

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

May 9, 2014

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

Ref. No.: GLS-5187

HAWAII

Approval of Term Extension of General Lease No. S-5187; Aloha Petroleum, Ltd., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-009:042.

APPLICANT AND REQUEST:

Aloha Petroleum, Ltd., a Hawaii corporation.

Improvements to leasehold property financed by Lessee, Aloha Petroleum, Ltd. (Lessee), pursuant to Section 171-36(b), Hawaii Revised Statutes, and Act 207, Session Laws of Hawaii 2011, in an amount of at least \$595,000.00.

In order for Lessee to fully amortize its expenditures, the Lessee is requesting an extension of General Lease No. S-5187 of 20 years, commencing on May 19, 2014 and expiring on May 18, 2034 for an aggregate term (initial 25-year term, plus 20-year extension currently being requested) of 45 years. Lessee additionally seeks the right to cancel the lease at the end of the tenth year of the extension.

LEGAL REFERENCE:

Sections 171 36(b), Hawaii Revised Statutes, as amended  
Act 207, Session Laws of Hawaii 2011

LOCATION:

Portion of Government lands, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-009:042, as shown on the attached map labeled Exhibit A.

AREA:

2.66 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:

Solely for bulk storage and distribution of petroleum products purposes.

TERM OF LEASE:

Original lease was for 25 years, commencing on May 19, 1989 and expiring on May 18, 2014. Last rental reopening occurred on May 9, 2004. No additional rental reopening is scheduled.

Request a 20-year extension under Section 171-36(b), HRS, commencing on May 19, 2014 and expiring on May 18, 2034 for an aggregate term (initial 25-year term plus 20-year extension) of 45 years.

RENTAL REOPENINGS:

The reopening in the original term was at the end of the 15<sup>th</sup> year of the term. Last rental reopening occurred on May 19, 2004.

Rent for the extended term shall be determined by an immediate appraisal that will project rent for the period of May 19, 2014 through May 18, 2024. The appraiser shall be selected by the State but paid for by Lessee.

IMPROVEMENTS:

Aloha Petroleum is proposing two improvement options:

Option 1: Containment of Tank #2602 and 2603 on the South East Corner of the Terminal, which will consist of an estimated area of 6,500 square feet (130' x 50') at a cost of \$595,000.00.

Option 2: Containment for the Entire Tank Farm, consisting of an estimated 41,340 square feet (260' x 159') at a cost of \$1,595,000.00.

Lessee contracted Powers Engineering & Inspection, Inc. to provide an assessment using visual test of components at the East Terminal of the Aloha Petroleum facility in Hilo. The resulting report dated March 21, 2014 is based on field inspection and evaluation in accordance with the American Petroleum Institute (API) 653/650 Standard. The purpose

of the assessment was to determine the current condition of the components in question and assess, if possible, the economic life of the components. The report indicated that the economic life of all components may extend beyond 20 years if periodic maintenance and inspection are performed.

ANNUAL RENTAL:

\$50,760.00.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO
Registered business name confirmed:	YES <u>x</u>	NO
Good standing confirmed:	YES <u>x</u>	NO

APPLICANT REQUIREMENTS:

Applicant shall:

1. Be required to pay for an appraisal for the rental reopening for the first ten years of the 20-year extension term of the lease, scheduled for May 19, 2014. The appraisal shall not be subject to arbitration.
2. Provide a performance bond in an amount equal to twice the annual rental amount for the extended period of the lease.
3. By May 31, 2015, complete a minimum of \$595,000.00 worth of improvements to the lease premises and provide the Hawaii District Land Office (HDLO) with copies of receipts for the improvements made.

REMARKS:

General Lease No. S-5187 was sold at public auction on May 19, 1989 to Texaco Refining and Marketing, Inc., a Delaware corporation for an annual rent bid of \$49,400. The premises are now the site of Aloha Petroleum, Ltd.'s Hilo East Terminal property – a gasoline storage terminal and distribution facility that receives gasoline, diesel and ethanol via marine delivery, with upgrades reflecting the modernization of loading rack arms, the addition of an ethanol load arm, and drainage improvements which include grading, paving and the installation of drainage structures (drywells, piping, catch basins). The site includes a warehouse, utility shed, canopy, asphalt parking and driveway areas, perimeter fencing, seven storage and refining tanks, piping, load arm, load rack, and related components. There were a number of lease assignments prior to Aloha Petroleum, Ltd.'s acquisition of 100% of the leasehold interest in the property, as summarized below.

Effective December 29, 1989, as part of an internal realignment of various Texaco subsidiaries, Texaco Refining and Marketing, Inc. changed its name to TRMI Holdings Inc. (THI). Thereafter, a new subsidiary of THI called Texaco Refining and Marketing, Inc. was formed. At its meeting of February 8, 1991, Item F-1-d, the Board of Land and Natural Resources consented to the assignment of the lease from Texaco Refining and Marketing, Inc., now known as TRMI Holdings, Inc., as assignor, to the new Texaco Refining and Marketing, Inc., as assignee.

