

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

October 24, 2014

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

Hawaii

Request for Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3611 William MacKenzie, Trustee of Nelle Wood Carlsmith Trust, Donn W. Carlsmith, Trustee of the Hiroaki Kono Trust Lessee and HPM Building Supply, Ltd.; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3611; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-032:021

APPLICANT AND REQUEST:

Improvements to leasehold property financed by Lessee, Hawaii Planing Mill, Ltd., pursuant to Act 207, Session Laws of Hawaii and Sections 171 36(b) in the amount of approximately \$357,084.00.

In order for Lessee to amortize this expenditure, the Lessee is requesting an extension of General Lease No. S-3609 of 10 years, commencing on January 16, 2016 and expiring on January 15, 2026 for an aggregate term (initial 55 year term plus extension) of 65 years.

LEGAL REFERENCE:

Act 207, Session Laws of Hawaii 2011
 Sections 171 36(b)(3), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Lots 7,8,9,16,17 and 18, Waiakea Business and Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-032:021, as shown on the attached map labeled Exhibit A.

AREA:

2.334 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

CHARACTER OF USE:

For the first 5 years, for the same business use in which the Lessee was engaged at the time of the natural disaster (wholesale-retail/building materials); provided that the Lessee may use for other than wholesale-retail/building materials purposes with the prior written consent of the Board.

TERM OF LEASE:

Original term of 55 years, commencing on January 16, 1961 and expiring on January 15, 2016.

Requested extension of 10 years commencing on January 16, 2016 and expiring on January 15, 2026.

ANNUAL RENTAL:

Current rent is \$74,000.00, due in semi-annual installments of \$37,000.00 on January 16 and July 16 of each year.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20th, 30th, 40th and 50th years of the term. The last rental reopening occurred on January 16, 2011. However, the request before the Board expands the allowed uses under the lease from transportation purposes to any uses allowed by current zoning. Therefore, staff is recommending the rent for the extended term be determined by an immediate appraisal that will project rent for the period January 16, 2016 through January 15, 2026. The appraiser shall be selected by the State and paid for by Lessee. As a condition of the Board's discretionary approval of the lease extension, the appraised rent for the extension period will be determinative and not subject to arbitration.

PROPOSED IMPROVEMENTS:

The Lessee has and will be making substantial improvements to the property. These improvements include major repairs to the roof of the warehouse and renovations to the adjacent buildings and resurfacing of the parking lot. The cost of these improvements is estimated to be approximately \$357,084.00.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

A review of the basic file reveals the following transactions on the subject property.

1. General Lease No. S-3611 was issued to Hawaii Planing Mill, Ltd. for a term of fifty-five (55) years pursuant to Act 4, First Special Session of 1960, which authorized the direct issuance of leases to victims of a natural disaster (tsunami).
2. Assignment of lease from Hawaii Planing Mill, Ltd. to WILLIAM MACKENZIE, Trustee under that certain Indenture of Trust created March 26, 1955 by Nelle Wood Carlsmith for the benefit of Carl Wendell Carlsmith, Edith Mattson Carlsmith and Donn Wendell Carlsmith, DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated October 10, 1969 created by Hiroaki Kono for the benefit of Elaine K. Kono and Lawrence H. Kono, DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated December 30, 1955 created by Takeyo Fujimoto for the benefit of Fred Y. Fujimoto, DONN W. CARLSMITH, Trustee under that certain Trust Agreement dated December 30, 1955 created by Takeyo Fujimoto for the benefit of Robert M. Fujimoto, and HAILI INVESTMENT CORPORATION, a Hawaii corporation, (approved by the Land Board, June 28, 1974, under agenda item F-1-b).
3. Consent was granted for Sub-Sublease form William MacKenzie, Trustee, et al, to Hawaii Planing Mill, Ltd. (approved June 28, 1974, under agenda item F-1-b)
4. Consent was granted to Mortgage between William MacKenzie, Trustee, et al, and Bank of Hawaii (approved June 28, 1974, agenda item F-1-b).
5. Consent was granted to an amendment to Sublease Agreement dated April 1, 1982 (approved October 22, 1982 under agenda item F-1-b).
6. Amendment to General Lease No. S-3611 dated June 28, 1983.
7. Consent was granted to an assignment of a 20% undivided interest in a sublease and an assumption of mortgage between the Kono Trust by its trustee, Donn W. Carlsmith, Assignor and Elaine K. Kono, Assignee (approved November 8, 1985 under agenda item F-1-e).

