

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

March 13, 2015

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

Ref No.: 14HD-086

Hawaii

After the Fact Consent to Assignment of General Lease No. 3166, Robin T. Jensen, as Successor Trustee of the John W. Jensen Self-Trusteed Trust dated March 31, 1994 and as Successor Trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994, Assignor, to Peter M. Jensen, Assignee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032.

After the Fact Consent to Assignment of General Lease No. 3166, Peter M. Jensen, Assignor, to Benjamin Krusche, Assignee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032.

Authorize a One-Year Holdover of General Lease No. 3166, Benjamin Krusche, Lessee, 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 Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032.

APPLICANT:

Benjamin Krusche, a married man.

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) 2-1-007:032, as shown on the attached map labeled Exhibit A.

AREA:

8,114 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 as individuals are not required to register with the DCCA.

CURRENT USE STATUS:

Encumbered by General Lease No. 3166, Robin T. Jensen, as Successor Trustee of the John W. Jensen Self-Trusteed Trust dated March 31, 1994 and as Successor Trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994, Lessees, for residential purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on September 11, 2000 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:

\$3,897.00, billed in two equal semi-annual installments. See attached Exhibit D for

calculations.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016.

REVOCABLE PERMIT MONTHLY RENTAL:

\$325.00, 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. 3166 (GL-3166) was originally issued to Fred R. Harlocker and Josephine M. Harlocker by the Territory of Hawaii for a term of 21 years commencing on March 15, 1947 with an annual rental rate of \$151.50.

GL-3166 was transferred by assignment of lease documents dated;

- May 26, 1947 - from Fred R. Harlocker and Josephine M. Harlocker to Lolita D. Brighter.
- July 20, 1954 - from Lolita D. Brighter to Elroy T. L. Osorio and Clara K. Osorio.
- July 6, 1959 – from Elroy T. L. Osorio and Clara K. Osorio to James W. Boyle and Nancy H. Boyle.

The Lessees were found to qualify as disaster victims under Act 4, First Special Session of 1960. The expiration of GL-3166 was consequently extended to March 14, 2015 with rental re-openings at 20 and 40 years from the most current lease agreement.

On February 7, 1963, the Board executed consent to the assignment of GL-3166 from James W. Boyle and Nancy H. Boyle to Thomas Kihei Desha Brown and Anuhea Audrey

Brown.

On May 7, 1965, the Board executed consent to the assignment of GL-3166 from Thomas Kihei Desha Brown and Anuheia Audrey Brown to John W. Jensen and Adele M. Jensen.

At its meeting of July 8, 1994, agenda item F-1-c, the Board consented to the assignment of lease from John W. Jensen and Adele M. Jensen, to John W. Jensen Self-Trusteed Trust dated March 31, 1994 and Adele M. Jensen Self-Trusteed Trust dated March 31, 1994.

In January 2006, both trusts were amended to name Robin T. Jensen, their daughter, as the successor trustee in the event of death, disability or resignation of the current trustees. At the same time, Adele M. Jensen resigned as trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994, making Robin T. Jensen the Successor Trustee.

In February 2012, after the death of her father, Robin T. Jensen accepted the appointment of Successor Trustee of the John W. Jensen Self-Trusteed Trust date March 31, 1994.

In late 2014 the Hawaii District Land Office received two Assignment of Lease documents, both executed March 20, 2012. One assigned GL-3166 from Robin T. Jensen as Successor Trustee of the John W. Jensen Self-Trusteed Trust date March 31, 1994 and as Successor Trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994 to Peter M. Jensen. The other assigned GL-3166 from Peter M. Jensen to Benjamin Krusche. Staff is recommending in this submittal that the Board give their consent to the two assignments.

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 February 5, 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 \$3,897.00. The annual rental amount will be divided by 12 for the revocable permit period and is calculated to be \$325.00 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. After the Fact Consent to the Assignment of General Lease No. 3166, from Robin T. Jensen, as Successor Trustee of the John W. Jensen Self-Trusteed Trust dated March 31, 1994 and as Successor Trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994, Assignor, to Peter M. Jensen, Assignee, subject to the following:
 - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General;
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. After the Fact Consent to the Assignment of General Lease No. 3166, Peter M. Jensen, Assignor, to Benjamin Krusche, Assignee, subject to the following:
 - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General;
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

4. Authorize a One-Year holdover for General Lease No. 3166 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 \$3,897.00 billed in two equal semi-annual amounts of \$1,948.50 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.

5. Authorize the issuance of a revocable permit effective March 15, 2016 to Benjamin Krusche, 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 \$325.00 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.

6. Authorize the issuance of a Bill of Sale transferring all improvements on the property to Benjamin Krusche 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, Interim Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



EXHIBIT B

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

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 20, 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. 3166, Benjamin Jack Krusche, Lessee, 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 Lessee

Project / Reference No.: GL-3166

Project Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032

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:

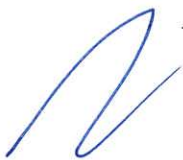
That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Carty S. Chang, Interim Chairperson

2/27/15

Date



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

February 25, 2015

MEMORANDUM

TO: Carty S. Chang, Interim Chairperson

THROUGH: Russell Y. Tsuji, Division Administrator

FROM: Candace Martin, Land Agent

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

GL No.: 3166
Lessee: Robin T. Jensen, as Successor Trustee of the John W. Jensen Self-Trusteed Trust and of the Adele M. Jensen Self-Trusteed Trust
Location: Ocean View Lease Lots, Waiakea, South Hilo, Hawai'i
Lease area: 8,114 sf.
Tax Map Key: (3) 2-1-007:032
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. 3166 (GL-3166) was originally issued on March 15, 1947 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 terminating on March 14, 2015 with rental reopenings at 20 and 40 years.

In a letter dated June 10, 2011, DOT HAR 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 DOT HAR 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. 3166


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

2014 Market Land Value	\$129,900.00
Rate of Return: 4%	5,196.00
Less 25% discount for tenancy	<u>-1,299.00</u>
Annual Holdover Rent	3,897.00

Monthly Revocable Permit Rent 325.00

Based on these calculations the annual rent for the one-year holdover period is \$3,897.00. The monthly rent amount for the period of the revocable is \$325.00.

Approved/Disapproved:



Carty S. Chang, Interim Chairperson

2/27/15

Date