

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

November 14, 2014

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

Ref No.: 14HD – 174

Hawaii

Consent to Assignment of General Lease No. 3170, Ruth M. Binyan, Assignor, to Ruth M. Binyan, Terri Lyn Saragosa, Trisha K. Evangelista, Christian K. Saragosa and Zaric Binyan, Assignees, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:036 and;

Authorize a One-Year Holdover of General Lease No. 3170, Ruth M. Binyan, Terri Lyn Saragosa, Trisha K. Evangelista, Christian K. Saragosa and Zaric Binyan, Lessees, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit and Issuance of a Bill of Sale Transferring All Improvements on the Property to the Lessees, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:036.

APPLICANTS:

Ruth M. Binyan, a widow, Terri Lyn Saragosa, a married woman, Trisha K. Evangelista, a married woman, Christian K. Saragosa, a single man, and Zaric Binyan, a single man, as tenants in common.

LEGAL REFERENCE:

Sections 171-36, -40 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Ocean View Lease Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-007:036, as shown on the attached map labeled Exhibit A.

AREA:

8,053 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: MG-1a (General Industrial minimum 1 acre)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. Refer to attached Exhibit B.

DCCA VERIFICATION:

Applicants are individuals and as such are not required to register with the DCCA.

CURRENT USE STATUS:

Encumbered by General Lease No. 3170, Leroy A. Binyan and Ruth M. Binyan, Lessees, for residential purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on May 25, 2002 and was for the remainder of the lease term.

CHARACTER OF USE:

Residential purposes.

HOLDOVER LEASE COMMENCEMENT DATE:

March 15, 2015.

HOLDOVER LEASE ANNUAL RENT:

\$3,891.00, billed in two equal semi-annual installments. See attached Exhibit D for calculations.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016.

REVOCABLE PERMIT MONTHLY RENTAL:

\$324.00, billed monthly. See attached Exhibit D for calculations.

COLLATERAL SECURITY DEPOSIT:

Currently, the lease does not require a performance bond. Staff recommends the revocable permit should require a performance bond equal to twice the monthly rental amount.

NOMINAL CONSIDERATION FOR IMPROVEMENTS:

A nominal fee of \$3,000.00 for the Lessee to purchase the improvements for the duration of the revocable permit period is recommended.

BACKGROUND:

General Lease No. 3170 (GL-3170) was originally issued to Mrs. Ernest Baptiste by the Territory of Hawaii for a term of 21 years commencing on September 10, 1947.

An assignment of lease was executed on September 29, 1947 from Mrs. Ernest Baptiste to Ernest M. Cabrinha. On November 24, 1950 an assignment from Ernest M. Cabrinha to Ernest M. Cabrinha and Adelaide Cabrinha was executed.

The lessees qualified as disaster victims under Section 87 of Act 32, Session Laws of Hawaii 1962. GL-3170 was consequently extended on May 25, 1962 for a period of 53 years terminating on March 14, 2015 with rental re-openings at 20 and 40 years from the most current lease agreement.

Over the following years the Board has consented to 7 assignments of GL-3170 as follows:

- 08/20/1979 from Ernest M. Cabrinha and Adelaide Cabrinha to Duaine T. Edwards and Pauline K. Edwards.
- 03/11/1983 from Gilbert K. Hara (as court appointed Commissioner in foreclosure) to William C. Fehr and Martha H. Fehr, Co-Trustees of the Fehr Family Trust.
- 02/04/1991 from William C. Fehr and Martha H. Fehr, Co-Trustees of the Fehr Family Trust to James E. Faull and Claire M. Faull.
- 12/06/1993 from James E. Faull and Claire M. Faull to B. Claire M. Faull
- 11/20/1996 from B. Claire M. Faull to Juliette Simpson Furtado.
- 01/24/2005 from Juliette Simpson Furtado to Leonard D. Sutton and Jane L. Sutton.
- 06/20/2007 from Leonard D. Sutton and Jane L. Sutton to Leroy A.

Binyan and Ruth M. Binyan (current lessees).

Mr. Binyan passed away in July 2007, as evidenced by a copy of the death certificate held in file. Since the Binyans held title as tenants by the entirety, the leasehold interest in the subject property transferred to Mrs. Binyan by operation of law.

Mrs. Binyan is asking for consent to the assignment of the subject lease to herself and her immediate family members. The assignment is part of her estate planning.

In 2001, the Department of Transportation, Harbors Division (DOTHAR) requested inclusion of the lands of the Ocean View Lease Lots (Baker's Beach) into the Hilo Commercial Harbor upon the expiration of the leases in 2015.

In a letter dated June 10, 2011, DOTHAR informed DLNR that the Hawaii Island Commercial Harbors 2035 Master Plan was almost complete and identified the need for the Ocean View Lease Lot properties for future expansion of Hilo Harbor. The estimated development window is between 2020 and 2030. They requested that in the interim period (from 2015 to 2020), DLNR would "keep the lots in short term usage only until DOTHAR is ready to secure funding and proceed with its development plans".

