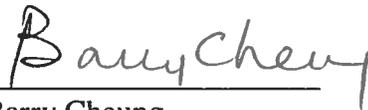
Based on the above, staff recommends that the Board authorize the issuance of a 60-day Notice to Vacate to the Lessees and other people who may be living on the subject property. Upon expiration of the 60-day Notice to Vacate, the State shall retake possession of the subject

property and any people remaining on the subject property will be considered trespassers.

RECOMMENDATION: That the Board:

1. Issue a Notice to Vacate to the Lessees, which requires the Lessees to clean up and deliver possession of the subject property to the Board's representative within 60 days of the date of such Notice to Vacate; and
2. Approve any other conditions that may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



D-5

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

February 10, 2012

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

OAHU

Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298,
Walter and Ann Liew, Lessees; Waimanalo, Koolaupoko, Oahu, Tax Map Key:
(1) 4-1-010:003.

APPLICANT AND REQUEST:

Consent to mortgage from American Savings Bank, Mortgagee, to Walter & Ann Liew,
in an amount not to exceed \$ 90,000.

For Mortgagor to qualify for this mortgage, Mortgagee requires extension of General
Lease No. S-4298 of twelve (12) years, commencing on March 12, 2013 and expiring on
March 11, 2025 for an aggregate term (initial term plus all extensions) of fifty-five (55)
years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by
Tax Map Key: (1) 4-1-010:003, as shown on the attached map labeled Exhibit A.

AREA:

15.587 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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

February 10, 2012

DB

EXHIBIT "1"

D-5

CHARACTER OF USE:

General agriculture purposes.

TERM OF LEASE:

Original term of 43 years, commencing on March 12, 1970 and expiring on March 11, 2013.

Requested extension of twelve (12) years commencing on March 12, 2013 and expiring on March 11, 2025.

ANNUAL RENTAL:

Current rent is \$15,000, due on February 12 of each year.

RENTAL REOPENINGS:

Most recent rental reopening occurred on February 12, 2008.

Reopening for the extension shall be on January 27, 2012 [Board date] for the period expiring February 11, 2022; followed by another reopening falling on February 12, 2022 for the period expiring on March 11, 2025.

USE OF LOAN PROCEEDS:

The Mortgagor intends to use the loan proceeds to make any changes necessary to bring the improvements on the subject premises into compliance with the relevant county ordinances.

DCCA VERIFICATION:

Individuals, not applicable.

APPLICANT REQUIREMENTS: The Lessees shall

1. Remove the 2nd house from the property within 90 days from the date of the Board approval.
2. Either combine the 3rd and 4th houses or to remove the 3rd house. This includes obtaining all necessary permits and completing any necessary construction within 180 days from the date of the Board approval.
3. Pay for the appraisal fee for the immediate rental reopening.

REMARKS:

General Lease No. 4298 was sold at public auction on March 12, 1970 to Ambrose Rosehill and Frederick Titcomb for an original term of 20 years. The lease was assigned several times until 1999 when the Board consented to the assignment of the subject lease to Walter and Ann Liew (Lessee). The assignment to the Liews was from the U.S. Department of Agriculture (USDA) which had received the lease as a result of the foreclosure of its loan to the prior tenant. It appears that the USDA was aware of the problems with the improvements not being in compliance, but that it did not disclose such problems to the Liews prior to the lease being assigned.

In March 2005, the Department received Notice of Violation (NOV) issued by the Department of Planning and Permitting of the City and County of Honolulu. The subject of the NOV was regarding unauthorized structures on the premises. Notice of Default (NOD) was served and the Board extended the cure period of the NOD to allow the Lessee more time to address the problem. At the time of writing this submittal, the breach has not been corrected.

On April 10, 2007, Lessee filed a lawsuit against the State of Hawaii, Department of Land and Natural Resources, alleging that the State had known that the structures were not in compliance with County ordinances and that it failed to disclose the problems with the structures to the Lessee.

Staff understands that the State and the Lessee's attorney are working a settlement regarding the lawsuit mentioned above. Under the proposed settlement, the Lessee will apply for a mortgage and the loan proceeds will be used to correct the default, for example, hiring a consultant to prepare engineering drawings as required by DPP, modification of the existing improvements to meet the current standards etc. With the loan, the lender requests the term of the lease be extended for an additional 12 years. In the meantime, the State will recommend approval from the Board for the lease extension request notwithstanding the lessee is not in compliance with the lease terms and conditions.

