

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

February 27, 2015

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

Ref No.: GL - 3156

Hawaii

Deny Lessee's Request for a One-Year Holdover and the Issuance of a Month-to-Month Revocable Permit, of General Lease No. 3156, Michael F. and Dora Lee Rudolph, Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:022.

APPLICANT:

Michael F. and Dora Lee Rudolph, husband and wife, as tenants by the entirety.

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) 2-1-007:022, as shown on the attached map labeled Exhibit A.

AREA:

7,180 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

DCCA VERIFICATION:

Applicant as individuals are not required to register with the DCCA.

CURRENT USE STATUS:

Encumbered by General Lease No. 3156, to the applicants, 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.

BACKGROUND:

General Lease No. 3156 (GL-3156) was originally issued to Mrs. Tungert L. Chong by the Territory of Hawaii for a term of 21 years commencing on November 18, 1946 with an annual rental rate of \$186.00.

On October 26, 1955, consent was given by the Commissioner of Public Lands to the assignment of GL-3156 from Mrs. Tungert L. Chong, Assignor, to Tungert L. Chong and Harvey C. Chong (mother and son), Assignees.

The Lessees qualified as disaster victims under Section 87 of Act 32, Session Laws of Hawaii 1962. GL-3156 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.

At its meeting of July 14, 1972, under agenda item F-1-c, the Board consented to the assignment of GL-3156 from Tungert L. Chong and Harvey C. Chong (mother and son), assignors, to Harvey C. Chong, assignee.

At its meeting of February 25, 1977, under agenda item F-1-a, the Board consented to the assignment of GL-3156 from Harvey C. Chong, as assignor, to Harvey C. Chong and Phyllis R. Chong as Trustees of the Harvey C. Chong Revocable Living Trust, as Assignee.

At its meeting of May 9, 1980, under agenda items F-1-a & b, the Board consented to the assignment of GL-3156 from Harvey C. Chong and Phyllis R. Chong as Trustees of the Harvey C. Chong Revocable Living Trust, Assignor, to William Carl Peters, Assignee and a Purchase Money Mortgage with William Carl Peters, as mortgagor, and Harvey C. Chong and Phyllis R. Chong as Trustees of the Harvey C. Chong Revocable Living Trust, as mortgagee.

At its meeting of May 25, 1984, under agenda item F-1-d, the Board consented to the assignment of GL-3156 from William Carl Peters, Assignor, to Marie T. Peters, Assignee (parent and child).

At its meeting of October 26, 1984, under agenda item F-1-b, the Board consented to the assignment of GL-3156 from Marie T. Peters, Assignor to Michael F. and Dora Lee Rudolph.

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 B). The letter offered all current lessees who "remain in good standing through the end of the lease term, and who timely requests a holdover and revocable month-to-month permit" 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:

On January 30, 2015, HDLO received a request letter for a one year holdover followed by a revocable month-to-month permit and for consent to assignment of lease from the applicants for GL-3156.

A review of the file revealed the following issues:

The applicant has habitually failed to keep lease rents current requiring staff to send, via certified mail, Notices of Default for 7 of the last 13 semi-annual billings. Given the payment history, it is highly unlikely that lease/permit rents will be kept current in the future. Administrative resources spent curing defaults could be better utilized on other tasks.

Staff conducted a site inspection of the premises on January 30, 2015. The property was found not in compliance with the terms and conditions of the lease. Major expansion of the original house has taken place; including electrical. Maintenance on the house has not been done. The yard in front of the house is littered with inoperable vehicles. A large two-story deck was built on the back of the original house and has fallen into disrepair with missing handrails and questionable roof support structure. There is an upstairs exterior door without an exterior landing. Refer to attached photos marked as Exhibit C.

Further, the property is located within a Special Management Area and is zoned General Industrial. The current county zoning of 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 in 1967 and was therefore “grandfathered-in”. Due to the non-conforming use, no further residential expansions are to be permitted on the property.

Due to the non-compliance issue, staff does not believe it would be in the best interest of the State to allow a holdover and month-to-month revocable permit on this property. The modifications made without benefit of proper permitting and inspection cannot be relied upon to be safe for habitation. The stockpiling of inoperable vehicles in such close proximity to the ocean is adverse to the coastal environment.