8. At its meeting of October 22, 1993, under agenda item F-8, the Board consented to the partial assignment of sublessees' interest in the sublease and of sub-sublessor's' interest in the sub-sublease of General Lease No. 3611 from ROBERT M. FUJIMOTO and GEORGE ICHIKAWA, Co-Trustees under that certain Trust Agreement dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Fred Y. Fujimoto, GEORGE ICHIKAWA and MARGARET F. GOTA, Co-Trustees under that certain Trust Agreement dated December 30, 1955, created by Takeyo Fujimoto for the benefit of Robert M. Fujimoto and HAILI INVESTMENT CORPORATION, a Hawai'i corporation, Assignors to HAWAII PLANING MILL, LTD., a Hawai'i corporation, Assignee.
9. At its meeting of September 12, 1997, under agenda item D-27, the Board consented to the assignment of sublease from Margaret Y. Oda and Donn W. Carlsmith, Personal Representatives of the Estate of Elaine K. Kono, Deceased to the Hiraoki, Elaine and Lawrence Kono Foundation.

This lease, along with GL S-3592 and GL S-3609 are all located on contiguous parcels under the management of Hawaii Planing Mill, Ltd., a major lumber and building Supply Company on the island of Hawaii. The improvements were and will be performed on structures and facilities on all three leases.

LEASE EXTENSION:

The Lessee's current 55 year lease is set to expire on January 15, 2016 and they are requesting a 10 year extension pursuant to Act 207, Session Laws of Hawaii 2011¹ in order to amortize the cost of planned improvements to the properties.² These improvements include the replacement of the roofing for the will-call warehouse along with the bulk warehouse, interior renovations to the Hilo Home Design Center, sewer improvements and replacement gutters for the retail store for a total expenditure of approximately \$284,000.00. Future improvements include repairing and resurfacing of the pavement area at a cost of \$79,960.00 (Exhibit B). An appraisal evaluation performed by a certified appraiser has determined that the economic life of the proposed improvements will exceed the twelve-plus year period necessary to amortize the refurbishments.

Staff additionally notes that Hawaii Planing Mill, Ltd. dba HPM Building Supply has made substantial repairs and improvements to the premises in the course of the lease. The warehouse structures are well maintained and in good condition. Such maintenance demonstrates the Lessee's continuing efforts to keep the buildings in good order and repair.

¹ 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.

² The warehouses, retail store and Home Design Center are all located on properties encompassed by three leases under HPM; GL S-3592, 3609 and 3611.

The subject parcel is located in an area served by aging infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that are also scheduled to expire between 2016 and 2021. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 resulting from the destruction of the Hilo bay front caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. The act provided the Lessees with an option to purchase the land within two years. Several businesses exercised this option creating an industrial area of mixed DLNR leases and fee simple properties³.

Since the implementation of Act 207, SLH 2011, there have been several leases within the Kanoelehua Industrial area that have been granted ten year extensions. Four of these leases are direct leases awarded as a result of Act 4. The other leases although in the Kanoelehua Industrial area are located along Railroad Ave. and were awarded through the public auction process.

The East Hawaii economic region is unique in that a majority of the available land suitable for commercial and/or industrial use is under the management of a government agency⁴. As one of the largest stake holders of commercial/industrial land in the Hilo area, the Department of Land and Natural Resources understands the need for a comprehensive analysis of the area in order to develop an economic strategy that will encourage new enterprises in addition to supporting the established businesses.

With this concept in mind, the Land Division has retained the services of the consulting firm Munekiyo & Hiraga, Inc. for the purpose of providing a feasibility study and analysis of the Kanoelehua Industrial Area in order to determine the future direction of this very important economic area of East Hawaii.

Key elements of the study/analysis will be:

- Determine the market demand for the KIA properties, particularly the demand for industrial-commercial use or some other use for long-term leasing (30 years or more)
- Determine whether some properties should be consolidated and reconfigured to maximize the utility of the land in view of the results from the above findings.
- Assess the feasibility and desirability of placing management of the leasehold properties under a master lease from the State for industrial, commercial or other uses permitted by the applicable zoning.

³ There are currently twenty six (26) leases and fifteen (15) fee simple properties within the area set aside as a result of Act 4 First Special Session 1960. The area borders are Kawili St., Makaala St., Pookela St. (both sides) and Wiwoole St.