During inspection, staff has noted that there are four (4) dwellings on the property. The subject lease only allows one primary residence plus one employee dwelling. Approximate locations of the dwellings are marked on Exhibit A, and photos of the dwellings are attached as Exhibit B. Following discussion between the Lessees and the State, it was agreed that the Lessees will remove the 2nd house from the property within 90 days of the Board approval of the lease extension request. Further, the Lessees agree to combine the 3rd and 4th houses into one single house with proper county approval and construction completed within 180 days of the Board approval of the lease extension. If the proposed combination is not feasible, the Lessees agree to remove either the 3rd or the 4th house from the property. Lessees acknowledge that all construction, demolition, or removal occurred on the property as mentioned above shall be conducted with proper authorization or permit from the county.

In addition, Department of Agriculture (DOA) has been maintaining a reservoir located

mauka of the subject property since 1993. Flowage easement over the subject property and access to the control box for the reservoir and water system are required for the proper operation and maintenance of the reservoir. After discussion, the Lessees agree to a condition being placed in the extension requiring the Lessees to provide access to the control box for the reservoir and water system, and designating flowage easements over the subject property. Staff understands the exact delineation of the access and flowage easement area will be determined by the Engineering Division of the Department, DOA, and the Lessees.

Staff recommends the Board consent to the mortgage and authorize the lease extension in view of the proposed settlement, which will elaborate on the specific structures/improvements that need to be corrected. In short, the defaults cited in the NOD (Exhibit B) will be rectified.

There are no other pertinent issues or concerns.

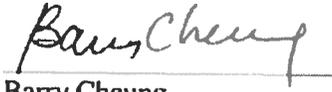
RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant Requirement listed above:

1. Consent to the mortgage between Walter and Ann Liew, Mortgagor, and American Savings Bank, Mortgagee, subject to the following:
 - A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - 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.
2. Authorize the extension of General Lease No. S-4298 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 lease extension form, as may be amended from time to time;
 - B. The State reserves an easement over the subject property for access purpose to the adjacent reservoir and its control system;

- C. The State reserves flowage easement(s) over the subject property;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Failure to comply the Applicant Requirement within the time stipulated therein shall result in automatic revocation of this approval.

