

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

April 25, 2014

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

Ref: GL 4298

OAHU

Denial of Request for Contested Case Hearing by Walter and Ann Liew, Lessees  
of General Lease No. 4298, Waimanalo, Koolaupoko, Oahu, TMK (1)  
4-1-010:003, Regarding Issuance of Notice to Vacate

BACKGROUND:

The petitioners, Walter and Ann Liew ("Liew"), requested a contested case hearing concerning the issuance of a notice to vacate approved by the Board on December 13, 2013, Item D-27. We recommend that the Board deny the petition for a contested case hearing by Walter and Ann Liew that was received by the Land Division on December 20, 2013.

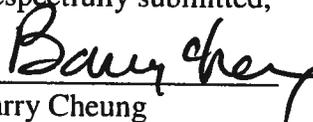
DISCUSSION:

On December 13, 2013, under agenda item D-27, the Board approved the staff recommendation of issuance of a notice to vacate pursuant to a prior Board action dated February 10, 2012. A copy of the December 2013 submittal is attached as **Exhibit 1**. An oral request for a contested case hearing was made at the December 2013 meeting by the Liew through their attorney. A written petition for a contested case hearing was received on December 20, 2013, which is now attached as **Exhibit 2**.

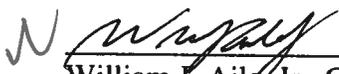
Land Division, after consultation with the Department of the Attorney General, recommends denial of the request on the basis that the Liew are not entitled to a contested case hearing by statute, rule, or due process.

RECOMMENDATION: That the Board deny the petition for a contested case hearing by Walter and Ann Liew due to lack of right to a contested case hearing, which will allow the immediate issuance of the notice to vacate as previously approved.

Respectfully submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson

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

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, Koolauapoko, Oahu; TMK (1) 4-1-010:003

OAHU  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
December 13, 2013

**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 2<sup>nd</sup> house within 90 days of the Board approval, and either combine the 3<sup>rd</sup> and 4<sup>th</sup> houses or remove the 3<sup>rd</sup> 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**)<sup>1</sup>, 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

<sup>1</sup> 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 3<sup>rd</sup> and the 4<sup>th</sup> 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 3<sup>rd</sup> and 4<sup>th</sup> houses for good cause. The Board's action at its January 25, 2013 meeting did not deal with removal of the 2<sup>nd</sup> house because the Department had been informed by the Lessees that the 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> house. The 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 "2<sup>nd</sup> 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 3<sup>rd</sup> and 4<sup>th</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> house from the property within 90 days of the 2012 Board approval date for the 12-year extension. The 2<sup>nd</sup> 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.

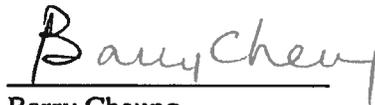
Based on the above, staff recommends that the Board authorize the issuance of a 60-day Notice to Vacate to the Lessees and other people who may be living on the subject property. Upon expiration of the 60-day Notice to Vacate, the State shall retake possession of the subject

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

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

February 10 2012 <sup>DB</sup>

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 2<sup>nd</sup> house from the property within 90 days from the date of the Board approval.
2. Either combine the 3<sup>rd</sup> and 4<sup>th</sup> houses or to remove the 3<sup>rd</sup> 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 2<sup>nd</sup> house from the property within 90 days of the Board approval of the lease extension request. Further, the Lessees agree to combine the 3<sup>rd</sup> and 4<sup>th</sup> 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 3<sup>rd</sup> or the 4<sup>th</sup> 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

