

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

February 14, 2014

Ref. No.: GLS-4312

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

HAWAII

Consent to Sublease of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio, Lessee, to David Hepp, dba: East Hawaii Metals, Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:026.

APPLICANT:

Gary J. Rubio and Karen L. Rubio, husband and wife, Tenants by the Entirety, as Sublessor, to David Hepp, dba: East Hawaii Metals, single, Tenant in Severalty, as Sublessee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes, as amended.

"Revision to Sublease Rent Participation Policy" adopted by the Board of Land and Natural Resources (Board) on May 26, 2000, agenda item D-24, and as amended by "Resubmittal: Amendment to the Sublease Rent Participation Policy" approved by the Board on January 26, 2001, under agenda item D-8, and as refined by the Board's action of August 24, 2012, Item D-14.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-058:026, as shown on the attached map labeled Exhibit A.

AREA:

.4386 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:

YES \_\_\_\_\_ NO   x  

LEASE CHARACTER OF USE:

General industrial purposes.

SUBLEASE CHARACTER OF USE:

For storage of precious, semi-precious, non-ferrous metal commodities in various forms, for purchase and resale purposes. e.g.: platinum, copper, brass, and aluminum.

TERM OF LEASE:

55 years, commencing on June 30, 1970 and expiring on June 30, 2025. Last rental reopening occurred on September 9, 2005; next rental reopening is scheduled for June 30, 2015.

TERM OF SUBLEASE:

1-year, commencing on October 1, 2013 and expiring on October 1, 2014.

ANNUAL RENTAL:

\$14,300.00 Payable in quarterly installments of \$3,575.00, due on the 30<sup>th</sup> day of March, June, September, and December of each and every year.

ANNUAL SUBLEASE RENTAL:

\$21,000.00. Payable in monthly installments of \$1,750.00, due on the First day of each month during the term of this Sublease.

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

In accordance with the most current Rent Participant Policy as approved by the Board of Land and Natural Resources at its meeting of August 24, 2012, agenda item D-14, the State will not receive any portion of the sublease rents for the reasons discussed in the remarks section below.

Sublease Rent Participation Policy:

The primary purpose of establishing the Board's Sublease Rent Participation Policy was to avoid lessees from speculating and profiting on fluctuating land values while benefiting from a State lease.

On May 26, 2000, agenda item D-24, the Board approved the "Revision to Sublease Rent Participation Policy" ("Policy"). On January 26, 2001, agenda item D-8, the Board amended the Policy to address the situation in which the lessee is a non-profit making entity and paying less than fair market rent.

In summary, the Policy applies to three types of situations.

- a. If the lessee subleases unimproved lands, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- b. If the lessee subleases improvements owned by the State, the Board shall revise the rent to include as additional rent, 50% of that portion of the sublease rent in excess of the original ground rent paid to the State.
- c. If the lessee subleases improvements not owned by the State, the Board shall not receive any portion of sublease rents from subleasing improved space unless: (i) that right and method of calculation are specifically stated in the lease, or (ii) participation in sublease rents is warranted considering the age of the improvements (including but not limited to the extent to which the improvements have been depreciated or amortized), lessee's expenditures to maintain the same in relation to sublease revenues, and the extent to which the lessee actually occupies and uses the lease premises for its own business.

The Board stated on the record that the formulas in the Policy generally reflect the intent of the Board regarding the calculation of sublease sandwich profit and shall serve as guidelines in such calculation. The Board also authorized the staff to use their discretion in representing the State's interest in applying these formulas to address the varying subleasing arrangements that may not fit neatly into the formulas.

Therefore, notwithstanding the Board adopting the Sublease Rent Participation Policy, the policy was never meant to be followed blindly with rigid adherence but instead, the Board expected staff to continue to use good land management practices and standards (and common sense) when analyzing a sublease rent proposal and arriving at a reasonable recommendation for the Board to consider that is both fair to both parties and in the best interest of the State.

This lease is silent with regards to sublease rent participation. It only requires the Lessor's consent to sublease.

DCCA VERIFICATION:

Sublessor/ Sublessee: As sole proprietors, are not required to register with DCCA.