Respectfully Submitted,

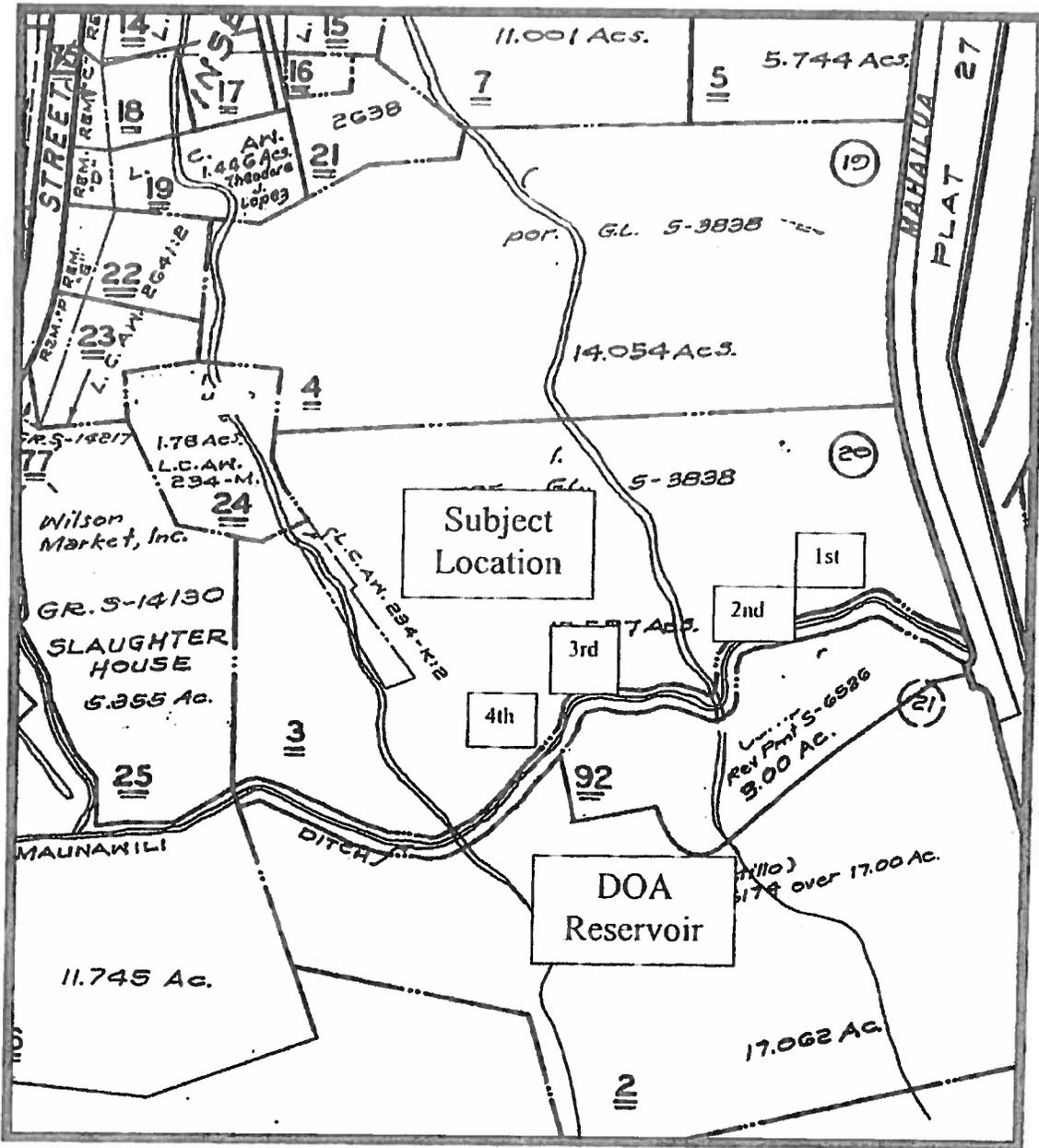


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

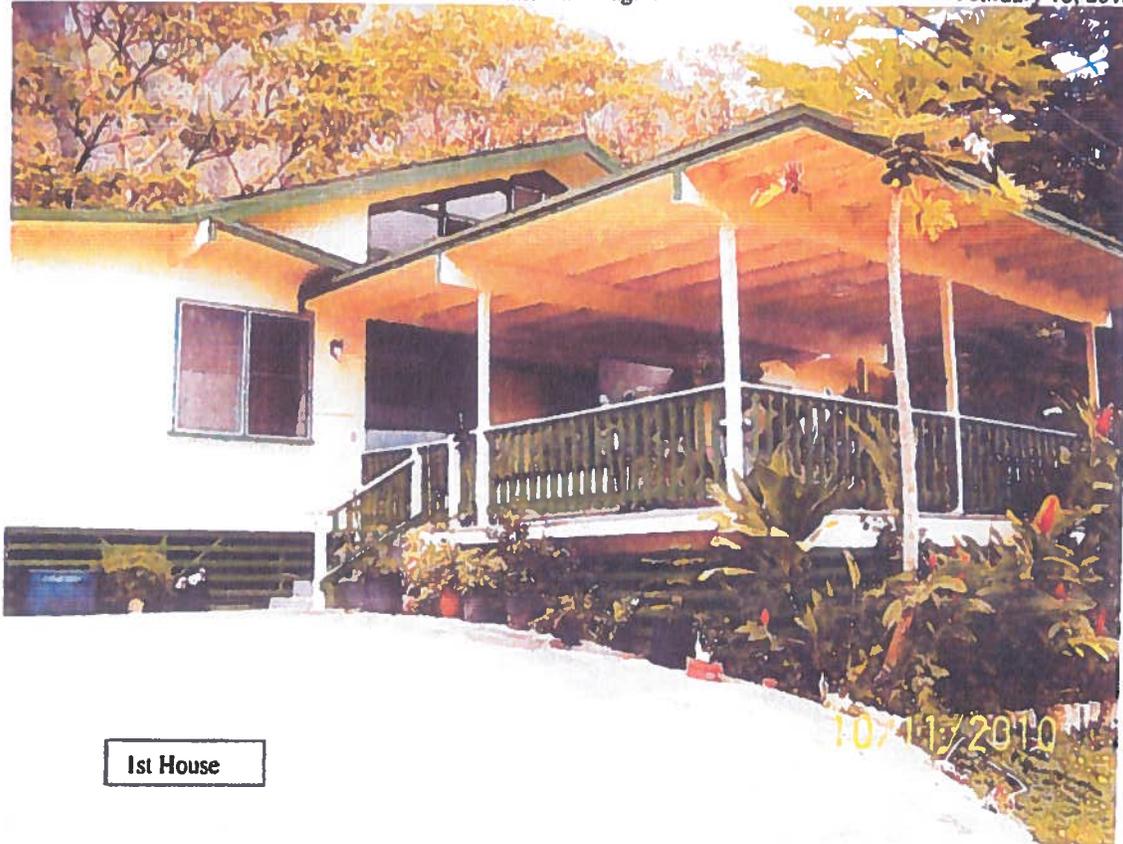

William J. Aila, Jr., Chairperson

W

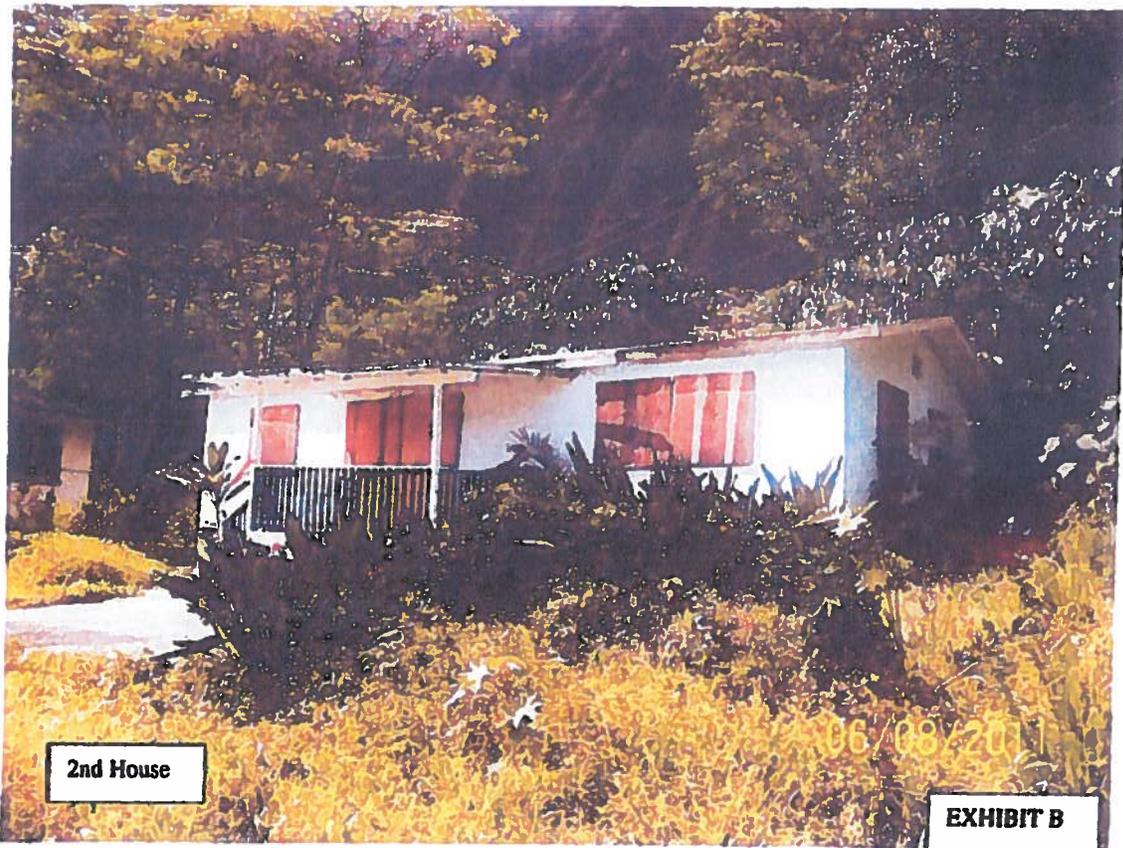


TMK (1) 4-1-010:003

EXHIBIT A



1st House



2nd House



3rd House



4th House



{In Archive}

bobby liew to: enver.painter, barry.w.cheung

05/11/2012 09:21 AM

From: bobby liew

To: <barry.w.cheung@hawaii.gov>

History: This message has been forwarded.

Archive: This message is being viewed in an archive.

Good Morning Gentlemen,

As of 5/9/12 the second house has been removed. Here are the pictures.