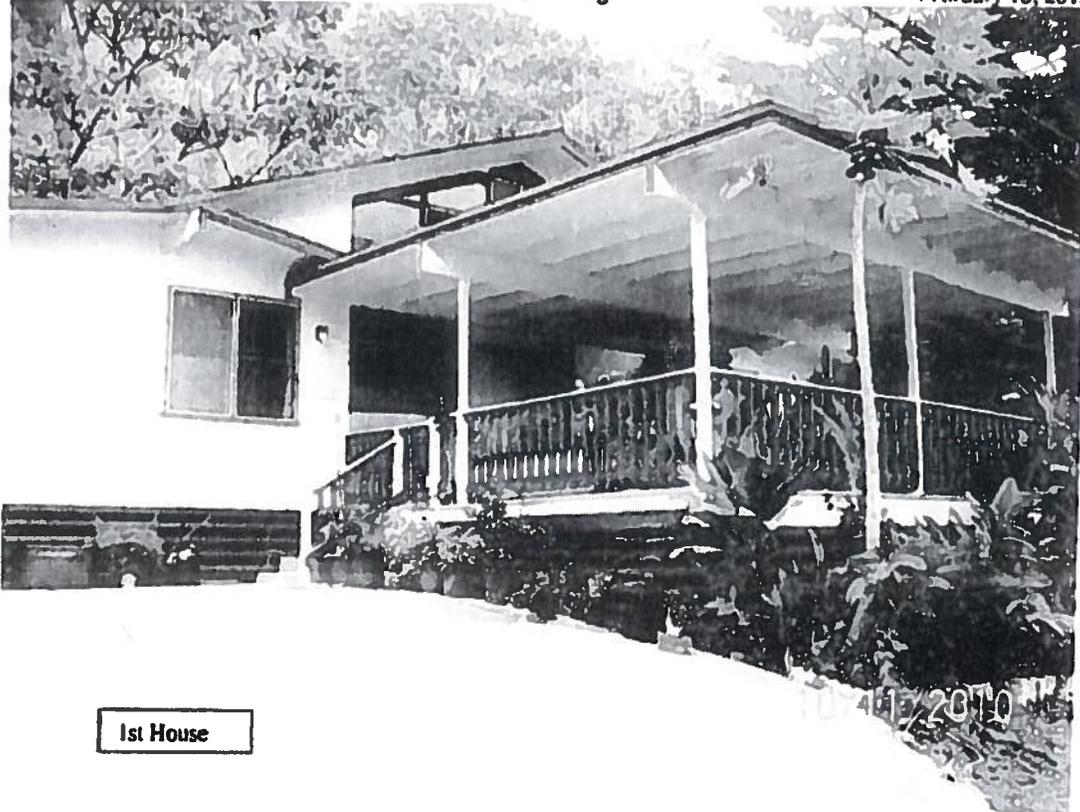
APPROVED FOR SUBMITTAL:



