

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

December 12, 2014

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

OAHU

Consent to Reinstatement and Extension of Lease Term, and Setting of Rent for Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessee; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003 and Settlement of Lawsuit, *Liew v. State of Hawaii*, Civ. No. 07-1-0644-04 (JHC).

APPLICANT AND REQUEST:

Walter & Ann Liew to make improvements to the property in an amount not to exceed \$100,000.

For Mortgagor to amortize the cost of the improvements, Mortgagee requires an extension of General Lease No. S-4298 of twelve (12) years, commencing on March 12, 2013 and expiring on March 11, 2025, for an aggregate term (initial term plus all extensions) of fifty-five years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-010:003, as shown on the attached map labeled Exhibit A.

AREA:

15.587 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:

General agriculture purposes.

TERM OF LEASE:

Original term of 43 years, commencing on March 12, 1970 and expiring on March 11, 2013.

Requested extension of twelve (12) years commencing on March 12, 2013 and expiring on March 11, 2025.

ANNUAL RENTAL:

Current rent is \$15,000, due on February 12 of each year.

RENTAL REOPENINGS:

An immediate rent reopening for the extended term was conducted by an independent appraiser. In July 2012, staff notified the Lessee that the annual rental for the first ten (10) years of the extended term would be \$21,800. The Lessee has agreed to this rental amount.

USE OF LOAN PROCEEDS:

The Mortgagor intends to use the loan proceeds to make changes necessary to bring the improvements on the subject premises into compliance with the relevant county ordinances.

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS:

The Lessees will continue their efforts to correct the pre-existing City and County of Honolulu (City and County) violations at their expense. In particular, the following shall be required:

- a. Removal of the 2nd house from the property by no later than 30 days from the date of the Board's approval.
- b. Either combine the 3rd and 4th houses or remove the 3rd house within 90 days from the Board's approval of the extension of the Lease. This includes obtaining

all necessary permits and completing any necessary construction.

- c. Provide the DLNR with a copy of all building permits issued to the Lessees for any improvements on the property and a copy of all outstanding permit applications submitted by the Lessees for any improvements on the property within 30 days of the Board's approval of the extension of the Lease.
- d. The Lessees will provide DLNR with a letter or statement from the City and County stating that Notice of Violation No. 2004/NOV-04-141 (HC) and Notice of Violation No. 2004/NOV-04-143 (HC) have been resolved and that there are no outstanding violations, within 180 days of the Board's approval of the extension of the Lease.

REMARKS:

General Lease No. 4298 was sold at public auction on March 12, 1970 to Ambrose Rosehill and Frederick Titcomb for an original term of 20 years. The lease was assigned several times until 1999 when the Board consented to the assignment of the subject lease to Walter and Ann Liew (Lessee). The assignment to the Liewes was from the U.S. Department of Agriculture (USDA) which had received the lease as a result of the foreclosure of its loan to the prior tenant. It appears that the USDA was aware of the problems with the improvements not being in compliance, but that it did not disclose such problems to the Liewes prior to the lease being assigned.

In March 2005, the Department received a Notice of Violation (NOV) issued by the Department of Planning and Permitting of the City and County of Honolulu. The subject of the NOV was unauthorized structures on the premises. The Notice of Default (NOD) was served and the Board extended the cure period of the NOD to allow the Lessee more time to address the problem. At the time of writing this submittal, the breach has not been corrected.

On April 10, 2007, Lessee filed a lawsuit against the State of Hawaii, Department of Land and Natural Resources, alleging that the State had known that the structures were not in compliance with County ordinances and that it failed to disclose the problems with the structures to the Lessee.

On February 10, 2012, the Board was asked to consent to the Liewes' mortgage of the leasehold interest and an extension of the Lease to allow the Liewes to repay the mortgage. The mortgage proceeds were required to be used to make any changes necessary to bring the improvements on the subject premises into compliance with the relevant county ordinances.

The written submittal conditioned the consent to mortgage and extension of the Lease on the Liewes' satisfaction of 3 conditions: removal of the second house from the property within 90 days from the date of the Board approval; either combining the third and fourth

houses or to remove the third house within 180 days from the date of the Board approval; and payment of the appraisal fee for the immediate rental reopening (Applicant Requirements). The submittal provided that failure to comply [with] the Applicant Requirement[s] within the time stipulated therein shall result in automatic revocation of this approval.