Thank you.[attachment "001.JPG" deleted by Barry W Cheung/DLNR/StateHiUS] [attachment "003.JPG" deleted by Barry W Cheung/DLNR/StateHiUS]

EXHIBIT " 2 "

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

January 25, 2013

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

PSF 12OD-021

OAHU

Amend Prior Board Action of February 10, 2012, Item D-5, Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessees; by Extending the Time for the Lessee to Comply with the Requirements and Authorizing a Six-Month Holdover; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003.

BACKGROUND:

On February 10, 2012, under agenda item D-5, the Board authorized a 12-year extension for the subject lease until March 11, 2025. A copy of the approved Board submittal is attached as **Exhibit 1**.

An immediate rental reopening for the extended term was conducted by an independent appraiser. In July 2012, staff notified the Lessee that the annual rental for the extended term would be \$21,800, and requested the Lessee respond within thirty days of such offer letter.

Staff did not receive any responses from the Lessee until late November 2012. Mr. Liew explained that he misunderstood that his attorney would respond to the offer letter for the new rent. After clarification with his attorney, Mr. Liew indicated in writing that he chose to reject the new rent and pursue arbitration.

REMARKS:

In view of the current expiration date of the subject lease which falls on March 2013, staff requests the Board authorize a six-month holdover period which will allow the Department and the Lessees time to resolve the arbitration issue.

Further, Lessee is required to either remove or combine the 3rd and 4th houses on the property within 180 days of the Board approval as mentioned in the Applicant Requirement section in the February 2012 submittal. Lessee requests additional time to comply with the Department

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 25, 2013 jo.

EXHIBIT " 3 "

of Health permit. Staff does not have any objection to the requested extension, and recommends the Board authorize the Chairperson to extend such period for good cause.

There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 10, 2012, under agenda item D-5 by:
 - a. Authorizing a six-month holdover commencing from March 12, 2013, further subject to the terms and conditions described above.
 - b. Authorizing the Chairperson to extend the time period for the Lessee to comply with the Applicant Requirements for good cause.
2. All terms and conditions listed in its February 10, 2012 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

N



EXHIBIT "4-a"



EXHIBIT "4-b"



EXHIBIT "4-c"



EXHIBIT "4-d"



EXHIBIT "4-e"



06/08/2011

EXHIBIT " 5 "



Fw: Exhibit E (for GL S-4298 submittal)
Pamela K Matsukawa to: Barry W Cheung

11/12/2013 04:02 PM

----- Forwarded by Pamela K Matsukawa/AG/StateHiUS on 11/12/2013 04:00 PM -----

From: "Enver W. Painter, Jr."
To: <Pamela.K.Matsukawa@hawaii.gov>
Cc: "bobby liew"
Date: 11/04/2013 05:37 PM
Subject: RE: Liew arbitration, GL S-4298

Pam:

I think the DLNR is overreacting. I just got off the phone with Walter. As far as he is concerned the house was removed from the property, at least from where it could have been used as a residence in violation of the 1 +1 residence limitation for the property. He was storing the hose at the back of the lot with the intention of cannibalizing the "2nd house" to combine the other two houses as was his option to do per the lease extension.

I will contact you tomorrow to discuss in more detail.

Enver

From: Pamela.K.Matsukawa@hawaii.gov [mailto:Pamela.K.Matsukawa@hawaii.gov]
Sent: Monday, November 04, 2013 2:23 PM
To: George Hao; Craig Leong; Andrew Rothstein
Cc: Russell.Y.Tsuji@hawaii.gov; Barry.W.Cheung@hawaii.gov; Linda.L.Chow@hawaii.gov
Subject: Liew arbitration, GL S-4298

This is to inform you that DLNR is suspending the arbitration of rent for a 12-year lease extension. At the site visit for this arbitration, DLNR learned that the Liew misrepresented to DLNR that they had removed the "2nd house" from the property. The house was not removed but was merely relocated to a remote part of the property. On February 10, 2012, the Land Board gave conditional approval for the 12-year extension. One of the conditions was the removal of the 2nd house from the property within 90 days of the approval. The Liew misinformed DLNR that the house had been removed from the property within the 90 days. The Land Board's conditional approval also provided for automatic revocation of the approval upon noncompliance with the conditions that the Board had set..

At this point, there is no lease. The automatic revocation of approval for the 12-year extension took effect when the Liew failed to remove the 2nd house within the 90 days. The written six-month lease extension allowing time to complete the arbitration expired in September 2013.

Land Division will seek the Land Board's approval to issue a notice to vacate to the Liew.

EXHIBIT " 6 "

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.