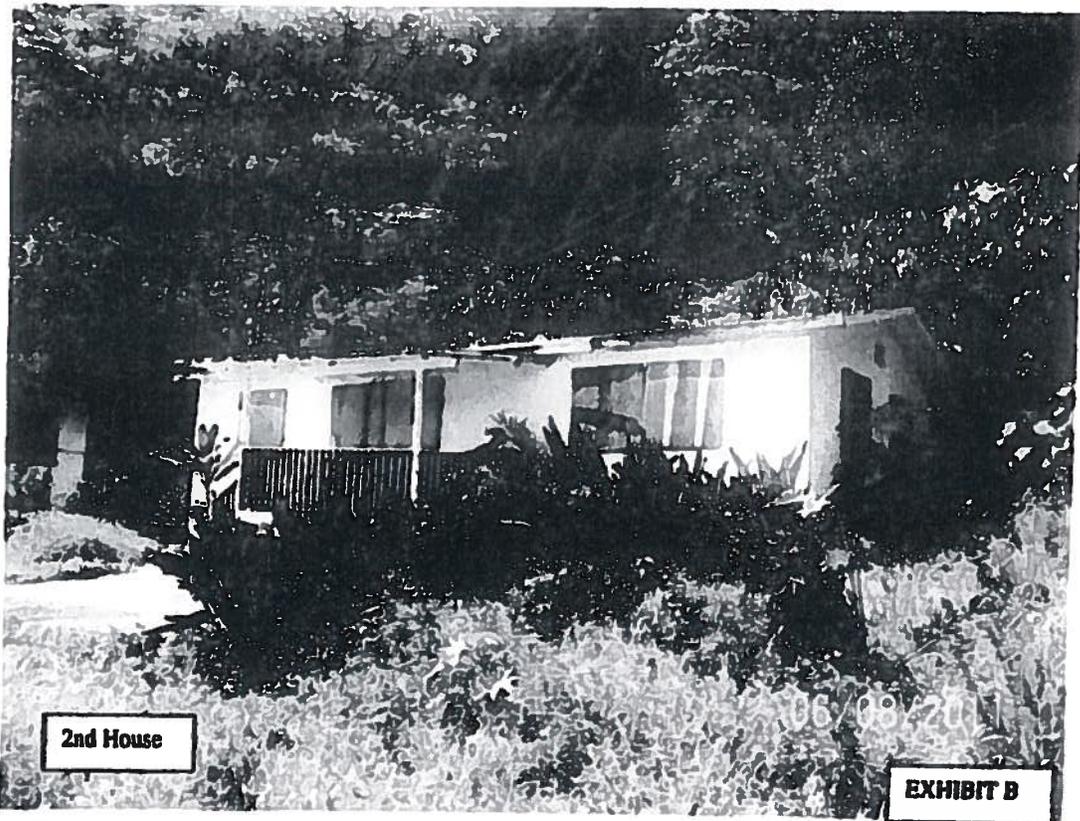
William J. Aila, Jr., Chairperson







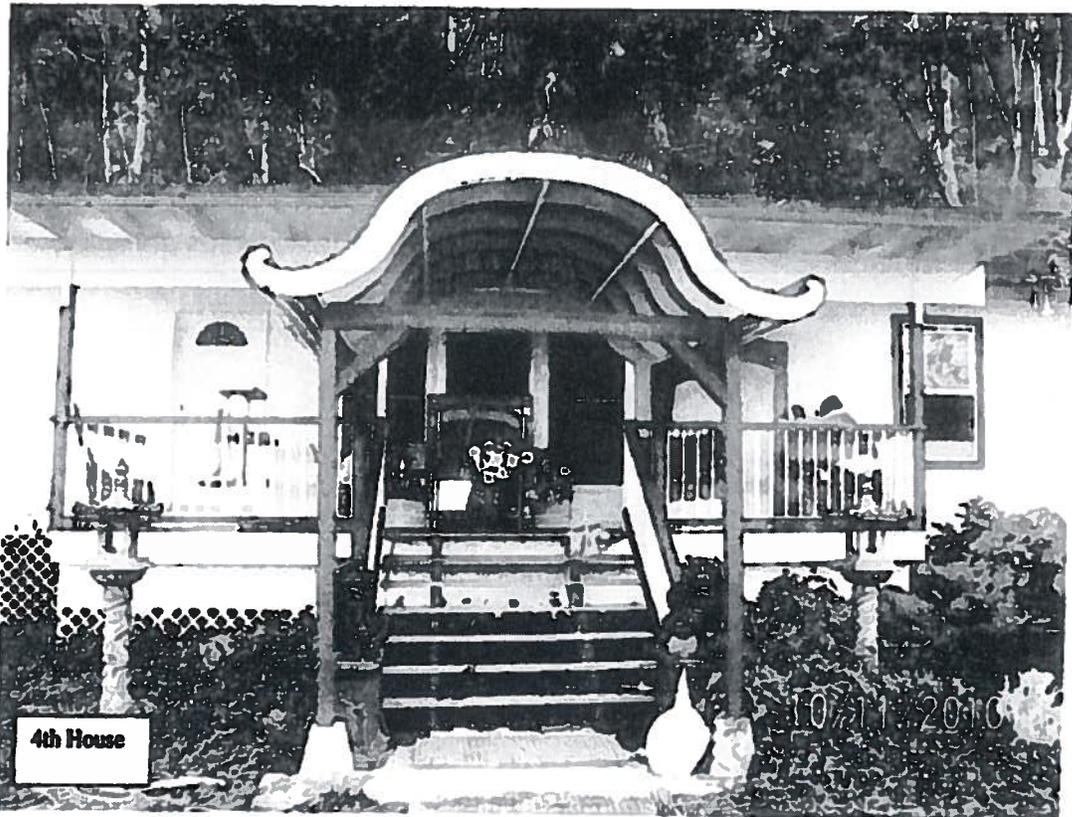
1st House



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 Licw, 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 3<sup>rd</sup> and 4<sup>th</sup> 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 J.D.

