

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

February 26, 2016

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

Ref. No.: GLS-3155
PSF No.: 14HD-092

HAWAII

Amend Prior Board Action of February 27, 2015, Item D-4, Authorize One-Year Holdover of General Lease No. S-3155, Maya Nicole Baylac, Lessee; Issuance of Revocable Permit; and Issuance of a Bill of Sale Transferring All Improvements Upon the Premises to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:021.

The purpose of the amendment is to add Witold Markiewicz as a co-permittee on the revocable permit and a co-buyer on the bill of sale. The holdover, which expires on March 14, 2016, will remain in the name of Maya Nicole Baylac.

BACKGROUND:

At its meeting of February 27, 2015, Item D-4, the Board of Land and Natural Resources approved a one year holdover for General Lease No. S-3155, with the issuance of a revocable permit and Bill of Sale to purchase all improvements upon the demised premises. (Exhibit A)

REMARKS:

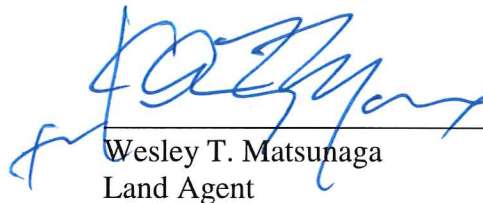
Upon receiving the executed holdover documents for final processing, applicant contacted the Hawaii District Land Office to request that the revocable permit and bill of sale be issued in the names of both Maya Nicole Baylac and Witold Markiewicz. As a result, staff is seeking to amend the prior Board action to accommodate applicant's request. The holdover will expire on March 14, 2016.

The revocable permit and bill of sale will be prepared and executed only upon receipt of the \$3,000.00 required to purchase the improvements upon the subject State leasehold property.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 27, 2015, under agenda item D-4 by adding Witold Markiewicz as a permittee on the revocable permit and a buyer on the bill of sale to be issued upon expiration of the holdover and upon receipt of the required \$3,000 for purchase of improvements.
2. All terms and conditions listed in its February 27, 2015 approval to remain the same.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



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

February 27, 2015

Ref. No.: GLS-3155
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Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Authorize One-Year Holdover of General Lease No. S-3155, Maya Nicole Baylac, Lessee; Issuance of Revocable Permit; and Issuance of a Bill of Sale Transferring All Improvements Upon the Premises to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:021.

APPLICANT:

Maya Nicole Baylac, single, Tenant in Severalty.

LEGAL REFERENCE:

Section 171-40 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) 2-1-007:021 as shown on the attached map labeled Exhibit A.

AREA:

0.1627 acres, or 7,089 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:
YES ___ NO x

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
February 27, 2015 10.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

CURRENT USE STATUS:

Encumbered by General Lease No. S-3155, Maya Nicole Baylac, Lessee, for residential purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on May 24, 2003 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:

\$3,813.00 Due in two equal semi-annual installments. See attached **Exhibit C** for calculations.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016

REVOCABLE PERMIT MONTHLY RENTAL:

\$318.00 per month. See attached **Exhibit C** for calculations.

PERFORMANCE BOND:

Currently, the lease does not require a performance bond or security deposit. Staff recommends requiring a deposit be held for the period of the revocable permit equal to twice the revocable permit 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:

This lease was sold at public auction and originally issued to William J. Bell, for a term

of 21 years, commencing on March 15, 1947 and expiring March 14, 1967.

On March 17, 1948, the Commissioner of Public Lands, under the Territory of Hawaii, consented to the assignment of General Lease No. S-3155, William J. Bell, Assignor, to Kenneth K. Bell, Assignee.

By unrecorded instrument dated May 25, 1962, General Lease No. S-3155 was amended and extended for a term ending March 14, 2015.

At its meeting of February 25, 1969, the Board of Land and Natural Resources approved the assignment of General Lease No. S-3155, Kenneth K. Bell, Assignor, to Kenneth K. Bell and Clara L. Bell, husband and wife, as Assignee.

At its meeting of January 20, 1975, the Land Board approved the assignment of General Lease No. S-3155, Kenneth K. Bell and Clara L. Bell, Assignor, to Edna M. Estes, Assignee.

At its meeting of September 28, 1979, the Land Board approved the assignment of General Lease No. S-3155, Edna M. Ziemer, formerly Edna M. Estes, Assignor, to Kenneth Lew Hughes and Alice Hanson Hughes, Assignee.

At its meeting of January 9, 1987, Item F-1-a, the Land Board approved the assignment of General Lease No. S-3155, Kenneth Lew Hughes and Alice Hanson Hughes, Assignor, to Richard Alderson, Assignee.

At its meeting of January 13, 1995, Item F-1-d, the Land Board consented to the assignment from Richard Alderson to Jesse C. Wolf.