⁴ The Department of Land and Natural Resources (DLNR) and the Department of Hawaiian Home Lands (DHHL) are the two major land holders in the industrial area of East Hawaii.

The results of this study will be used to assist the department in determining the future of the Kanoelehua Industrial Area and create an economic region that will benefit not only the people of East Hawaii, but the State as well.

Staff is recommending that the rent payable for the remaining term of the lease, with extension, be determined by immediate appraisal. The appraiser will be selected by the State but the appraisal fee will be paid by Applicant, and the appraised rent will not be subject to arbitration.

AMEND LEASE TERMS:

As the lease was issued by direct negotiation instead of public auction, the Board has authority to amend the lease to change the character of use provision and make other amendments.

One of the provisions of the lease is that the lessee;

“use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided, however, that the Lessee may devote or place said demised premises to a use or uses other than wholesale/retail building material purposes in character, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld...”

A change in the character of use from “wholesale/retail building material purposes” to “uses allowed under the County of Hawaii zoning code, ML-20, limited industrial”, would benefit the State by allowing a wider range of uses and thereby making the property more appealing/valuable for future leasing.⁵

Also, the lease contains language which allows the Lessee to sublease portions of the property without Board approval, consent or knowledge. Staff believes the better practice is to require prior Board consent for all subleases. Therefore, Staff is recommending the assignment/sublease provision in the lease be amended to reflect the current language for assignments and subleases.

RECOMMENDATION:

EXTENSION:

1. Authorize the extension of General Lease No. S-3611 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

⁵ Although the use restriction by its terms applied only to the first five years of the lease, it is not clear what uses were intended to be allowed after the first five years. Accordingly staff is recommending the amendment of this provision for the sake of clarity.

- A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
- B. Hawaii Planing Mill, Ltd. dba HPM Building Supply shall complete its repairs to the warehouse, renovations to the buildings and pavement repairs and submit to Land Division staff receipts verifying payment for the improvements.
- C. Review and approval by the Department of the Attorney General; and
- D. Such other conditions as may be prescribed by the Chairperson, which are in the best interests of the State.

AMENDMENT:

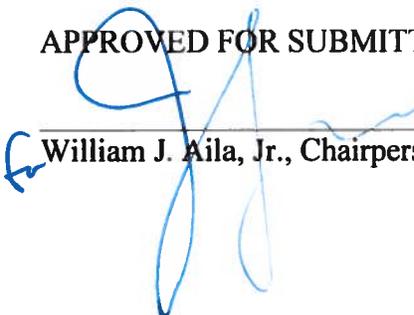
- 2. Authorize the amendment of General Lease No. S-3611 to change the character of use from "transportation" to "uses allowed under the current County of Hawaii Zoning Code, ML-20, limited industrial", and to update the lease provision titled "Assignments, etc." (Section 22 of the lease) with the current language used by the Department of the Attorney General for assignment and subleasing provisions. The amendment of the lease shall further be subject to the following:
 - A. The standard terms and conditions of the most current consent to change in character of use and amendment of lease document forms, as may be amended from time to time;
 - B. Review and approval by the Department of the attorney general; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