**EXHIBIT "3"**

D-10

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:

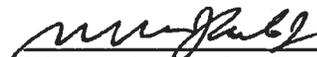
1. Amend its prior Board action of February 10, 2012, under agenda item D-5 by:
  - a. Authorizing a six-month holdover commencing from March 12, 2013, further subject to the terms and conditions described above.
  - b. Authorizing the Chairperson to extend the time period for the Lessee to comply with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



**EXHIBIT "4-a"**



**EXHIBIT "4-b"**

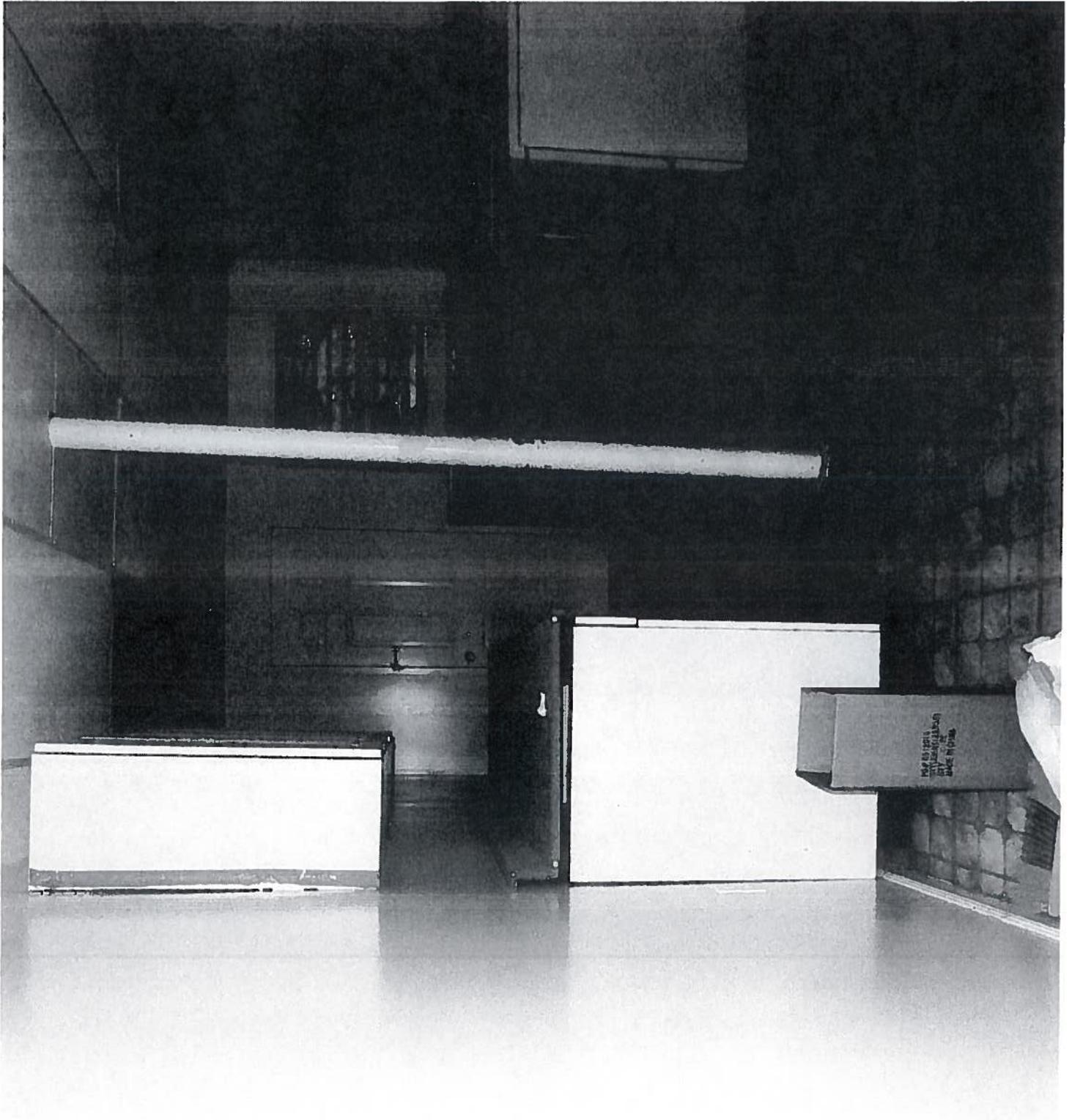


EXHIBIT "4-c"



**EXHIBIT "4-d"**



**EXHIBIT "4-e"**



**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 lieu"  
**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 "2<sup>nd</sup> 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.Tsujl@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 Liews 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 Liews 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 Liews 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 Liews.

