

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

February 13, 2015

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

Ref No.: GL - 3162

Hawaii

Authorize a One-Year Holdover of General Lease No. 3162, Scott Tadashi Hayashi, Lance Hiromu Hayashi and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, 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) 2-1-007:028.

APPLICANT:

Scott Tadashi Hayashi, a married man with ¼ interest, Lance Hiromu Hayashi, a married man with ¼ interest and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, with ½ interest, as tenants in common.

LEGAL REFERENCE:

Sections 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) 2-1-007:028, as shown on the attached map labeled Exhibit A.

AREA:

7,749 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 Trustees and as such are not required to register with the DCCA.

CURRENT USE STATUS:

Encumbered by General Lease No. 3162, Scott Tadashi Hayashi, Lance Hiromu Hayashi and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, Lessees, for residential purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on May 25, 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:

\$3,867.00, billed in two equal semi-annual installments. See attached Exhibit D for calculations.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016.

REVOCABLE PERMIT MONTHLY RENTAL:

\$322.00, billed monthly. See attached Exhibit D for calculations.

COLLATERAL SECURITY DEPOSIT:

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:

General Lease No. 3162 (GL-3162) was originally issued to Gladys H. Dias by the Territory of Hawaii for a term of 21 years commencing on November 18, 1946 with an annual rental rate of \$145.00.

An assignment of lease was executed on June 10, 1955 from Gladys H. Dias to Roy C. Blackshear. On September 6, 1955, Roy C. Blackshear assigned GL-3162 to Kitome Hayashi.

Kitome Hayashi assigned GL-3162 to herself and her son, Hiroo Hayashi, on August 31, 1960.

Kitome Hayashi (Ohama) and Hiroo Hayashi qualified as disaster victims under Section 87 of Act 32, Session Laws of Hawaii 1962. GL-3162 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.

On October 1, 1963 an assignment of lease was executed between Kitome Hayashi Ohama and Hiroo Hayashi, assignors, and Clarence Tatsuka Ohama and Kitome Ohama, as tenants by the entirety, as assignees.

Clarence Tatsuka Ohama passed away on August 29, 1995 at which time he was the sole lessee by the rights of survivorship.

At its meeting of September 27, 1996, under agenda item D-19, the Board consented to the assignment of lease from Hiroo Hayashi, personal representative of the Estate of Clarence Tatsuka Ohama, deceased, as assignor, to Hiroo Hayashi, single as to one-half interest and Kinue Sakaitani, wife of Terry Sakaitani, as to one-half interest, as tenants in common, as assignees.

At its meeting of February 13, 2004, under agenda item D-3, the Board consented to the assignment of lease from Hiroo Hayashi and Kinue Sakaitani, assignors to Hiroo Hayashi

and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, as assignees.

At its meeting of January 28, 2005, under agenda item D-5, the Board consented to the assignment of lease from Hiroo Hayashi (1/2 interest) and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust (1/2 interest), as assignors, to Scott Hayashi (1/4 interest), Lance Hayashi (1/4 interest) and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust (1/2 interest).

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 January 22, 2015 and the property and improvements are well cared for. The lessee is compliant with the terms and conditions of the lease with regards to the rent and liability insurance. This lease does not have a provision for a performance bond or property insurance. Staff recommends establishment of a performance bond during the revocable permit period equal to twice the revocable permit monthly rental amount.

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, 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 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 D). This amount is calculated to be \$3,867.00. The annual rental amount will be divided by 12 for the revocable permit period and is calculated to be \$322.00 per month.

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

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.

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. Authorize a One-Year holdover for General Lease No. 3162 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 rental amount for the One-Year holdover period will be \$3,867.00 billed in two equal semi-annual amounts of \$1,933.50 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.

3. Authorize the issuance of a revocable permit effective March 15, 2016 to Scott Tadashi Hayashi, Lance Hiromu Hayashi and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, 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 \$322.00 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. The lessee will be required to post a performance bond equal to twice the monthly rental amount;
 - 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 Scott Tadashi Hayashi, Lance Hiromu Hayashi and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust 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:

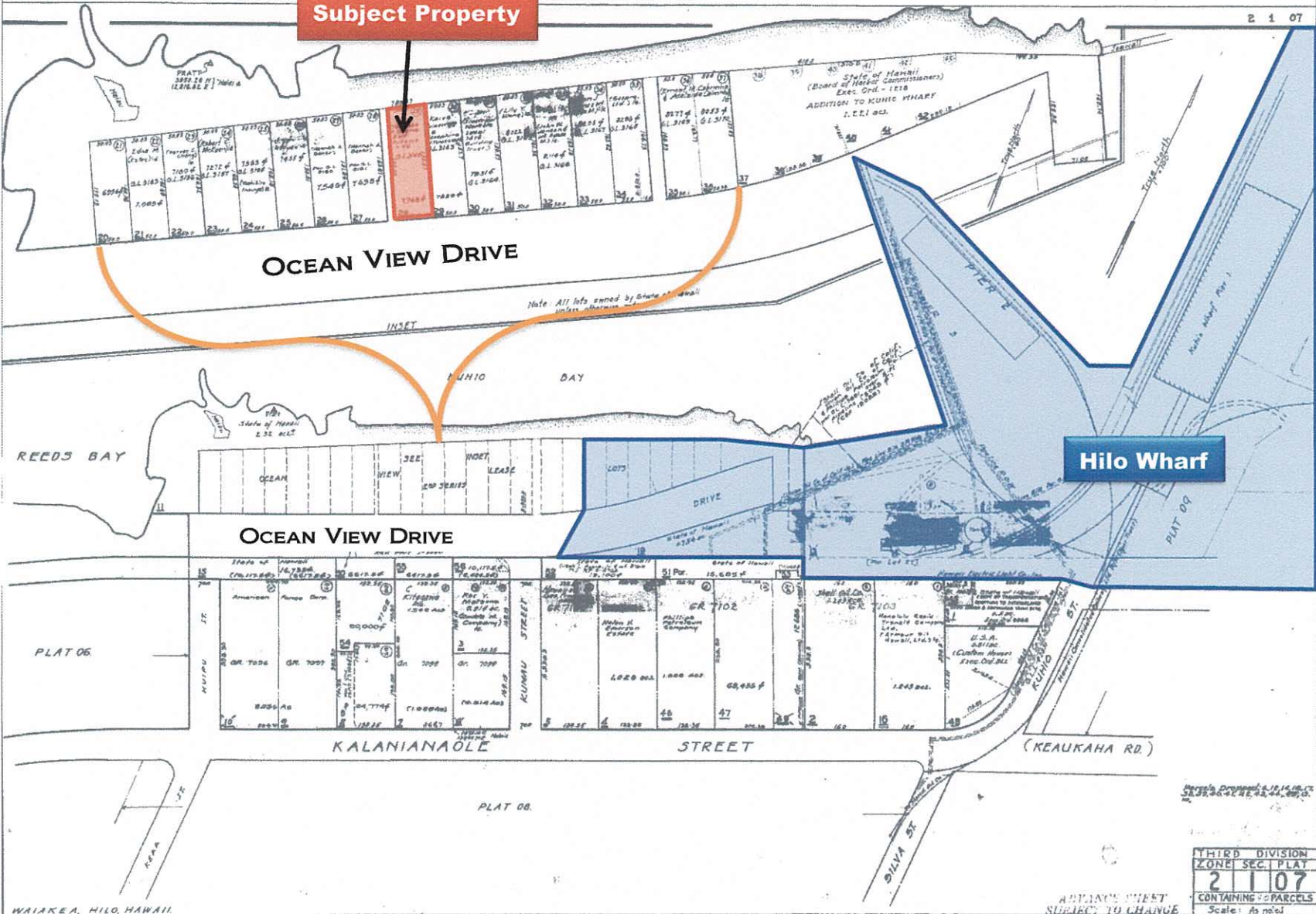


Carty S. Chang, Acting Chairperson

EXHIBIT A

Subject Property

2 1 07



DAVID Y. IGE
GOVERNOR OF HAWAII



EXHIBIT B

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

FIRST DEPUTY

WILLIAM M. TAM
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 30, 2015

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. 3162, Scott Tadashi Hayashi, Lance Hiromu Hayashi and Terry S. Sakaitani and Kinue Sakaitani, Trustees under the Sakaitani Family Trust, 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 Permittees, for Residential Purposes

Project / Reference No.: GL-3162

Project Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:028

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.



Carty S. Chang, Acting Chairperson

1/28/15

Date



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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 C

WILLIAM J. AHA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

GUY H. KAULUKUKU
DIRECTOR

WILLIAM TAM
DEPUTY DIRECTOR

ADAM A. SCHULTZ
BOARD MEMBER
TERRY W. KOSKI
COMMISSIONER
CONSULTANT
CONSULTANT
ENGINEER
INSURANCE SURVEYOR
LAND SURVEYOR
LAND SURVEYOR

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

January 23, 2015

MEMORANDUM

TO: Carty S. Chang, Acting Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent 

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

GL No.: 3162
Lessee: Scott Tadashi Hayashi, Lance Hiromu Hayashi and
Terry S. Sakaitani and Kinue Sakaitani, Trustees
under the Sakaitani Family Trust.
Location: Ocean View Lease Lots, Waiakea, South Hilo,
Hawai'i
Lease area: 7,749 sf.
Tax Map Key: (3) 2-1-007:028
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. 3162 (GL-3162) was originally issued on November 18, 1946 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 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, sales activity from the period of July 2012 thru June 2013 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. 3162

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

2014 Market Land Value	\$128,900.00
Rate of Return: 4%	5,156.00
Less 25% discount for tenancy	<u>-1,289.00</u>
Annual Holdover Rent	3,867.00
Monthly Revocable Permit Rent	322.00

Based on these calculations the annual rent for the one-year holdover period is \$3,867.00. The monthly rent amount for the period of the revocable is \$322.00.

Approved/Disapproved:


Carty S. Chang, Acting Chairperson

1/27/15
Date