REMARKS:

General Lease No. S-4312, a forty year lease, was originally awarded to Hacker and Schneiderich, a Hawaii corporation, as the successful bidder at public auction held on June 30, 1970 at the State Office Building in Hilo, Hawaii.

At its meeting of April 13, 1973, Item F-1, the Board consented to the assignment of the lease from Hacker and Schneiderich, Assignor, to R. Hiraе Painting, Inc., as Assignee.

At its meeting of August 26, 2005, Item D-3, the Board approved the consent to assignment of the lease from Richard M. Hiraе and Corliss T. Hiraе, Assignor, to Gary J. Rubio and Karen L. Rubio (Rubios), Assignee; Consent to Mortgage with Extension of Lease Term; and Consent to Various Subleases.

Upon acquiring the lease, the Rubios made substantial repairs and improvements to the property. The following is an itemization of the repairs/improvements made.

Roof repair:	\$60,000.00
Construct retaining wall with fill:	\$25,000.00
Paint building/ install gutters:	\$ 4,500.00
Install gate at property entrance:	<u>\$ 1,000.00</u>
Total:	\$90,500.00

At its meeting of August 24, 2012, Item D-4, the Board approved forfeiture of the lease due to the Rubios' failure to post the required performance bond and failure to keep lease rental payments current.

At its meeting of October 12, 2012, Item D-3, the Board approved to rescind its prior Board actions of August 24, 2012 (D-4), Forfeiture of General Lease No. S-4312. On September 4, 2012, the Rubios brought the rent current and on September 10, 2012, they deposited a check for \$28,600 with Budget and Finance to satisfy the bond requirement.

The Rubios desire to sublease a portion of their improved premises to Mr. David Hepp, dba: East Hawaii Metals. Mr. Hepp intends to utilize a 1,500 square foot portion of the warehouse for the storage of semi-precious, non-ferrous metal commodities in various forms (i.e.: platinum, copper, aluminum, brass, etc.), at a rate of \$1,750 per month. There are no plans to modify, alter or initiate any improvements to the existing warehouse. Currently, a Royden B. H. Wong, dba: Royden's Auto Service is subleasing a 1,500 square foot portion of the warehouse for \$1,100 per month.

Staff is requesting the Board's consent to the sublease of General Lease No. S-4312. Pursuant to the most recent rent participant policy approved by the Board at its meeting of August 24, 2012, under agenda D-14, sandwich profits are not expected in this

situation.

In this case, the subject sublease is for improved property only where the improvements are not owned by the State. The Rubios are paying fair market rent as calculated by an independent appraiser in its most recent rental reopening of September 9, 2005. The subject property is rectangular in shape and has a gross land area of .4386 acres, or 19,106 square feet. The site is asphalt-paved with a 6,000 square foot single level steel warehouse that was constructed in 1972 and is owned by the Rubios. The lease does not specifically state a method for calculating the rent participation. The Rubios are still depreciating renovation costs to the improvements and occupy most of the premises (3,000 s.f.) for their own business, dba: Big Island Brake and Front End Repair.

Staff reviewed the file and can report that notices of default for failure to pay rents were sent on 1/3/12, 2/3/12, 5/3/12, 7/31/13 and 10/29/13. Rent paid quarterly is now current. Liability and fire insurance are current, with an expiration date of 12/29/2013. A performance bond in the amount of \$28,600.00 is deposited with Budget and Finance. The Rubios have never been cited for any illegal or unlawful activity on the State property.

There are no outstanding rental reopening issues.

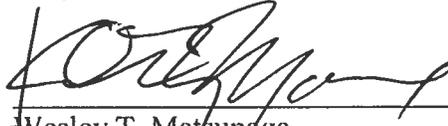
No agency or community comments were solicited, as there will be no new disposition or change in land use.

RECOMMENDATION: That the Board:

- A. Consent to the Sublease under General Lease No. S-4312 between Gary J. Rubio and Karen L. Rubio, dba: Big Island Brake and Front End Repair, as Lessee/Sublessor, to David Hepp, dba: East Hawaii Metals, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  1. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
  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.