On May 9, 2012, DLNR staff received an email from the Liew's son confirming that the second house had been removed from the property. Subsequent to May 9, 2012, DLNR staff did go to the property to verify that the second house had been removed and to investigate complaints regarding activity on the property. DLNR staff verified that the second house was no longer in its location near the front entrance to the property.

On January 25, 2013, DLNR staff again took the Lease to the Board to request a 60 day holdover of the Lease to allow the Liew's to fulfill the last Applicant Requirement, to combine the third and fourth houses or to remove the third house. The Board granted the 6 month holdover of the Lease, until September 11, 2013, and delegated authority for the Chairperson of the Board to grant further extensions of the time for completion of the Applicant Requirements for good cause.

On October 29, 2013, the Liew's, DLNR staff and attorneys conducted a site visit of the subject property in connection with a rent arbitration proceeding. While on the site visit, DLNR staff and attorneys discovered that the second house, which was represented as having been removed from the property on May 9, 2012, was still on the property and had merely been relocated within the property. As a result of this finding, the Board, at its meeting of December 13, 2013, Item D-27, authorized the issuance of a 60 day Notice to Vacate to the Liew's as the Liew's had failed to fulfill one of the requirements for the extension of the Lease and, by the terms of the Board's consent, failure to remove the second house within the time provided would result in automatic revocation of the Board's consent to the extension of the Lease. Such Notice to Vacate was never issued as the Liew's filed a petition for contested case hearing a week after the Board meeting. The Board denied the request for contested case hearing at its meeting on April 16, 2014, (Item D-15).

Although the lease extension was revoked, the lawsuit filed by the Lessee is ongoing. Recently, staff understands that the State and the Lessee's attorney are working on a settlement regarding the lawsuit mentioned above. The terms of the proposed settlement are as follows:

1. The Board shall approve the twelve (12) year extension of the lease term to run from March 12, 2013, to March 11, 2025.
2. Rent for the re-opening period of February 10, 2012 to February 11, 2022, shall be at the annual rental of \$21,800.00. A rental re-opening shall be held for the period of February 12, 2022, to March 11, 2025 according to the terms of the Lease and Hawaii Revised Statutes § 171-17, as amended.

3. The Lessees will continue their efforts to correct the pre-existing City and County of Honolulu (City and County) violations at their expense. In particular, the following shall be required:
 - a. Removal of the 2nd house from the property by no later than 30 days from the date of the Board's approval
 - b. Either combine the 3rd and 4th houses or remove the 3rd house within 90 days from the Board's approval of the extension of the Lease. This includes obtaining all necessary permits and completing any necessary construction.
 - c. Provide the DLNR with a copy of all building permits issued to the Lessees for any improvements on the property and a copy of all outstanding permit applications submitted by the Lessees for any improvements on the property within 30 days of the Board's approval of the extension of the Lease.
 - d. The Lessees will provide DLNR with a letter or statement from the City and County stating that Notice of Violation No. 2004/NOV-04-141 (HC) and Notice of Violation No. 2004/NOV-04-143 (HC) have been resolved and that there are no outstanding violations, within 180 days of the Board's approval of the extension of the Lease.
4. The above referenced lawsuit will be dismissed with prejudice within 30 days of the Board's approval of the extension of the Lease.
5. The Lessees will cause the performance bond to be reinstated or renewed from the bond company within 10 days of the Board's approval of the extension of the Lease.
6. The Lessees will pay for the State's costs incurred in the prior rent re-opening arbitration proceeding. Currently, the State has paid costs in the amount of \$1,396.86 for the services of Craig Leong. In addition, the State anticipates being billed for the services of George Hao in connection with the arbitration. Reimbursement for Mr. Leong's services shall be due within 30 days of the Board's approval of the extension of Lease. Payment of amounts billed by George Hao for his services shall be due within 30 days of the Lessees' receipt of a copy of the State's invoice for Mr. Hao's services.

The parties understand that the settlement was subject to approval by the Board for the lease extension request and the other settlement terms notwithstanding that the lessee is

not in compliance with the lease terms and conditions.

Staff recommends the Board consent to the mortgage and authorize the lease extension in view of the proposed settlement.

