

NEIL ABERGROMBIE
GOVERNOR



RS 12.0105

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
JAN S. GOUVEIA
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

HAR-PM
5382.12

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 So. Nimitz Hwy., Honolulu, Hawaii 96813-4898

July 26, 2011

Mr. Frank Goto, General Manager
United Fishing Agency, Ltd.
1131 N. Nimitz Highway
Honolulu, Hawaii 96817

Dear Mr. Goto:

Subject: Request for Waiver of Performance Bond Requirement, Harbor Lease No. H-03-17, Unit FV1, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Island of Oahu

This is in response to your request for a waiver of the performance bond requirement for the subject lease. We acknowledge your company's substantial financial investment in the construction of improvements for which a rental waiver of one (1) year was provided. A review of your lease payment history indicates that past payments were received on a timely basis and your account is current.

In accordance with Paragraph 46 of the subject lease, "Upon substantial compliance by the LESSEE of the terms, covenants, and conditions herein contained on its part to be observed and performed, the LESSOR at its discretion, may waive or suspend the performance bond and/or improvement bond requirement, or modify the same by reducing the amount thereof; provided, however, that the LESSOR reserves the right to reactivate or reimpose said bond in and to their original tenor and form at any time throughout the term of this lease."

In view of your good credit history and completion of improvements, the division feels that reducing the amount required under the performance bond requirement to equal one quarter of the annual rental amount then owed is in order. In keeping with Paragraph 46 of the lease, the bond amount shall be automatically restored to its original annual requirement if there is a violation of any term or condition of the lease, including a failure to keep rental payments current.

ITEM M-3

Mr. Frank Goto
July 26, 2011
Page 2

HAR-PM
5382.12

Please indicate your acceptance below of the conditions for the proposed reduction in the performance bond amount and return a signed copy of this letter. Upon receipt of your acceptance we will proceed to request the approval of the Board of Land and Natural Resources. The enclosed copy may be kept for your records.

Please contact Ms. Patti Miyashiro, Property Manager, at 587-1942 if there are any questions.

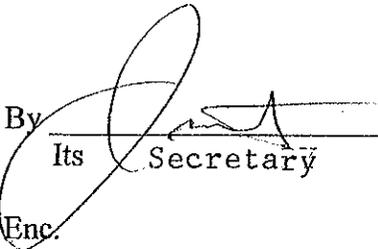
Sincerely,



RANDY GRUNE
Deputy Director, Department of Transportation
Harbors Division

ACCEPT DO NOT ACCEPT

UNITED FISHING AGENCY

By  _____
Its Secretary

Date 7/29/11

Enc.

HARBOR DIVISION
71 AUG -3 AM '11



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

IN REPLY REFER TO:

December 15, 2000

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

OAHU

**AMENDMENT TO PRIOR LAND BOARD ACTION OF JANUARY 22,
1999 UNDER AGENDA ITEM K-5 REGARDING THE ISSUANCE OF
A LEASE BY DIRECT NEGOTIATION TO UNITED FISHING
AGENCY, LTD. AT PIER 38, HONOLULU HARBOR, HONOLULU,
OAHU TMK: 1ST/ 1-5-42 (PORTION)**

At its meeting of January 22, 1999, under agenda Item K-5, the Land Board authorized the issuance of a lease by direct negotiation to United Fishing Agency, Ltd. (UFA), attached as Exhibit "A." The UFA, during negotiation with the Harbors Division, has requested a lease term of fifty-five (55) years, instead of the original term of thirty-five (35) years, as requested on agenda Item K-5, in order to amortize their mortgage loan.

Additionally, the UFA informs the Harbors Division that their bank requires established rentals for the first thirty-five (35) years of the lease, rather than the lease being subject to rental reopenings during the first thirty-five (35) year period. The Harbors Division has no objections to the increase in the lease term from thirty-five (35) years to fifty-five (55) years, and fixing the initial rental of the lease term to assist UFA in obtaining financing for the proposed leasehold lot. Due to this amendment of the term and fixed rental period of the lease, the Harbors Division will re-advertise the proposed disposition in accordance with Section 171-16 (c), Hawaii Revised Statutes.