The opportunity to qualify for a one-year holdover followed by a month-to-month revocable permit was limited to those lessees who “remain in good standing through the end of the lease term”. Given the non-compliance issues, the lessees are not in “good standing”. Therefore, staff recommends denial of the request for a one-year holdover and issuance of a month-to-month revocable permit.

RECOMMENDATION:

That the Board:

1. Deny the Request for a One-Year Holdover and issuance of a month-to-month revocable permit, of General Lease No. 3156, Michael F. and Dora Lee Rudolph, Lessees.

Respectfully Submitted,



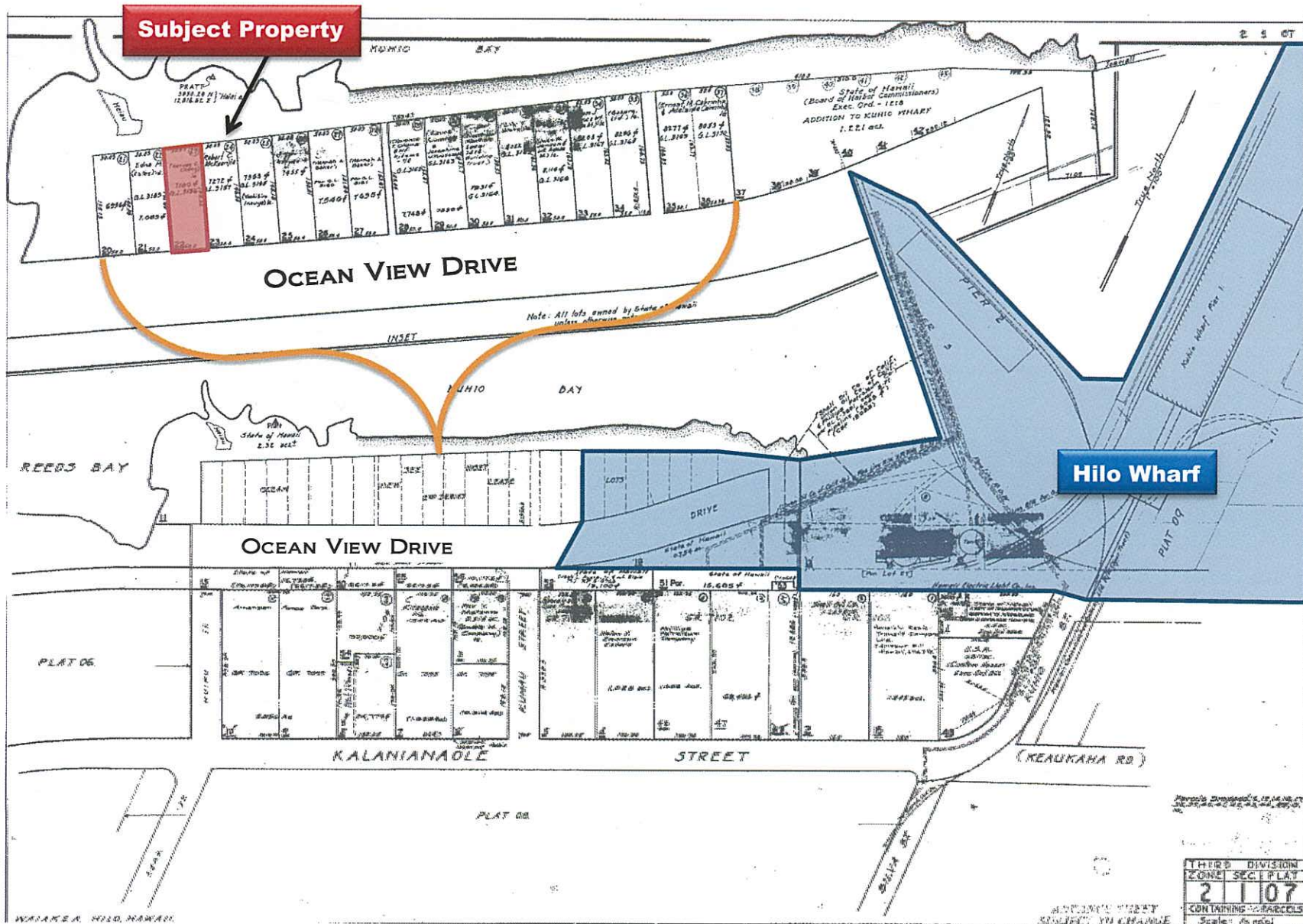
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson