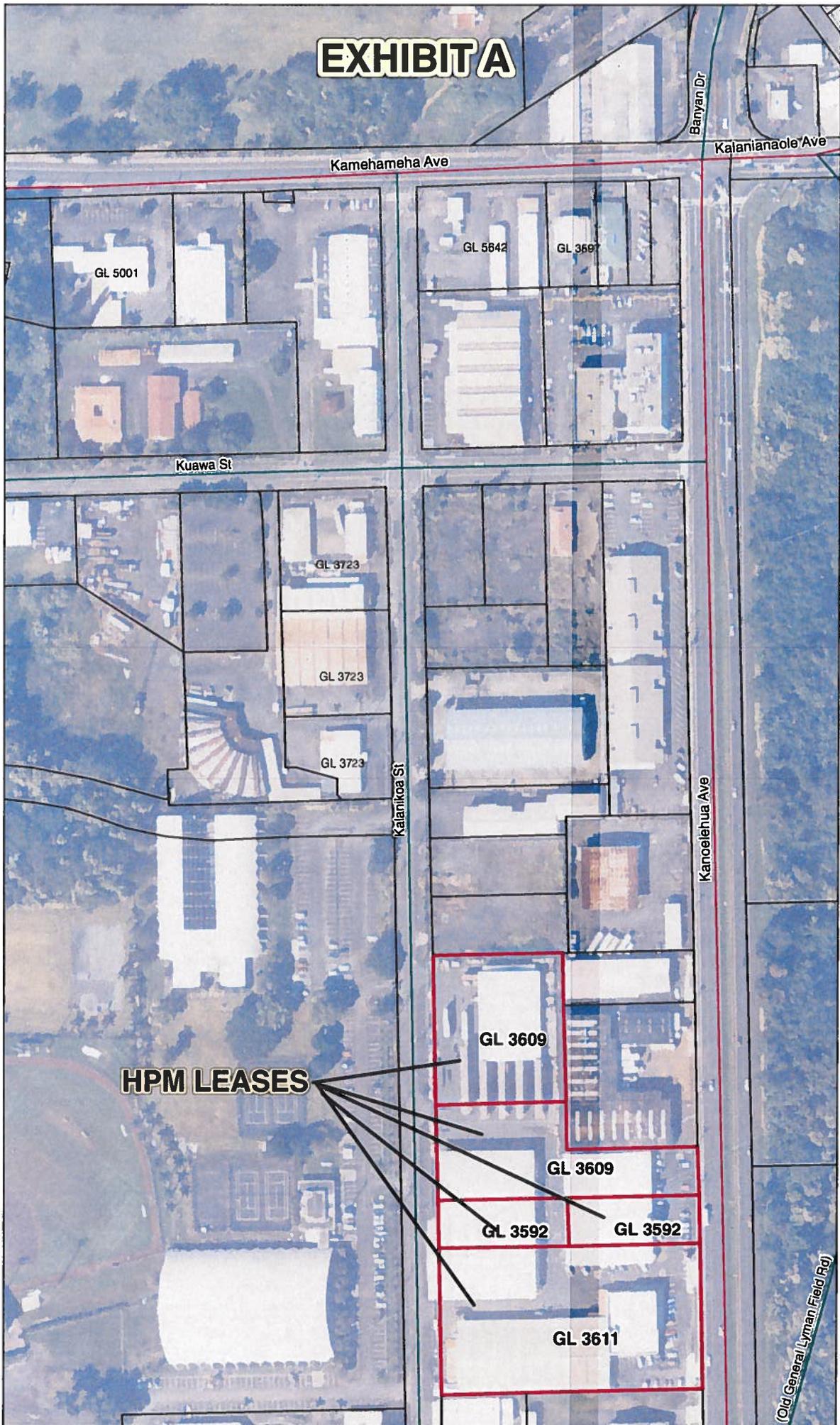
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A



HPM LEASES

(Old General Lyman Field Rd)

Hilo Property Improvements

HPM Building Supply

Previous Investments

Asset ID	Description	In Service Date	Value
3741	DRYWELL REMEDIATION/DRAINAGE IMPROVEMENT	10/01/2009	\$ 32,523.00
3742	GUTTERS FOR RETAIL STORE	10/01/2009	\$ 11,715.87
3777	ROOFING FOR WILLCALL WAREHOUSE	12/01/2009	\$ 59,885.06
3794	HILO LUMBER SHED	02/28/2010	\$ 4,590.39
3814	BULK WAREHOUSE RE-ROOFING	08/01/2010	\$ 79,485.99
3828	HILO HOME DESIGN CENTER RENOVATION	10/01/2010	\$ 55,027.02
3926	SEWER IMPROVMENTS	11/30/2011	\$ 10,768.22
3968	Hilo Retail Exterior Paint	08/31/2012	\$ 6,233.97
3979	HILO CONFERENCE ROOM FLOORING	02/28/2013	\$ 2,634.81
	Hilo Design Center Re-Roof (not including material)	04/01/2013	\$ 6,237.36
4006	HILO CONTRACTOR SALES PAINTING		\$ 4,006.06
	PSD Office Renovations (excluding furniture)	3/1/2014	\$ 11,016.00
		Subtotal	\$ 284,123.75

Future Investments

Asset ID	Description	In Service Date	Value
	Pavement Repairs (Yamada & Son's)	8/1/2014	\$ 72,960.00
		Subtotal	\$ 72,960.00
		5 Year Total	\$ 357,083.75