**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.



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED  
2013 DEC 20 PM 1:23  
DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Ann and Walter Liew	2. Contact Person	
3. Address	4. City Waimanalo	5. State and ZIP HI 96795
6. Email	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name Enver Painter	10. Firm Name	
11. Address 1188 Bishop St. #2505	12. City Honolulu	13. State and ZIP HI 96813
14. Email enver.painter@hawaiiantel.net	15. Phone 537-9777	16. Fax 537-9207

C. SUBJECT MATTER	
<b>17. Board Action Being Contested</b> Issuance of Notice to Vacate	
<b>18. Board Action Date</b> December 18 2013	<b>19. Item No.</b> D-27
<b>20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action</b> Leasehold Interest in TMK (1)4-1-010-003 through March 2025	
<b>21. Any Disagreement Petitioner May Have with an Application before the Board</b> The Liew's disagree that the breached the settlement agreement and conditions for Lease extension through March 2025. They substantial complied with and performed both.	
<b>22. Any Relief Petitioner Seeks or Deems Itself Entitled to</b> Enforcement of Settlement Agreement and Lease extension through March 2025.	
<b>23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest</b> Petitioners are the real parties in interest. Neither the public interest nor the interest of justice can be serv without their participation.	
<b>24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR</b> SEE ATTACHED	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

ENVER PAINTER  
Petitioner or Representative (Print Name)

[Signature]  
Signature

DEC. 20, 2013  
Date

## DECLARATION OF WALTER LIEW

My name is Walter Liew. I am 80 years old, my wife Ann is 70 years old and we are the owners of the Lease No. S-4298 for the property at \_\_\_\_\_ in Waimanalo. We use the property to grow and display bonsai trees.

We discussed the purchase of the Lease with the United States Farm Service Agency in 1998. It was represented to us that the Lease is in full force and effect and that the land and buildings on the property were free and clear of all liens and encumbrance.

Because the term of Lease as stated in the Lease document expired in March of 1990, we were directed to meet with Mr. Cecil Santos, a Land Agent for the Hawaii Department of Land and Natural Resources (DLNR).

We met with Mr. Santos in August of 1998. Mr. Santos explained that the Lease was on an extension and could be automatically extended for 12 more years, up until March of 2025. Mr. Santos said that there were 27 years left on the Lease with the extensions. He gave me a piece of paper where he had written down his explanation of the Lease term and the extensions through March of 2025. A copy of Mr. Santos hand written notes are attached as Exhibit "A".

Based upon what Mr. Santos told us, we went ahead and purchased the Lease. The Lease was assigned to us in May of 1999. We would not have purchase it if there were only less than 14 years remaining.

In April of 2004 we got a Notice of Violation from the City and County of Honolulu saying that the buildings on the property were built without building permits. The buildings were on the property when we purchase the Lease. A copy of the Notice of Violation is attached as Exhibit "B".

On April 27, 2005 we received a notice from the DLNR that it was going to cancel the Lease because of the violations. We later found out that both the U.S. Farm Service Agency and the DLNR knew about the violations before we purchase the Lease but did not tell us about the know violations. In a July 13, 1995 letter from Mr. Okimoto of the Farm Service Agency to Mr. Santos of the DLNR, Mr. Okimoto confirms their observations from their joint inspection of the property on July 12, 1995. The buildings on the property were built without building permits. A copy of Mr. Okimoto's letter to Mr. Santos is attached as Exhibit "C".

Nobody from the Farm Service Agency or the DLNR, including Mr. Santos when he was explaining that the Lease could be extended through March of 2025, ever told us of the existing building code and other violations. We never would have bought the Lease if we

had known about all of the pre existing problems.

We later found out that we could not get the lease extension through 2025 because of the building code and other violations. In order to get the extension, all of the violations would first have to be corrected. We got estimates that it was going to cost us at least \$90,000 to correct the building code violations alone. We did not have \$90,000.

Because of these problem we had to hire an attorney and file lawsuits against the Farm Service Agency and the DLNR.