A letter dated July 15, 2011 from DLNR notified all Ocean View Lease Lot lessees of the situation (refer to Exhibit C). The letter offered all current lessees who met certain qualifications that the DLNR's Land Division would recommend to the Board a one-year holdover and thereafter issuance of a revocable permit to the lessee for the interim period of March 15, 2015 to at least December 31, 2019.

DISCUSSION:

Staff conducted a site inspection of the premises on October 22, 2014 and the property and improvements are well cared for. The lessee is compliant with the terms and conditions of the lease.

The current county zoning of MG-1a, General Industrial, does not allow for residential use. However, the residential nature of the Ocean View Lease Lots was established prior to the general industrial zoning designation and is therefore "grandfathered-in" to the current code. Due to the non-conforming use, no further residential expansions or alterations will be permitted on the property. The County of Hawaii Planning Department has determined that the proposed action is exempt from the definition of "development" and shall require no further review against the Special Management Area Guidelines. It is further noted that any current or future tenants should be reminded that inhibition of lateral public access on or makai of the shoreline abutting the parcel is not permitted.

The lease specifically allows the lessee to remove any or all of the improvements upon

the expiration of the lease on March 14, 2015 (March 14, 2016 if the holdover tenancy is approved). Any improvements remaining on the property after the expiration become the property of the State. This presents a dilemma for the Lessee who has installed significant non-structural custom improvements (i.e., cabinets, countertops, flooring, doors, etc.). The Lessee has planned on removing some of these improvements upon vacating, which is consistent with the terms of the lease, but would not be allowed once the lease expired and the revocable permit was issued. Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until DOTHAR is ready to begin the Harbor expansion and recommends the Board require the Lessee to purchase the improvements at a nominal fee of \$3,000 for the duration of the revocable permit period which is to be paid in full prior to the expiration of the one-year holdover period. At the end of the holdover period, the Board of Land and Natural Resources will issue a bill of sale for the improvements. Further, the revocable permit should include a provision which requires any remaining improvements to be structurally sound and securable upon the Lessee vacating the property.

Staff is recommending the annual rent for the holdover period and beyond be set at 4% of the 2013 real property tax assessed market land value with a 25% discount due to the nature of the tenancy (refer to attached Exhibit D). This amount is calculated to be \$3,891.00. The annual rental amount will be divided by 12 for the revocable permit period and is calculated to be \$324.00 per month.

The proposed use has continued since the late 1940's and will continue until the property is transferred to DOTHAR. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

No agency comments were solicited on this request as it involves a continuation of previous use.

The applicants have 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.

RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably

- have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Consent to Assignment of General Lease No. 3170, Ruth M. Binyan, Assignor, to Ruth M. Binyan, Terri Lyn Saragosa, Trisha K. Evangelista, Christian K. Saragosa and Zaric Binyan, Assignees, subject to the following:
 - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General;
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

 3. Authorize a One-Year holdover for General Lease No. 3170 for the period of March 15, 2015 to March 14, 2016, 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 holdover of lease form, as may be amended from time to time;
 - b. The annual rent for the one-year holdover period will be \$3,891.00, billed in two equal semi-annual amounts of \$1,945.50 each;
 - 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.

 4. Authorize the issuance of a revocable permit effective March 15, 2016 to Ruth M. Binyan, Terri Lyn Saragosa, Trisha K. Evangelista, Christian K. Saragosa and Zaric Binyan covering the subject area for residential purposes 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 revocable permit form, as may be amended from time to time;
 - b. The initial monthly rental amount will be \$324.00 which is subject to annual review;

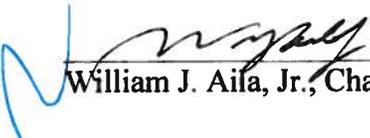
- c. The lessee shall purchase the improvements on the property for a nominal fee of \$3,000.00 prior to the commencement of the revocable permit;
 - d. The lessee will be allowed to remove any or all of the improvements at the termination of the revocable permit. Any portion of the improvements left on the property by the lessee upon vacating, shall be in a structurally sound and securable condition;
 - e. Review and approval by the Department of the Attorney General; and
 - f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a Bill of Sale transferring all improvements on the property to Ruth M. Binyan, Terri Lyn Saragosa, Trisha K. Evangelista, Christian K. Saragosa and Zaric Binyan and further subject to the following:
- a. The standard terms and conditions of the most current bill of sale document form, 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,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aifa, Jr., Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVIYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 7, 2014

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Authorize a One-Year Holdover of General Lease No. 3170, Ruth M. Binyan, Lessee, to be Immediately Followed by the Issuance of a Revocable Permit to Ruth M. Binyan, , Permittees, for Residential Purposes

Project / Reference No.: PSF 13HD-174

Project Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:036

Project Description: The State Department of Transportation – Harbors Division has included the Ocean View Lease Lots in their Hawaii Island Commercial Harbors 2035 Master Plan as an area for future expansion of Hilo Harbor. Their estimated development window is between 2020 and 2030. They have requested DLNR – Land Division keep the properties in short-term usage until they are ready to secure funding and proceed with development. DLNR recommends the short-term extension of current use until Harbors Division is ready to accept management oversight of the properties.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

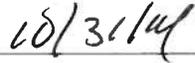
Consulted Parties Not applicable

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



Date



Ocean View Drive Lessees
July 15, 2011
Page 2

Accordingly, for any Ocean View Drive lessee who remains in good standing through the end of the lease term, and who timely requests a holdover and revocable month-to-month permit, DLNR's Land Division will recommend to the board a one-year holdover and thereafter issuance of a revocable permit to the lessee. The rent payable during the holdover period will need to be established at market rates by independent appraisal. The cost of the appraisal will be paid by the lessee seeking the holdover.