In a letter dated June 10, 2011, DOTHAR informed DLNR that the Hawaii Island Commercial Harbor 2035 Master Plan was almost complete and identified the need for the Ocean View Lease Lot properties for future expansion of the Hilo Harbor. The estimated development window is between 2020 and 2030. They requested that in the interim period (2015 to 2030), 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 (**Exhibit D**). 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 issue a revocable permit to the lessee for the interim period of March 15, 2015 to at least December 31, 2019.

By letter dated April 22, 2014, General Lease No. S-3155, Maya Nicole Baylac, Lessee, requested a 1-year holdover followed by issuance of a month-to-month revocable permit for residential purposes. Ms. Baylac also requested that a Mr. Witold Markiewicz be added to the lease.

On May 19, 2014, the Hawaii District Land Office sent Ms. Baylac a letter requesting additional information/documents in order to process her request for an assignment of the lease. The processing of an assignment of lease would involve a transfer of the leasehold interest from Ms. Baylac to herself and Mr. Markiewicz. In order to proceed, an executed copy of an assignment of lease document is required. To date, HDLO did not receive any additional information/documents, therefore, we were unable to process Ms. Baylac's request for an assignment of lease. Numerous attempts to contact Ms. Baylac by phone and correspondence were unsuccessful. As a result, staff will proceed with only the request for a holdover and issuance of a revocable permit.

Staff reviewed the file and can report that for the past two (2) years, Lessee had no notices of default. Liability and fire insurance is not required. The Lessee has never been cited for any illegal or unlawful activity on the State property. No performance bond is required.

Maya Nicole Baylac 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.

The last rental reopening occurred on May 25, 2003. There are no outstanding rental reopening issues.

DISCUSSION:

On January 21, 2015, staff conducted a site inspection of the premises. The property, including the interior and exterior of the improvements, was in satisfactory condition.

The current county zoning is MG-1a, General Industrial, which 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 upon the demised premises.

The lease specifically allows the lessee to remove any or all of the improvements upon expiration of the lease on March 14, 2015 (March 14, 2016 if the holdover is approved). Any improvements remaining on the property after the expiration of the lease, become the property of the State. This presents a dilemma for the Lessee who has installed significant non-structural improvements over the years. The Lessee has intentions of removing the structure prior to the cancellation of the holdover and/or the revocable permit, which is consistent with the terms and condition of the lease, but would not be allowed once the lease expired and the revocable permit issued. Due to the potential liability and potential problems of illegal habitation of the vacant property, staff believes that it is in the best interest of the State to have the property remained occupied until DOTAR is ready to begin the Harbor expansion and recommends that 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 the 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 2014 real property tax assessed market land value, with a 25% discount due to the nature of the tenancy (refer to attached Exhibit C). This amount is calculated to be \$3,813.00. The annual rental amount will be divided by 12 for the revocable permit period and is calculated to be \$318.00 per month.

The proposed use has continued since the 1940's and will continue until the property is transferred to DOTAR. 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 as there will be no new disposition or change in land use.

The Lessee has had an opportunity to review this submittal and has expressed her willingness to accept the terms and conditions as stated.

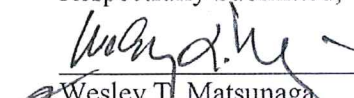
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition 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. Authorize a One-Year Holdover for General Lease No. S-3155 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. 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 interest of the State.
3. Authorize the issuance of a revocable permit effective March 15, 2016 to Maya Nicole Baylac, 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:

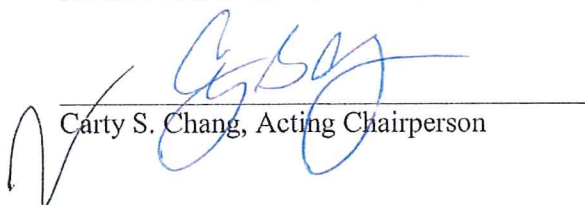
- A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - B. The initial monthly rental amount shall be \$318.00, which is subject to annual review;
 - C. Provide a performance bond/ security deposit, equal to twice the monthly rental amount, prior to the expiration of the holdover;
 - D. The lessee shall purchase the improvements on the property for a nominal fee of \$3,000.00, prior to the expiration of the holdover;
 - E. 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.
 - F. Review and approval by the Department of the Attorney General; and
 - G. 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 Bill of Sale transferring all improvements on the property to Maya Nicole Baylac, Lessees, 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 interest of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Acting Chairperson