On June 8, 2011 Barry Cheung, Linda Chow, my attorney Enver Painter and I all met at the property to discuss a settlement. There were too many residences on the property. It was agreed that what everyone refers to as the 2<sup>nd</sup> house could not and would not be used as a residence. Barry asked what will you will you do with the 2<sup>nd</sup> house. I asked him what I could do with it. Barry said I could use it for anything I wanted except for a residence so long as it was properly permitted. I told Barry I would probably just sell it or tear it down because building permits would cost to much.

Eventually the lawsuits were settled. The settlement with the DLNR was pretty much like as explained by Barry Cheung on page 3 of his February 10, 2012 letter D-5 to the Land Board which is attached as Exhibit "1" to his letter to the Land Board dated December 13, 2013. Basically, we agreed to only have the one owner residence and one worker residence allowed by the Lease and to get rid of the others and to fix all of the building code and other violations on the rest of the buildings at our own expense. In exchange, the DLNR agreed to give us the lease extension through 2025. We also agreed to give the Department of Agriculture easements and access so they could maintain and inspect their reservoir located next to the property.

The settlement was all written up by the DLNR and submitted to the Land Board. The Land Board approved on February 10, 2012. Pursuant to the settlement, I had 90 days to remove the 2<sup>nd</sup> house. To me this meant that the 2<sup>nd</sup> house could not be used as a residence. I thought I could sell the house so I advertise it for sale.

On May 2, 2012 my son Bobby Liew sold the 2<sup>nd</sup> house for \$25,000 and took a deposit for \$5000. The buyer did not have the balance of the purchase price and his lot was not ready for the house. Bobby told him we had to move the house because of the settlements with the DLNR and that we would charge him \$1,500 to move the house. Tony, the purchaser agreed. See contract for sale of 2<sup>nd</sup> house attached as Exhibit "D".

The 2<sup>nd</sup> house was not used for a residence. Everything was taken out of it. All water and

sewage and electricity was disconnected and the house was moved away for the residence area of the property and put on the back of the property until the buyer came to get it.

Bobby sent Barry an email on May 9, 2012 that the 2<sup>nd</sup> house had been removed. I thought we removed the 2<sup>nd</sup> house as required by the settlement.

About one week later, Barry came to the property. He asked what we had done with the 2<sup>nd</sup> house. I told him we sold it and moved it "over there" for "temporary storage" because the buyer did not have the money to pay for it and his lot was not ready. Barry said that would be "satisfactory as long as not used as residence."

About one month later, my neighbor McGill Ramirez, who always makes complaints about his neighbors, made a complaint of illegal dumping. Barry came to the property and saw cement blocks and the 2<sup>nd</sup> house being stored on the back of the lot. Barry asked "what house is this, Walter." I told Barry it was the 2<sup>nd</sup> house that had been sold and moved back here for temporary storage. Barry just said "OK".

In March or April of 2013 we painted the 2<sup>nd</sup> house because it had been all boarded up and was rained on and was getting moldy and we still wanted to sell it or use it for materials. If we didn't paint it then it would have just rotted and buyer would not buy and we could not use for materials.

In approximately July 23, 2013, McGill again made a complaint of illegal dumping. Barry came over and inspected property. There were too many cars on the property and there were two boats parked next to 2<sup>nd</sup> house being stored at back of lot. Barry issued citation saying boats and cars had to be removed. Barry also asked about the 2<sup>nd</sup> house. I told him the sale fell through and I am going to chop up and use for materials but don't have permit yet for combining 3<sup>rd</sup> and 4<sup>th</sup> house. Barry didn't say anything about the 2<sup>nd</sup> house at that time.

We removed the boats and the cars and took pictures. I took the pictures and a letter to Barry to Barry's office. The letter said we had removed the boats and cars and if not OK please tell us right away so we would have time to correct. There was going to be an inspection but Barry said he did not have the time to do the inspection so he was going to send Steve Lau.

Around October 23, 2013, Steve Lau came to property and did the inspection. He said Barry wanted me to go to back of property to and see that 2 boats were removed and ask what is plan for 2<sup>nd</sup> house. I took Steve Lau to the back of property and showed him the boats were gone and told him that 2<sup>nd</sup> house would be chopped up and used for materials.

