



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

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

OAHU

TERMINATION OF HARBOR LEASE H-99-3 FOR BREACH OF
LEASE DUE TO ILLEGAL STRUCTURES, ILLEGAL SEWER
CONNECTION AND NON-COMPLIANCE WITH ENVIRONMENTAL
REQUIREMENTS AT PIER 18, HONOLULU HARBOR, ISLAND OF
OAHU, HAWAII

LEGAL

REFERENCE: Sections 171-11 and 55, Hawaii Revised Statutes.

APPLICANT: Leo Ohai

CHARACTER OF

USE: Commercial fishing facility and administrative offices.

LOCATION:

Portion of government lands, situated at Pier 18, Honolulu Harbor, Island of Oahu, Tax Map Key Nos. 1st /1-5-39:21 (Portion), as shown on Exhibit "B"

CURRENT USE

STATUS: Encumbered by Governor's Executive Order No. 2903 that sets aside the land to the Harbors Division, Department of Transportation

AREA: Approximately 4,686 square feet of area as described in Exhibit "B"

RENTAL: \$21,567 per year

ZONING:

State Land Use Commission: Urban
City and County of Honolulu: I-3 (Waterfront Industrial)

LAND TITLE

STATUS: G.E.O. 2903 Subsection classified "X" is non-ceded lands.

COMMENCEMENT

DATE: September 1, 1999

**CHAPTER 343
ENVIRONMENTAL**

ASSESSMENT: The project has not completed an Environmental Assessment and obtained approval of the Environmental Impact Statement or Negative Declaration in order to comply with Chapter 343. This is a Breach of Paragraph 14.d of lease agreement H-99-3.

REMARKS: The applicant is currently a Harbors Division tenant NOT in good standing.

On September 12, 2014, during a routine inspection, Harbors Property Management (HAR-PM) and Engineering Environmental (HAR-EE) Staff observed several violations of the lease agreement. As a result, letters from both sections were sent to the tenant.

In its letter dated October 7, 2014, HAR-EE issued a "Notice of Violation" regarding "Storm Water Compliance." The most egregious violation cited in the report was a 4" sewer pipe leaking onto the ground with liquid entering a storm drain a few feet away. The tenant was instructed to contain the leak immediately and to have the pipe repaired by a licensed plumber. Although the leak was contained, the tenant has not provided documentation that correction was performed by a licensed plumber.

HAR-PM issued a "Notice of Violation" dated October 24, 2014, notifying the tenant of several violations of the lease agreement. The lease provisions were identified that related to violations such as the sewer pipe leak, illegal sewer connection, structures that posed a threat to health and safety, the lack of plan approval of structures by Harbors Engineering. In addition, a review of Harbors records indicated that several requirements identified in the lease agreement had not been met prior to the construction of improvements, e.g., Environmental Assessment. The tenant was given time frames for correcting the various violations and notified that failure to complete the items constituted a "Breach" of the lease agreement, which could lead to the termination of the lease. During subsequent site visits, the tenant was given verbal reminders of the various violations. However, upon the passing of the final allotted time to comply, the tenant failed to properly act upon any of the violations. Therefore, on November 17, 2014, a "Notice of Deficiencies" was issued by HAR-PM.

The letter again cited lease violations and requested 1) Verification that the leaking pipe was repaired by a licensed plumber; 2) City and County authorization for the sewer connection, which appeared to be abnormal; 3) Written authorization approving the existing structures; 4) Plan approval for all improvements in the lease area; and 5) Compliance with Paragraph 17.c. of the lease agreement which includes the completion of an Environmental Assessment, Government Approvals, e.g., permits, Soils Report and Hazardous waste/materials survey report, none of which were present in the tenant's file.

Mr. Nephi Ohai, son of Mr. Leo Ohai, indicated verbally that he had documentation granting him permission to make the improvements. However, as of this date no copies have been provided to Harbors Division.

On December 18, 2014, Interim Director of Transportation Ross Higashi received a letter dated December 12, 2014, from the tenant. The letter stated that the "MUTUAL SETTLEMENT and RELEASE AGREEMENT" addresses the concerns of the letter. However, review of the "MUTUAL SETTLEMENT and RELEASE AGREEMENT" showed that it related to a rent settlement and states on page 4, "This settlement is not contingent upon or related to the settlement of any other lawsuit or claims the parties may have against one another." It did not address any of the issues raised in the previous notices. In addition, rental payments were not noted in any of the Notices.

- Since there has been no response to the "Notice of Violations" and "Notice of Deficiencies" noted above, a "Notice of Termination" dated January 26, 2015, was sent via Certified Mail to the tenant, which was acknowledged as having been received as of February 6, 2015. The letter stated that the agreement would be terminated not less than 30 days after receipt of the letter.

RECOMMENDATION:

Due to violations of the lease summarized above, violations of the Clean Water Act and the unsafe conditions that pose a threat to the health and safety of the tenant, employees, visitors, and the general public, Harbors respectfully requests that H-99-3 be terminated effective the date of Land Board Approval.


Respectfully submitted,



FORD N. FUCHIGAMI
Director of Transportation

Attachment

APPROVED FOR SUBMITTAL:



CARY S. CHANG
Acting Chairperson and Member
Board of Land and Natural Resources