

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

January 10, 2014

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

HAWAII

Deny Request for Extension of Lease Term Made Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3716 Hawaiian Fresh Products, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-050:015.

APPLICANT AND REQUEST:

Hawaiian Fresh Products, Inc., a Hawaii corporation (Lessee).

Lessee has made improvements to the leasehold property (financed by Lessee) pursuant to Act 207, Session Laws of Hawaii 2011 and Section 171-36, Hawaii Revised Statutes, in an amount of \$93,130.00.

In order for the Lessee to amortize this expenditure, it is requesting an extension of General Lease No. S-3716 of 10 years, commencing on October 29, 2017 and expiring on October 28, 2027 for an aggregate term of 65 years (initial 55 year term plus the 10-year extension).

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands, Lot 1-A, Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-050:015, as shown on the attached map labeled Exhibit A.

AREA:

24,200 square feet, 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

TERM OF LEASE:

Original term of 55 years, commencing on October 29, 1962 and expiring on October 28, 2017.

Requested extension of 10 years commencing on October 29, 2017 and expiring on October 28, 2027.

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the term. The last rental reopening occurred on October 29, 2012.

IMPROVEMENTS:

In 2013, the lessee made substantial improvements to the property, which involved the repair/replacement of the building's roof. The lessee replaced the metal roof, installed new gutters, roof vents, and downspouts, at a cost of \$93,130.00.

ANNUAL RENTAL:

\$18,480.00 Due in quarterly installments of \$4,620.00 on the 29<sup>th</sup> day of January, April, July and October of each year.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <input checked="" type="checkbox"/>	NO
Registered business name confirmed:	YES <input checked="" type="checkbox"/>	NO
Good standing confirmed:	YES <input checked="" type="checkbox"/>	NO

APPLICANT REQUIREMENTS:

Not applicable.

REMARKS:

The subject lease was originally issued to Hilo Soda Works in connection with Act 32, Session Laws of Hawaii 1962, authorizing the leasing or leasing with option to purchase of public lands to victims of natural disaster through direct negotiation for other than residential or agricultural purposes.

At its meeting of March 6, 1964, the lease was subsequently amended to change the lessee name to Masaru Shindo dba: Hilo Soda Works, as it was discovered that "Hilo Soda Works" was solely a trade name used by Mr. Masaru Shindo.

At its meeting of November 19, 1999, the Land Board approved the assignment of General Lease No. S-3716 from estate of Masaru Shindo to Tamae Shindo, Calvin Shindo, Howard Shindo and Sandra DeLeon, as Assignee.

At its meeting of February 25, 2000, Item D-6, the Land Board approved consent to assignment of General Lease No. S-3716, Tamae Shindo, Calvin Shindo, Howard Shindo and Sandra DeLeon, as Assignors, to Hawaiian Fresh Products, Inc., as Assignee.

By letter dated August 8, 2013, Mr. Roy Nakamoto, Attorney at Law, on behalf of Hawaiian Fresh Products, Inc., requested a ten (10) year term extension of General Lease No. S-3716. The extension is being requested pursuant to Act 207, Session Laws of Hawaii 2011,<sup>1</sup> and Section 171-36, Hawaii Revised Statutes. Receipts on file with the Hawaii District Land Office indicate that improvements, which involved the repair and replacement of the warehouse roof, were completed in 2013 at a cost of \$93,130.

Land Division is in the process of procuring a consultant to prepare a development plan for the Kanoelehua Industrial Lots,<sup>2</sup> which are a part of the Kanoelehua Industrial Area Association. To maximize the number of leased properties to be available for inclusion in the development plan, the remaining State leases in the area should be allowed to expire within a reasonable time of each other, by the end of 2017.

Many of the State leases are scheduled to expire by the end of 2017, are less than one acre in size and are classified for light industrial. Currently, in the Hilo area, market demand is growing for light industrial purposes. Staff believes that issuing new leases at public auction will help correct the underperformance of Kanoelehua Industrial Area leases.

---

<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.

<sup>2</sup> 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.

Additionally, upon expiration of the existing State industrial leases, any improvements on the property will belong to the State. The State will likely be able to bring in a higher lease rent for improved land than it would for extensions of the existing leases.<sup>3</sup>

An extension of the Hawaii Fresh Product, Inc. lease and any other leases by ten years would likely perpetuate the underperformance of the land. Accordingly, staff recommends against the lease extension. If the development plan is not completed by 2017, then staff will bring a request to the Board near the expiration of the lease term for the issuance of a month-to-month revocable permit to Hawaiian Fresh Products, Inc. to allow it to continue its use of the premises.

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 6/30/2014. The performance bond was waived. The Lessee has never been cited for any illegal or unlawful activity on the State property.