As determined by independent appraisal, the fixed rental for the first thirty-five (35) years of the lease shall be as follows:

| | |
|---------------------|--------------|
| Years 1 through 5 | \$150,256.00 |
| Years 6 through 10 | \$172,794.00 |
| Years 11 through 15 | \$198,713.00 |
| Years 16 through 20 | \$228,520.00 |
| Years 21 through 25 | \$262,798.00 |

Approved by the Board
at its meeting held on

ITEM K-4

Years 26 through 30 \$302,217.00
Years 31 through 35 \$347,550.00

The above annual rentals for each five (5)-year period are based on a 115% increase of the last year of the previous five (5)-year period. The annual rental shall be reopened and redetermined at the end of the thirty-fifth (35th) and forty-fifth (45th) years of the lease term.

RECOMMENDATION:

That the Board amend its action of January 22, 1999, under agenda Item K-5, by amending the lease term to fifty-five years, together with establishing a fixed rental for the initial thirty-five (35)-year term of the lease, as listed above, subject to the following terms and conditions:

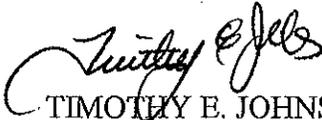
1. All other terms and conditions of the Land Board action of January 22, 1999, under agenda Item K-5, remain the same.
2. Other terms and conditions as may be prescribed by the Director of Transportation.

Respectfully submitted,



KAZU HAYASHIDA
Department of Transportation

APPROVED FOR SUBMITTAL:



TIMOTHY E. JOHNS
Chairperson and Member



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

IN REPLY REFER TO:

December 11, 1998

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

O'AHU

ISSUANCE OF LEASE BY DIRECT NEGOTIATION,
PIER 38, HONOLULU HARBOR, ISLAND OF O'AHU

STATUTE: Section 171-11, 16(c), 17, 33, 35, 36, 41, and 59(a), Hawaii Revised Statutes

APPLICANT: United Fishing Agency, Ltd.

LOCATION: Pier 38, Honolulu Harbor, O'ahu described as TMK No. 1-5-42, portion of Parcel 6, labeled Lot 1 of the Domestic Commercial Fishing Village, as shown on the attached Exhibit "A."

AREA: Approximately 53,663 square feet of reclaimed (filled) government land.

ZONING: State Land Use: Urban
City and County of Honolulu: Waterfront Industrial

PURPOSE: Construction, installation, operation, use, maintenance and repair of improvements necessary for a fish auction, seafood dinner and ancillary uses.

TERM: Thirty-five (35) years, to commence on the date determined by the Director of Transportation.

MINIMUM ANNUAL LEASE RENT: Subject to the waiver of lease rental provided hereinbelow, the minimum annual lease rent for the first five (5) years of the lease term, as determined by independent appraisal, shall be \$150,256.00.

Approved by the Board
at its meeting held on

ITEM K-5

The rental for the sixth through the tenth year of the lease term shall be 115% of the annual rental for the fifth year. Rental for the eleventh through the fifteenth year of the lease term shall be 115% of the annual rental for the tenth year.

**PERCENTAGE ANNUAL
LEASE RENT:**

During the entire term of the lease, the lessee shall pay to the State five percent (5%) of gross revenues the lessee receives and realizes from the retail operations within the premises, excluding State Excise Tax (gross income) collected and other allowable exclusions. Commissions from auction sales is excluded from gross revenues.

**WAIVER OF LEASE
RENTAL:**

The provisions of the lease require the lessee to make substantial improvements to the premises, in an amount not less than \$1,000,000.00, including, without limitation, constructing and installing utility lines, equipment and appurtenances necessary for the purpose of the lease. As a result, the lessee's obligation to pay rent to the State during the period of such construction shall be waived for a period not to exceed one year, and the waiver of rental shall terminate as of the date the lessee occupies the premises and commences operations.

RENTAL REOPENING:

The annual rental shall be reopened and redetermined at the end of the fifteenth (15th) and twenty-fifth (25th) years of the lease term. Independent appraiser(s) retained for such redetermination shall also determine a total overall appreciation rate to be applied on the later five-year periods of each ten-year period, which rate shall not be less than fifteen percent (15%).