There are no other pertinent issues or concerns.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

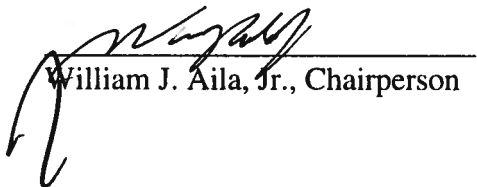
1. Authorize the extension of General Lease No. S-4298 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve the settlement of the above referenced lawsuit on the terms set forth above.

Respectfully Submitted,

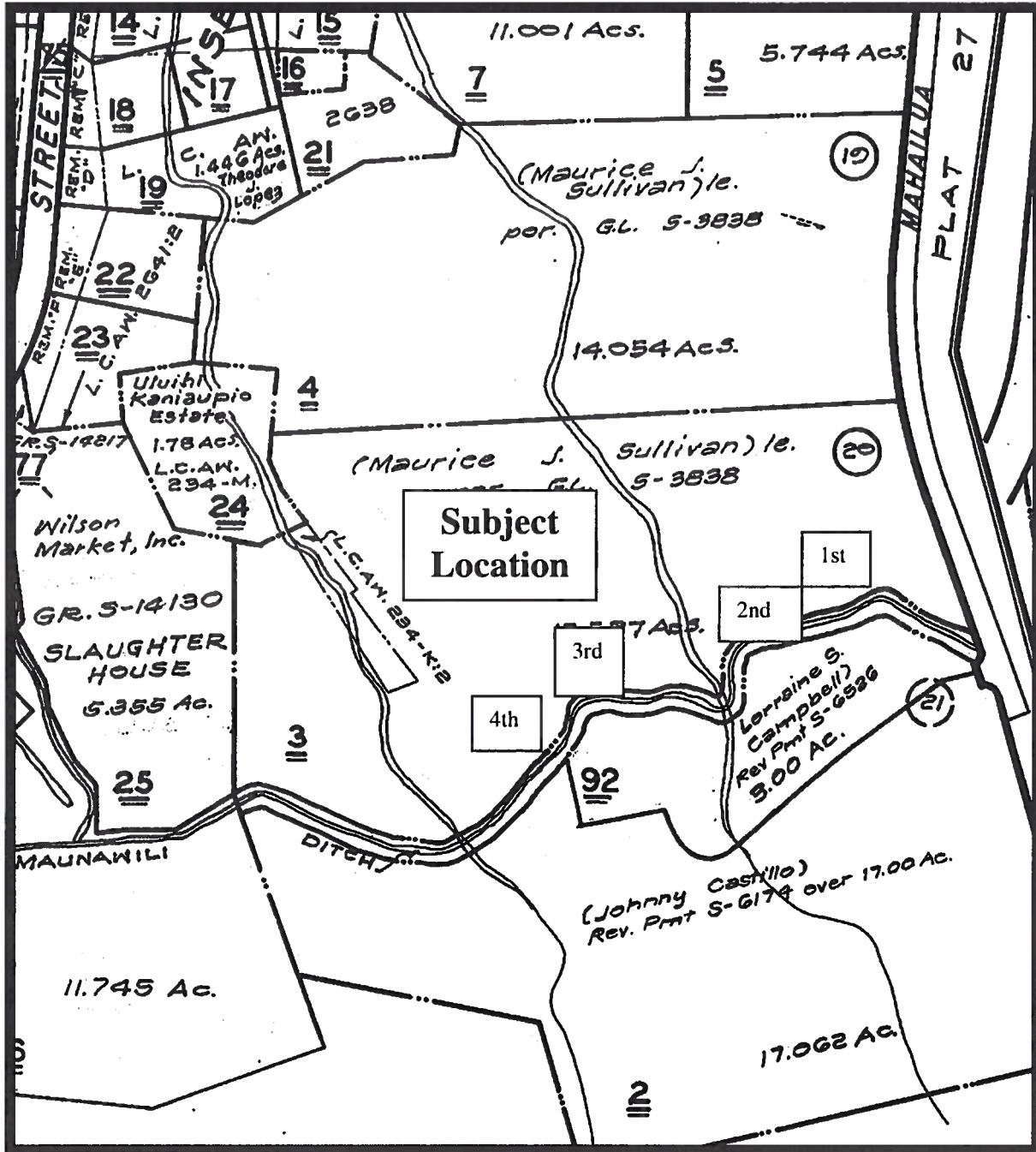


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 4-1-010:003

Note: Map above indicates the approximate location of the four houses mentioned in the submittal.

EXHIBIT A