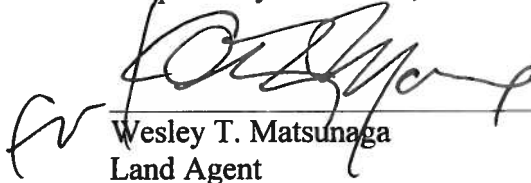
There are no outstanding rental reopening issues.

No agency or community comments were solicited, as the denial will result in no change in disposition or use of the land.

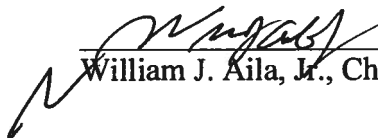
RECOMMENDATION:

That the Board deny the requested extension of General Lease No. S-3716.

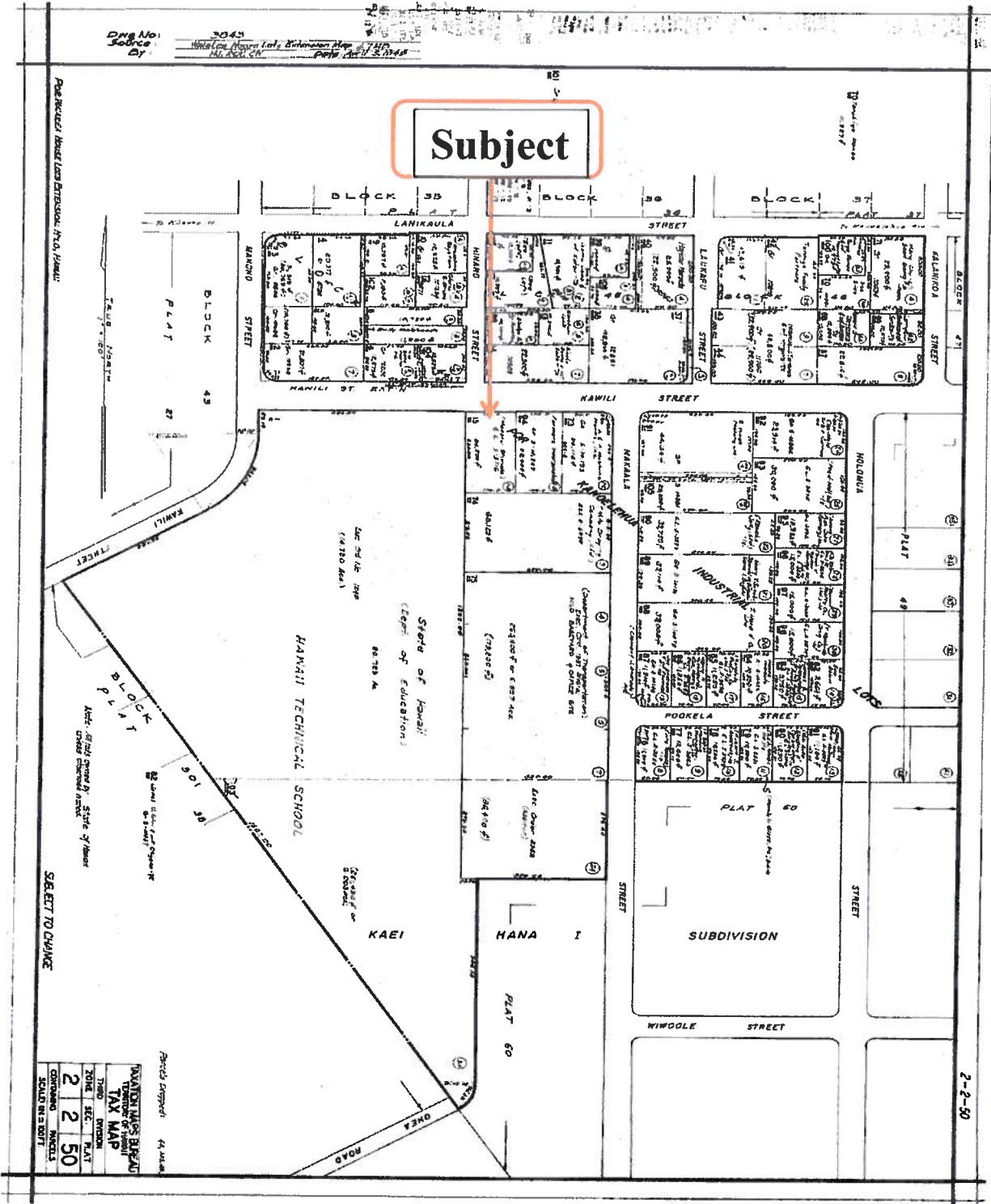
Respectfully Submitted,

  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson

<sup>3</sup> Lease extensions only give the State ground rent; the lessee continues to own the improvements in the extension period.



**EXHIBIT A**