BACKGROUND:

In 1989, a comprehensive and integrated master plan was developed by the Hawaii Community Development Authority (HCDA) for the Honolulu waterfront from Ala Moana to Keehi Lagoon. The plan decreed the relocation of the shipyard, fish auction, marine research and fish processing uses of Kewalo Basin

to other areas (Honolulu Harbor and beyond) and the development of new retail, restaurant, aquarium, additional parking, pedestrian promenade, etc. Tour related harbor activities would be incorporated into the plan.

The Department of Transportation took steps to relocate the fish auction and fish processing operations to the Pier 36 area of Honolulu Harbor. In 1994, a Request for Proposals was solicited for the private development of a fresh fish wholesale distribution center. However, no acceptable proposals were submitted. Subsequent discussion and meetings with various representatives of the commercial fishing industry indicated that it would be necessary for the State to construct the required pier and subdivision infrastructure to make development of a commercial fishing facility feasible. Harbors Division currently has two projects pending for such infrastructure development. The objective of this development is to provide a home base for the domestic commercial fishing fleet and its associated customers in a comprehensive facility to be known as the Pier 38 Domestic Commercial Fishing Village.

The Fishing Village project area encompasses approximately sixteen (16) acres of land at Piers 36, 37 and 38. Harbors Division will be constructing new pier structures, and will be parceling and grading lots for individual tenants. Also provided in this project are all roadways, common areas, parking facilities, landscaping, unloading dock, utility connections to property lines, and amenities at common areas, such as lamp posts, bollards, benches and trash receptacles. Tenants are to provide their building and all other site improvements in accordance with Design Guidelines intended to achieve a uniform appearance.

REMARKS:

The critical link between the commercial fishing fleet and the wholesalers is the fish auction. The applicant's proposed fish auction facility will be located at the makai end of Pier 38, where a new forty feet (40') wide by three hundred feet (300') long pier apron will be constructed, and where landing of fish and catches of the sea will occur.

A Notice of Intention to dispose of Department of Transportation lease by negotiation was published in the Honolulu Advertiser on February 9, 16 and 23, 1998. As a result of the notice, the applicant was the sole entity that submitted its application and bid proposal package.

The lease by direct negotiation, rather than by public auction, is appropriate in this instance in order to provide the displaced tenants of Kewalo Basin a facility wherein they would be able to continue the close association necessary for convenient and efficient processing of fresh fish. Concurrent to this objective is the desire to consolidate major commercial fishing activities in a modern and more efficient environment where the complete range of seafood processing can be accomplished.

The Lease for the fish auction premises will be submitted to the Department of the Attorney General for review and approval as to form.

RECOMMENDATION: That the Board:

1. Find the Area to be an economic unit in terms of the intended use.
2. Find that public interest demands the lease of public land be disposed of through negotiation with the existing tenant(s) of Kewalo Basin who meet established criteria.
3. Approve the lease by direct negotiation covering the subject area for the stated purpose, subject to the following terms and conditions:
 - a. Standard minerals reservations.
 - b. Standard indemnity and hold-harmless clause.

- c. All building construction shall be in full compliance with all laws, rules, and regulations of the Federal, State, and County governments applicable thereto, and in accordance with plans and specifications submitted by lessee to, and approved by, the Director of Transportation, prior to construction.
- d. Standard liability insurance clause.
- e. The lessee accepts the property in "as is" condition.
- f. Standard withdrawal clause.
- g. Standard hazardous materials clause.
- h. Standard assignment premium clause.
- I. Standard sublease clause with the standard sublease premium clause.
- j. Other terms and conditions of the standard lease of easement document, unless modified above, and such other terms and conditions as may be prescribed by the Director of Transportation.