EXHIBIT A



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 B

WILLIAM J. AHL, JR.
GOVERNOR OF HAWAII

GUILLERMO RUIZ
GOVERNOR OF HAWAII

WILLIAM T. TAM
GOVERNOR OF HAWAII

WILLIAM J. AHL, JR.
GOVERNOR OF HAWAII

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.

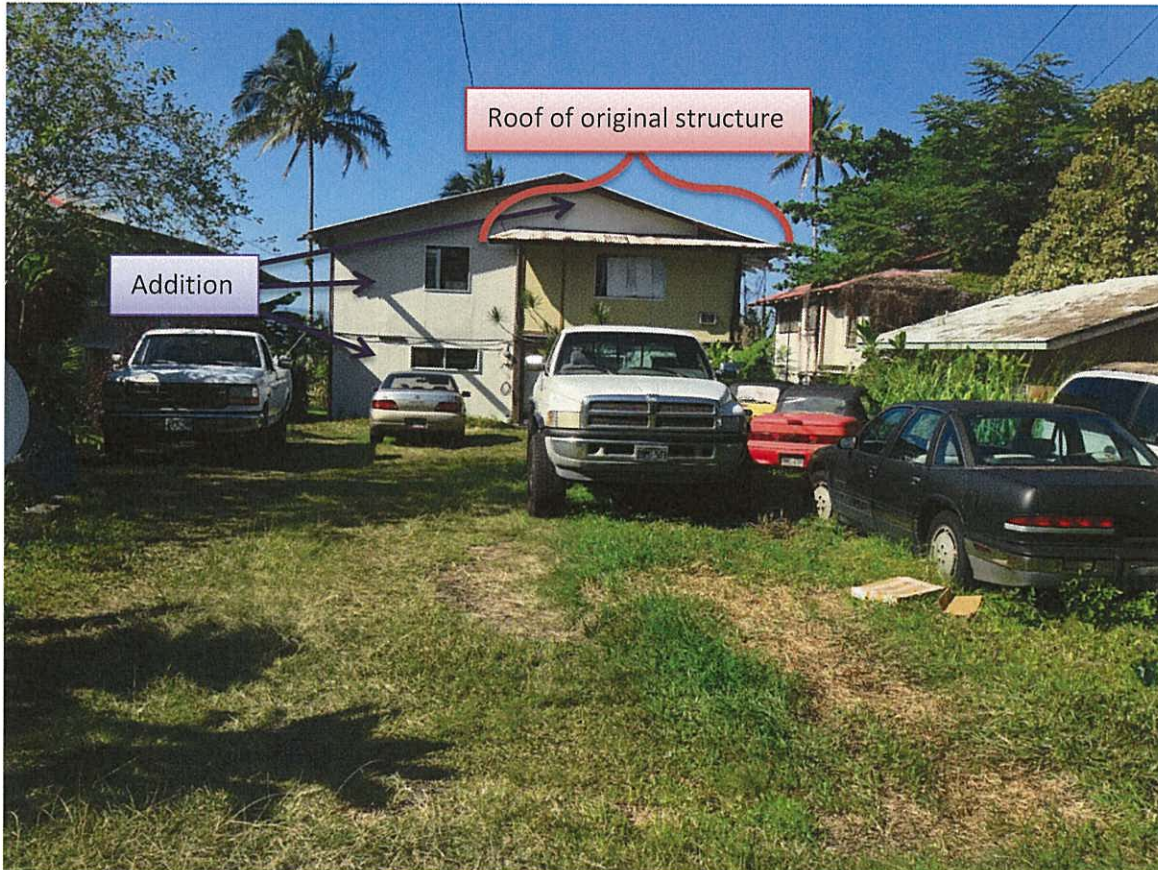
Sincerely,



 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

January 30, 2015 Inspection photos of GL-3156
Michael F. and Dora Lee Rudolph



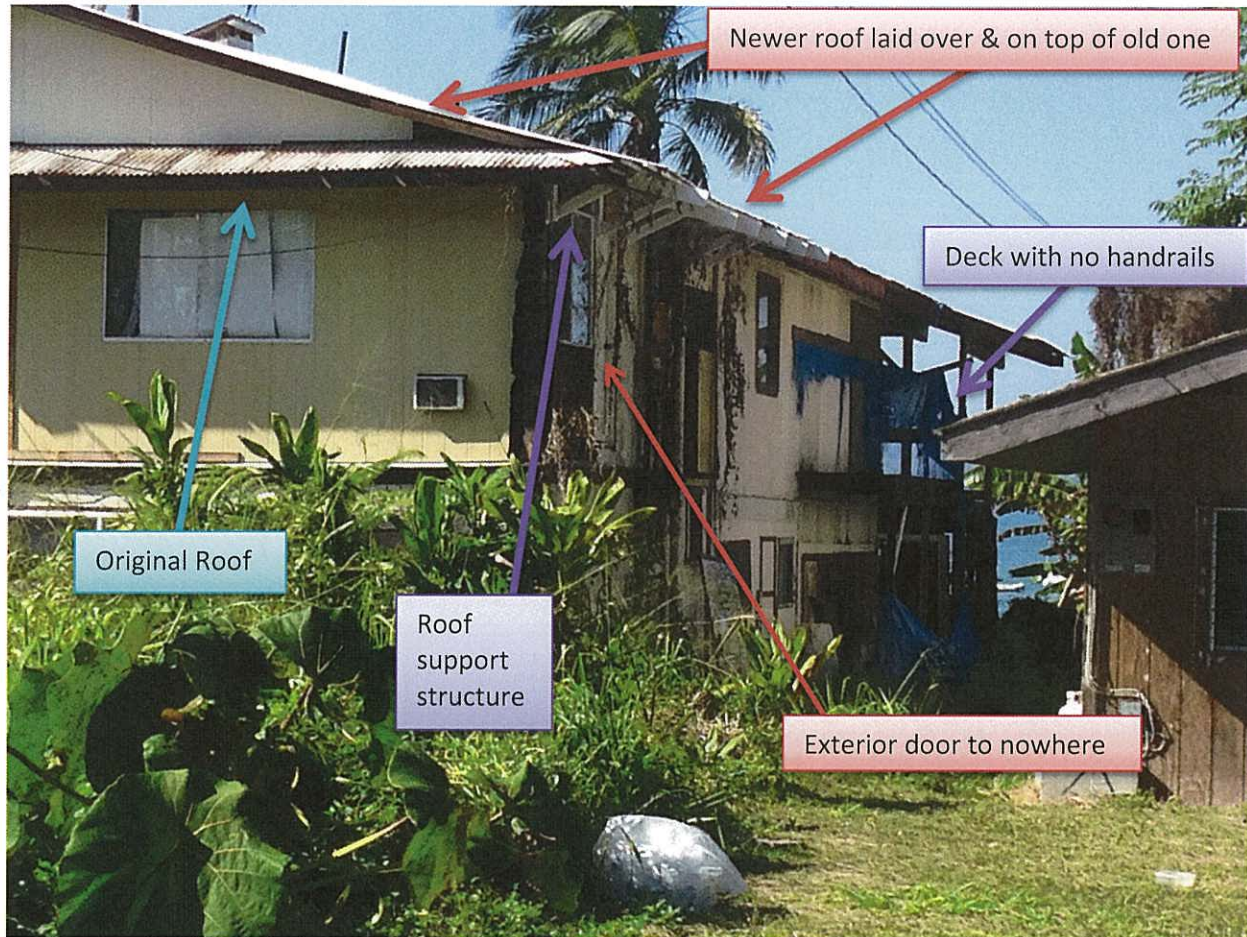
View from street. The Addition to the original house was constructed over the top and laid upon the original house structure.

EXHIBIT C



Another view from street showing the unkempt yard and the inoperable vehicles left in the yard.

EXHIBIT C



Side view of house from street. The “exterior door to nowhere” does not have a landing. The deck is very dangerous without handrails. The support structure of the newer roof is questionable due to the transfer of truss bearing to the walls of the older structure.