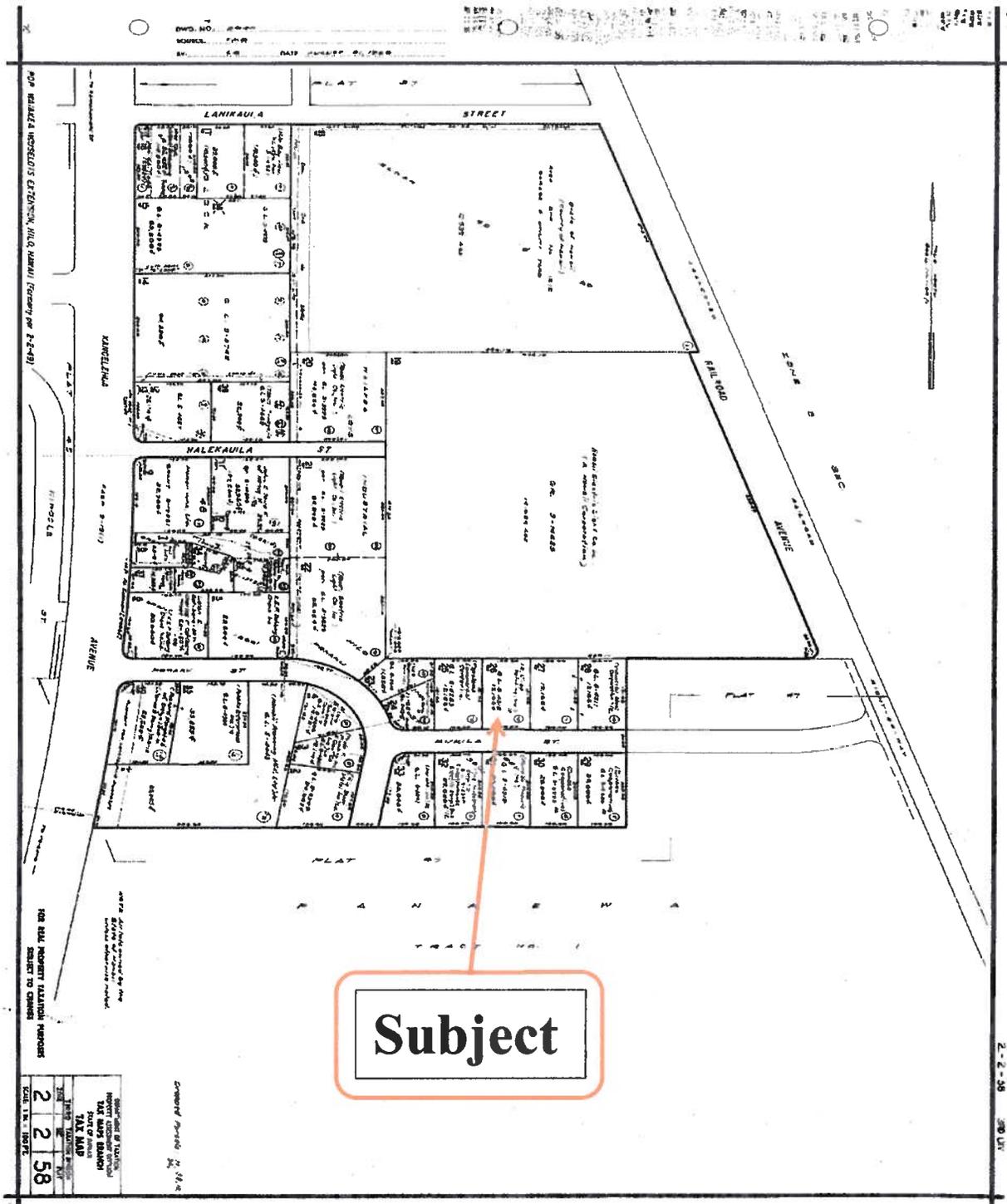
Respectfully Submitted,



Wesley T. Matsunaga  
Land Agent

APPROVED/DENIED:

  
William J. Aila, Jr., Chairperson



**EXHIBIT A**