Also, over this time, my wife and I spent between \$75,000 and \$80,000 to fix up the building code violating. We are still waiting for the permit for combining the 3<sup>rd</sup> and 4<sup>th</sup> house which our architect thinks will be given very soon. In my mind the only major thing left to do was to figure out what the fair rent for the extension period was going to be.

On October 29, 2013 we had a site inspection for the appraisers to determine the amount of lease rents. The DLNR appraiser, Craig Leong said he wanted to start the inspection by looking at the house on the back of the property. We all went there with Craig Leong leading the way. Barry again asked about the 2<sup>nd</sup> house. Bobby told Barry that we think the sale fell through and we are going to use the house for materials to combine the 3<sup>rd</sup> and 4<sup>th</sup> house but didn't yet have the building permit. Barry did not have any problem with the 2<sup>nd</sup> house being there so we didn't think there was any problem.

After the inspection, one of my workers came to me and complained that Craig Leong had entered his residence and opened the door to his bedroom. The worker was home in bed sick with the flue. The worker was startled when Craig Leong opened his bedroom door so he jumped up. He said Craig Leong then took a picture of him. He was very upset and said not even the police would do this and he wanted the pictures back and wanted Craig Leong to apologies. I told Mr. Painter about this and he sent an email to Pam Matsukawa who had been at the site inspection. A copy of Mr. Painter's October 31, 2013 email to Pam Matsukawa is attached as Exhibit "E"

On November 4, 2013 Pam Matsukawa sent an email saying the Lease was terminated and Land Division will seek Land Board's approval to issue a notice to vacate. A copy of Pam Matsukawa's November 4, 2013 email to Enver Painter is attached as Exhibit "F".

We tried to work things out, but the DLNR refused to discuss. They said I could make my case before the Land Board. I am submitting this statement and the attached Exhibits under oath to do just that.

I, Walter Liew , do declare under penalty of law that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, December 11, 2013.



Walter Liew

Early August, 1998

6

# GENERAL LEASE NOS-4298

1st term	3/12/70	to	3/11/90	=	20 YRS
+ Extension	3/12/90	to	3/11/2013	=	23

---

7/2/98 to 3/11/2013 = 15 yrs

---

43 YRS

---

2ND Extension	3/12/2013	to	3/11/2025	=	12 YR
---------------	-----------	----	-----------	---	-------

---

MAXIMUM term 55 yrs

## REMAINDING TIME AFTER 2ND EXTENSION:

7/2/98 to 3/11/2025 = 27 yrs.



April 19, 2004

Building Code

# Notice of Violation

Violation No.: 2004/NOV-04-141 (HC)

Date: April 19, 2004

Owner(s)

State of Hawaii, DLNR, Land Division  
 Alvin Steve Lau  
 P. O. Box 621  
 Honolulu, HI 96809

Contractor(s)

Lessee  
 Lewy Walter and Ann

Tenant/Violator

Agent

Architect/Plan Maker

Engineer

TMK: 4-1-010-003

Specific Address of Violation:

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

Codes and/or Ordinance(s) and Section(s)

Violation(s)

ROH 1990, as amended, Chapter 18  
 Section 18-3.1

There are greenhouses, workshops, an office building, three dwelling units, a bonsai studio and a six feet chainlink fence on the property that were constructed without building permits.

Please obtain building permits for all structures and fencing.

ROH 1990, as amended, Chapter 18  
 Section 18-6.2(d)

Restore the area immediately and complete all work within 30 days from the date of this notice.

Please call the undersigned after the corrections have been made.

You are reminded that if no action is taken within the specified time:

1. This matter will be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action; and/or
2. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations.

Special Instructions:

Inspector:

*Joanne Yoneshige*  
 Joanne Yoneshige

Phone: 527-6309

for the Director Department of Planning and Permitting

261-9700

United States  
Department of  
Agriculture

Loan  
Resolution  
Task Force

RECEIVED  
DIVISION OF  
LAND MANAGEMENT

July 13/95  
P.O. Box 50224  
Honolulu, HI 96850  
(808) 541-2588 (Fax) 541-3694

JUL 14 1 30 PM '95

July 13, 1995

Mr. Cecil B. Santos, Oahu District Land Agent  
State of Hawaii, Department of Land and Natural Resources  
Division of Land Management  
1151 Punchbowl Street, Rm. 220  
Honolulu HI 96813

Dear Mr. Santos:

Re: General Lease No. S-4298,

Waimanalo

We are confirming our observations and agreement from our joint visit to the subject property on July 12, 1995. The purpose of this visit was to identify lease violations and corrective actions which would be acceptable to the State. The lease violations and corrective actions noted below were the only ones brought to our attention. We assume the Rural Economic and Community Development (RECD) will convey the leasehold interest to another party without leasehold violations when the corrective actions below are completed.