By law, the board cannot act on requests for holdovers or revocable permits on these properties until there are two years or less remaining on the lease term. The leases are scheduled to expire on March 14, 2015. Accordingly, Land Division would not be able to take a holdover or revocable permit request to the board until March 15, 2013 at the earliest. Finally, all such requests must be brought before the board prior to the lease termination date of March 14, 2015.

Should you have any questions, please contact Hawaii District Land Agent Kevin Moore at 974-6203.

Sincerely,


William J. Aila, Jr.
Chairperson

C: Land Board Member
Glenn M. Okimoto, Director, Department of Transportation
Representative Jerry Chang
Wallace Ah Fook Aki, RP No. S-7536
Central File
District File



EXHIBIT D



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 23, 2014

MEMORANDUM

TO: William J. Aila, Jr., Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent 

SUBJECT: In-House Recommendation – Holdover & Revocable Permit Rent Calculation

GL No.:	3170
Lessee:	Ruth M. Binyan
Location:	Ocean View Lease Lots, Waiakea, South Hilo, Hawai'i
Lease area:	8,053 sf.
Tax Map Key:	(3) 2-1-007:036
Character of Use:	Residential purposes

We have been requested to provide an in-house evaluation of the rental amount for a one-year holdover followed immediately by a month-to-month revocable permit estimated to continue until December 31, 2019.

General Lease No. 3170 (GL-3170) was initially commenced on September 10, 1947 by the Territory of Hawaii for a term of 21 years. Pursuant to Section 87 of Act 32, Session Laws of Hawaii 1962, which provided assistance to tsunami disaster victims, the lease was extended for a period of 53 years terminating on March 14, 2015 with rental reopenings at 20 and 40 years.

In a letter dated June 10, 2011, DOTHAR informed DLNR that the Hawaii Island Commercial Harbors 2035 Master Plan was almost complete and identified the need for the Ocean View Lease Lot properties for future expansion of Hilo Harbor. The estimated development window is between 2020 and 2030. They requested that in the interim period (from 2015 to 2020), DLNR would "keep the lots in short term usage only, until DOTHAR is ready to secure funding and proceed with its development plans".

DLNR notified, by letter, all Ocean View Lease Lot lessees of the situation. The letter offered all current lessees who met certain qualifications that the DLNR's Land Division would recommend to the Board a one-year holdover and thereafter issuance of a revocable permit to the lessee for the interim period of March 15, 2015 to at least December 31, 2019.

This is an unusual occurrence which does not fall within the parameters of typical rent evaluations. Since the lessee will be purchasing the improvements for the duration of the revocable permit, the rent is calculated on the land value only. We have chosen to use land assessment values from the 2013 Real Property Tax Assessment¹ as the base of value for the property. The methodology employed by the Real Property Tax Office is to analyze competitive sales transactions and then abstract land value from the adjusted sales price. Adjustments are made depending on the zoning and use of the property and values are calculated on a per square foot basis. For the 2013 Assessment Year, sales activity from the period of July 2011 thru June 2012 was used. The Market Land Value as determined by the Real Property Tax Office is a good and reasonable estimate of market value.

Hawaii Revised Statutes Section 519-2, while specific to privately-owned lands, sets a maximum 4% annual rate of return for rental reopenings. This indicates a 4% return is fair and reasonable. Staff is recommending a discount of 25% due to the uncertain nature of the tenancy and/or the length of time the property will be available for use.

HOLDOVER & REVOCABLE PERMIT RENT CALCULATIONS: GL No. 3170

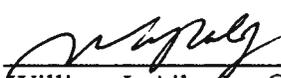
Holdover period: 03/15/2015 – 03/14/2016
Revocable Permit estimated period: 03/15/2016 – 12/31/2019

2013 Market Land Value	\$129,700.00
Rate of Return: 4%	5,188.00
Less 25% discount for tenancy	<u>-1,297.00</u>
Annual Holdover Rent	3,891.00

Monthly Revocable Permit Rent (\$3,891.00/12) 324.00

Based on these calculations the annual rent for the one-year holdover period is \$3,891.00. The monthly rent amount for the period of the revocable is \$324.00.

Approved/Disapproved:



William J. Aila, Jr., Chairperson

10/31/19

Date

¹ The 2014 Real Property Tax Assessment market land values are the same as for 2013.