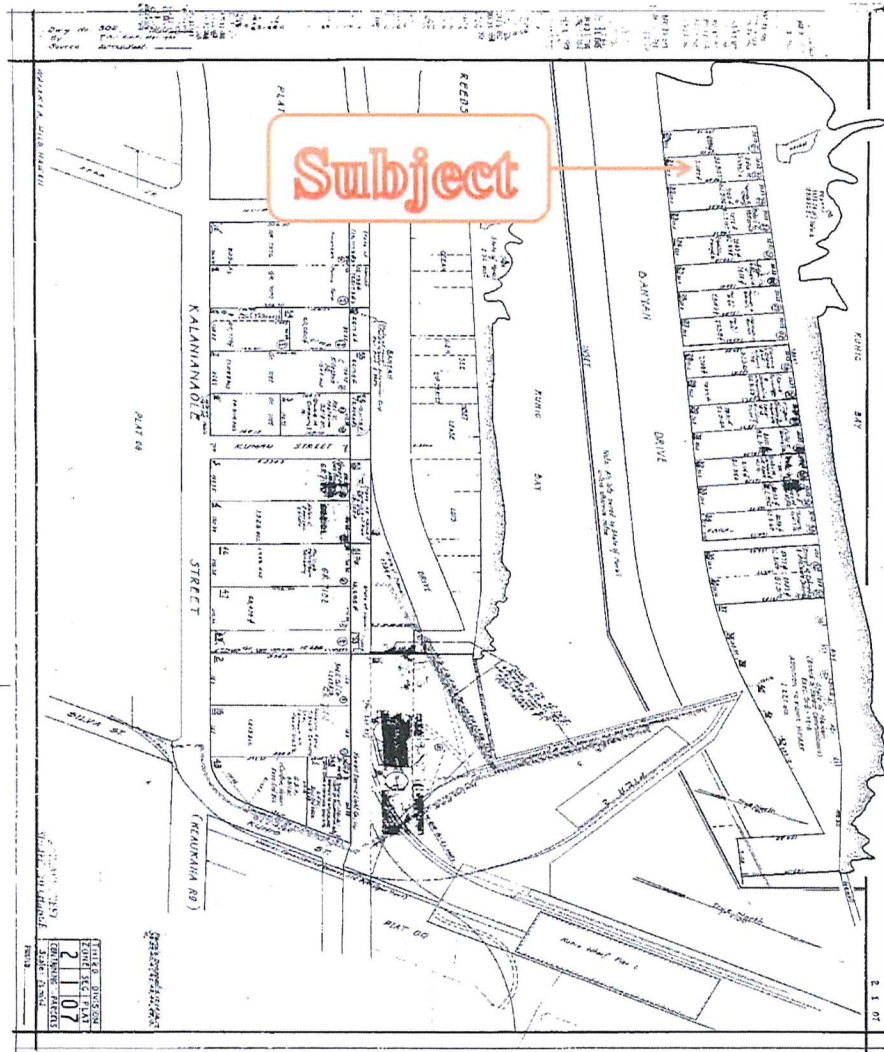


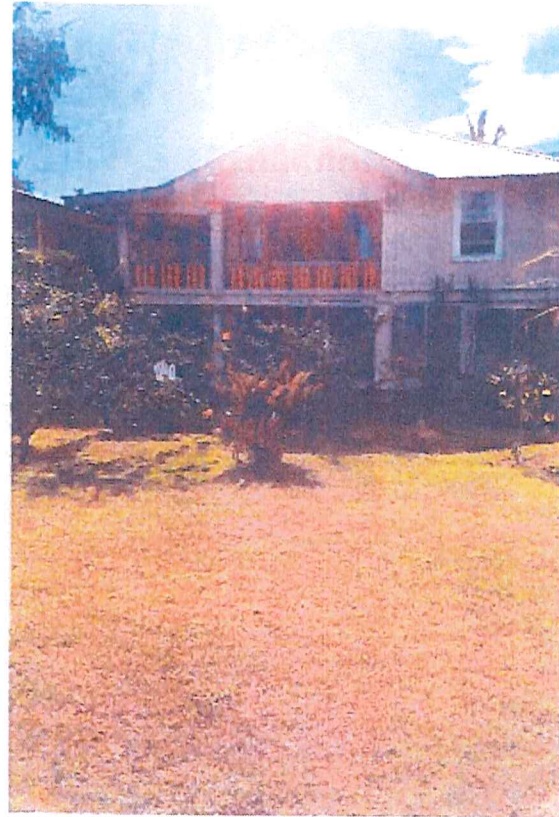
EXHIBIT A

TMK: (3) 2-1-007:021



front yard

1/21/15



Back yard

EXHIBIT A

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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

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. S-3155; Issuance of Revocable Permit to Maya Nicole Baylac, Lessee/Permittee, for Residential Purposes.

Project / Reference No.: PSF No.: 14HD-092

Project Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:021.