The four violations identified were:

1. There are buildings on the property constructed without building permits.  
We agreed to look into obtaining building permits for all major structures on the property that were constructed without permits. We will make application if we are allowed to do so. All of these structures were in place before the lease was assigned to the U. S. Government. The three structures identified were the warehouse, two greenhouses and one house.
2. Wooden pallets stacked below the large greenhouse must be removed.
3. Move existing dirt piles located in the cut area against the cut to minimize the angle of the cut.
4. Two old vans and debris around vans must be removed.

Exhibit "C"

Mr. Cecil B. Santos, Oahu District Land Agent  
General Lease No. S-4298,  
July 13, 1995  
Page 2

Waimanalo

We were made aware of an easement located on the upper road for a drainage line and irrigation water line. The exact location and description of the easement has not been incorporated in any map or the lease at this time.

You may call me at 541-2588 if there are any comments or questions.

Sincerely,

  
DONALD K. OKIMOTO  
Loan Resolution Specialist

cc: Acting State Director, RECD, Attn: Acting Farmer Program Chief, Hilo, HI  
Lawrence Hom, Office of General Counsel (OGC), San Francisco, CA

5/2/12

I, Bobby Liew, received \$15000 in cash for the down payment on the 2 bedroom 2 bathroom Mobile Home. The total value is \$35,000. We want Tony Kammann to pay the balance of \$20,000 ASAP otherwise when we are needed the money to pay for the 3rd & 4th house attachment which will cost us more than \$20,000. We are waiting for the building Permit to be issued by DPP. When the permit is issued you must pay \$20,000 and take the home off premises. We will offer short term storage without charge but we have to charge you \$1,500 to relocate ~~storage~~ storage



Bobby Liew

**Enver W. Painter, Jr.**

---

**From:** Enver W. Painter, Jr. <enver.painter@hawaiiantel.net>  
**Sent:** Thursday, October 31, 2013 12:37 PM  
**To:** Pamela.K.Matsukawa@hawaii.gov  
**Subject:** Liew site inspection

Pam:

It appears that there is an issue arising out of this week's site visit. Apparently when we all went to the first house inside the gate, Craig Leon entered the house and opened one of the bedroom doors. A worker who was home sick in bed was startled when Leong opened the bedroom door. He jumped up and Leong took a picture of him. The worker is very upset and has complained vehemently about this incident to Mr. Liew arguing that "not even the police could come into his room without a warrant, so why was this man coming into his bedroom and then taking a picture of him." I must admit that the worker raises a valid point.

The worker is demanding that Leong apologize and give him the camera chip which contains his photograph and destroy any paper or electronic copies that might have been made.

On another note, Walter is upset that Leong entered the back room in the workshop where Walter had some valuable Chinese artifacts displayed. Apparently Leong also took pictures of the artifacts. Given the recent theft of Bonsai plants, Walter is concerned that his artifacts might be the next target and Walter wants the pictures of the artifacts returned to him.

I thought I would give you a heads up on this and solicit your opinion as to how to resolve this matter. I certainly do not want to be accused of any ex parte communications with anyone on the panel so I have not communicated with Leong or anyone else regarding this matter. We represent the parties, let's find a way to address this issue and move on.

Let me know our thoughts.

Thanks

Enver

---

Enver W. Painter, Jr.  
Attorney At Law  
1188 Bishop Street, Suite 2505  
Honolulu, Hawaii 96813

Phone: (808) 537-9777

Exhibit "E"

**Enver W. Painter, Jr.**

---

**From:** Pamela.K.Matsukawa@hawaii.gov  
**Sent:** Monday, November 04, 2013 2:23 PM  
**To:** George Hao; Craig Leong; enver.painter@hawaiiantel.net; 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's 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's 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's 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's.

**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.