At its meeting of September 27, 1996, Item D-14, the Board approved the assignment of the lease from Texaco Refining and Marketing, Inc., as assignor, to Texaco Refining and Marketing, Inc. and Aloha Petroleum, Inc., assignee, as tenants in common in equal shares. At its meeting of August 13, 1999, Item D-12, the Board approved the assignment of the lease from Texaco Refining and Marketing, Inc. and Aloha Petroleum, Inc., as assignor, to Equilon Enterprises LLC and Aloha Petroleum, Inc., as assignee, as tenants in common. At its meeting of August 12, 2010, Item D-2, the Board consented to the assignment of the lease from Equilon Enterprises LLC, and Aloha Petroleum, Ltd., as assignor, to Aloha Petroleum, Ltd., as assignee. Since that time, Aloha Petroleum, Ltd. (Lessee), has been the sole lessee under the lease.

By letter dated, April 9, 2014, Mr. Robert Fong, Lessee's General Counsel, requested up to a 40-year term extension of General Lease No. S-5187 pursuant to Act 207, Session Laws of Hawaii 2011.<sup>1</sup> The subject lease is scheduled to expire on May 18, 2014. Lessee explains that it is considering two improvement option packages to the premises. Option 1, in the amount of \$595,000, consists of construction and containment work in an area around two petroleum tanks on the premises, and Option 2, in the amount of \$1,595,000, is for construction and containment work for the entire tank farm. This work involves permitting, grading and installation of a polyurethane liner as required by the Environmental Protection Agency for containment purposes in the event of a spill. The two options of scope of services were proposed in an effort to give Lessee flexibility in implementing the work for the entire property in phases. If granted the extension, Lessee would like to include a special provision giving it the right to early cancellation of the lease by providing the State with a written notice of such cancellation at least one hundred eighty (180) days prior to the following dates:

- a. May 18, 2024
- b. May 18, 2034; and
- c. May 18, 2044.

The cancellation would only be effective upon the dates listed above, and not at any other time.

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<sup>1</sup> Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

The subject lease was issued through a public auction, and not pursuant to Act 4, First Special Session of 1960 relating to the 1960 tsunami.

Staff reviewed the file and can report that Lessee is in compliance with all terms and conditions of the lease. Liability and fire insurance are current, with an expiration date of April 1, 2015. Surety Bond No. 105441120, for \$101,520 is through Travelers Casualty and Surety Company of America, will expire on May 18, 2015. The Lessee has never been cited for any illegal or unlawful activity on the State property.

Lessee 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.

The last rental reopening occurred on May 18, 2004.

General Lease No. S-5187 is an older form lease that lacks any Phase I environmental site assessment (ESA) requirement upon lease termination. Staff would like to see a Phase I ESA requirement included in the lease as well as greater indemnity protection to the State for hazardous materials, but because the lease was issued at public auction, staff understands the lease terms cannot be amended.

Although Lessee has requested a 40-year term extension, it has not provided staff with a report justifying that long of an extension. Rather, the March 21, 2014 report by Powers Engineering & Inspection, Inc. (PEII) states that with periodic inspection, maintenance and repairs,<sup>2</sup> the useable economic life of the facility may be extended beyond 20 years. Accordingly, staff feels constrained to recommend that only a 20-year extension be approved at this time. The recommendation below is to allow Lessee approximately one year to expend at least \$595,000 in improvements to the premises, which can be in the form of: (i) new containment permitting, design and construction, or (ii) conducting the inspections and repairs recommended in the PEII report, or a combination of (i) and (ii). Lessee is required to submit proof of expenditures to HDLO by May 31, 2015.

There is only one other DLNR lease in the vicinity of the subject premises. That lease, General Lease No. S-4323, is now held by Kalaniana'ole Real Estate Investments and expires on November 9, 2035. See Exhibit B. Most of the lands surrounding the Aloha Petroleum site are privately owned or under the jurisdiction of the Department of Transportation – Harbors Division.

**RECOMMENDATION:** That the Board:

1. Subject to the Lessee fulfilling the Applicant requirements listed above, authorize

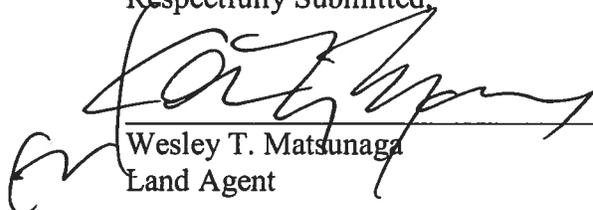
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<sup>2</sup> The inspections and repairs in the PEII report generally relate to isolated coating failures and corrosion on piping, anchors, supports and other components, and the condition of a seal at the base of the ethanol tank.