Project Description: The State Department of Transportation-Harbors Division had 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. DOT has requested that DLNR-Land Division keep the properties in short-termed usage until they are ready to secure funding and proceed with development. DLNR recommends the short-term extension of the current use until Harbors Division is ready to accept management of the properties.

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

Exemption Class No. and Description: 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

EXHIBIT B

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, which 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." and

Exemption Class No. 4, which states, "Repairs, maintenance and renovation of existing structures on leased state lands."

Exemption Item Description from Agency Exemption List: 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.

Minor alterations in the conditions of land, water or vegetation.

Recommendation: That the Land Board find that the above requests are exempt from Chapter 343, HRS, as it will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Carty S. Chang, Acting Chairperson



2/9/15
Date

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 21, 2015

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Carty S. Chang, Acting Chairperson

THROUGH: Russell Y. Tsuji, Land Administrator

FROM: Wesley T. Matsunaga, Land Agent

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

GL No.: S-3155
Lessee: Maya Nicole Baylac
Location: Ocean View, Waiakea, South Hilom, Hawaii
Tax Map Key: (3) 2-1-007:021
Charter 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 for residential purposes, estimated to continue until December 31, 2019.

This is an unusual occurrence which does not fall within the parameters or 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 2014 Real Property Tax Assessment 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 2014 Assessment Year 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.

EXHIBIT C

HOLDOVER & REVOCABLE PERMIT RENT CALCULATIONS: GLS-3155

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

2014 Market Land Value:	\$127,100.00
Rate of return: 4%	5,084.00
Less: 25% discount for tenancy	<u>-1,271.00</u>
Annual Holdover Rent:	\$ 3,813.00

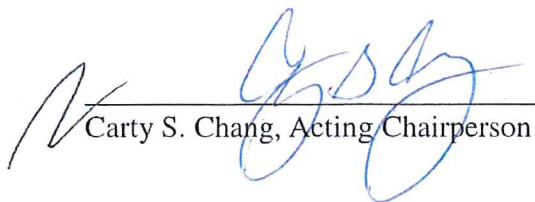
Monthly Revocable Permit Rent (rounded) \$318.00

Based on these calculations, the annual rent for the one-year holdover period is \$3,813.00.
The monthly rent amount for the period of the revocable permit is \$318.00

Special Assumptions and Limiting Conditions

- 1) This rental valuation estimate is for internal purposes only. This document does not take the place of an appraisal and does not constitute an appraisal that adheres to the Uniform Standards of Professional Appraisal Practices.
- 2) The subject property was not inspected by an appraiser.

Approved/Disapproved:



Carty S. Chang, Acting Chairperson



Date

cc: District File
Central File

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU HAWAII 96809

WILLIAM J. ALLA, JR.
DEPUTY CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF LAND AND NATURAL RESOURCES MANAGEMENT

GUY MAULUUKU
DEPUTY CHAIRPERSON

LEONORE H. OHYE
ACTING DEPUTY CHAIRPERSON

ACADEMIC RESOURCES
BIOLOGICAL AND OCEAN RESEARCH
BUREAU OF CONSERVATION
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CONSERVATION AND RECREATION
CONSERVATION AND RECREATION
ENTREPRENEURSHIP
FORESTRY AND WILDLIFE
HERITAGE PRESERVATION
KAILUA AVE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 15, 2011

Ocean View Drive Lessees
Hilo, Hawaii

Dear Lessees:

Subject: General Lease Nos. 3155, 3156, 3157, 3158, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169 & 3170, Ocean View Drive Lots at Waiakea, South Hilo, Hawaii; Tax Map Keys: 3rd/ 2-1-07:20 through 36

As you may know, the State Department of Transportation (DOT) has requested the transfer of the above-referenced properties on Ocean View Drive belonging to the Department of Land and Natural Resources (DLNR) to DOT for the expansion of Hilo Harbor. Initially, DOT anticipated taking possession of the properties upon the expiration of the leases in 2015. But we have recently been informed that DOT will not be developing the lands for harbor expansion until approximately 2020.

In light of this information, DLNR will continue to manage the properties through at least December 31, 2019. Pursuant to Hawaii Revised Statutes section 171-40, the Board of Land and Natural Resources has authority to approve a one-year holdover of the leases "upon such rent terms, and conditions as the board may prescribe." Further,

[u]pon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe.

Section 171-55, in turn, allows the board to issue month-to-month permits for periods not exceeding one-year, but also authorizes the board to continue the permits for additional one-year periods. Revocable permits are non-assignable, and no subletting is allowed under a revocable permit.

Please note the board has no authority to issue new leases by direct negotiation for these properties. A public auction sale of a lease would be appropriate if the properties were zoned for residential use. But they are located in the MG-1a, General Industrial District, which does not allow for residential use.

EXHIBIT D

Ocean View Drive
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