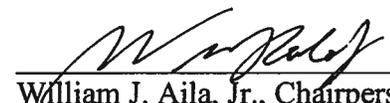
a 20-Year Term Extension of General Lease No. S-5187, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time; provided that the Lessee shall have the right of early termination of the extension effective as of May 18, 2024 if Lessee notifies the Board in writing of its intention to terminate the lease at least 180 days prior to May 18, 2024;
- B. Lessee shall complete a minimum of \$595,000 in improvements which can be in the form of: (i) new containment permitting, design and construction, or (ii) conducting the inspections and repairs recommended in the Powers Engineering & Inspection, Inc. report dated March 21, 2014, or a combination of (i) and (ii), and submit to the Hawaii District Land Office receipts for expenditures by May 31, 2015, or the lease extension shall be subject to cancellation;
- C. Provide a performance bond/security deposit, equal to twice the annual rental amount within 30 days of issuing the Extension;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,

  
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Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson  

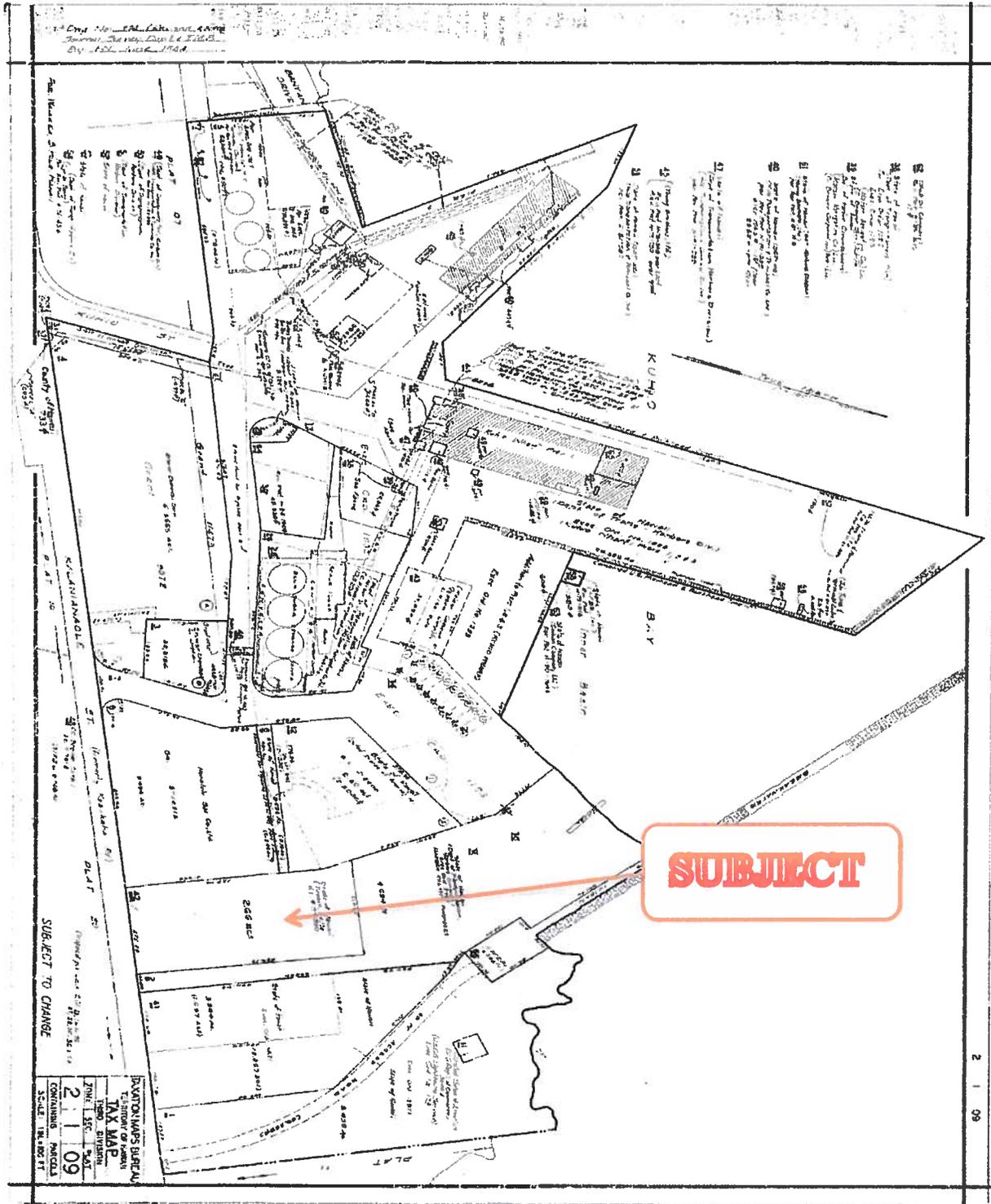



EXHIBIT A



To see all the details that are visible on the screen, use the "Print" link next to the map.



**SUBJECT**



\*Hawaii County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from 11 intended to be used for visual purposes only and should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. The 'parcels' data layer does not contain metes and bounds descriptions that may not have used this layer as a base may not produce precise results. GPS and imagery data will not overlay exactly.

### EXHIBIT B