Respectfully submitted,

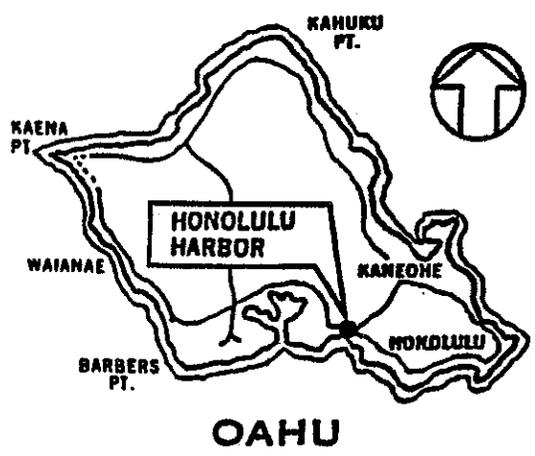
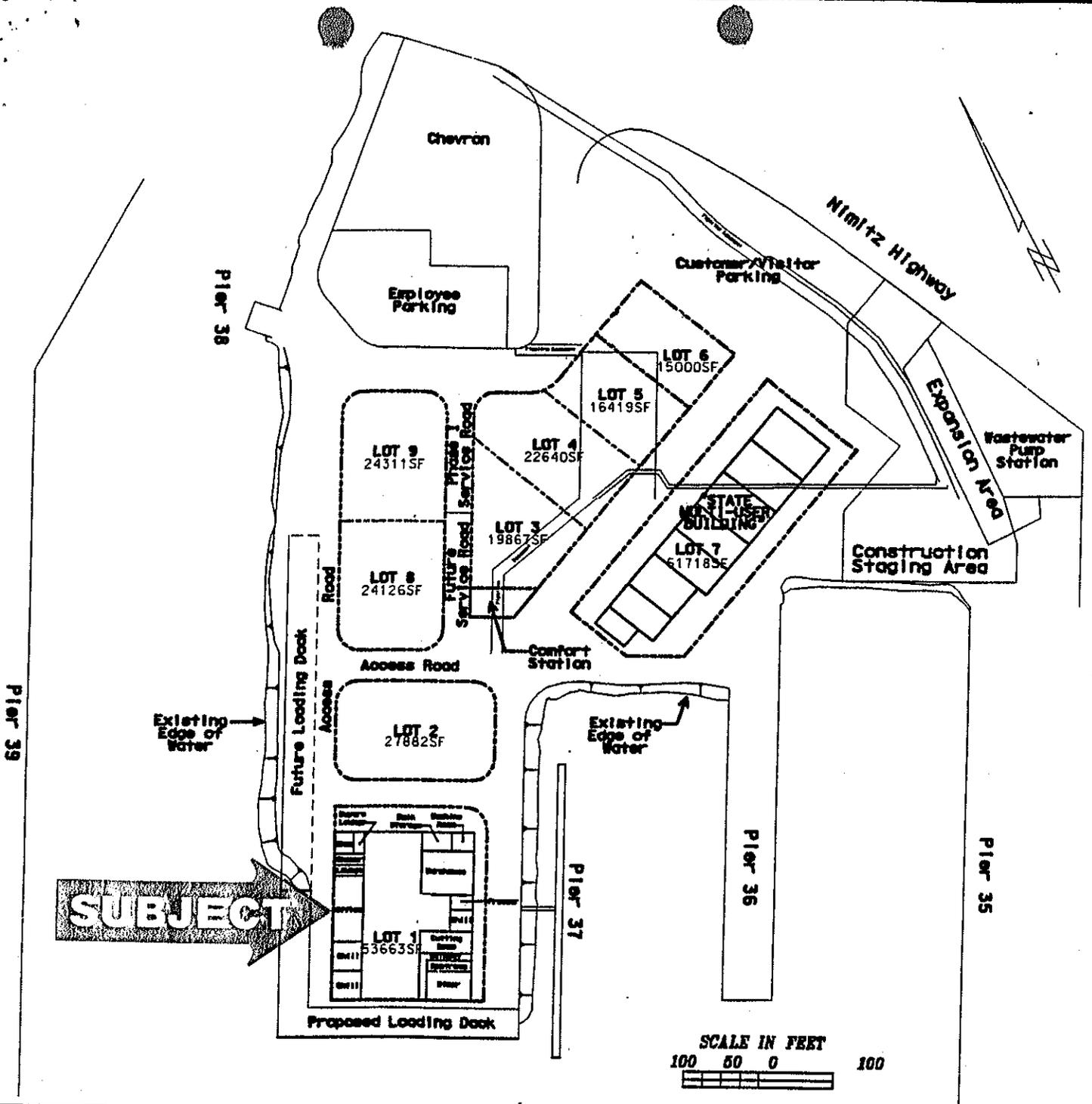


KAZU HAYASHIDA
Director of Transportation

Attachment

APPROVED FOR SUBMITTAL:


MICHAEL D. WILSON
Chairperson and Member



DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

DOMESTIC COMMERCIAL FISHING VILLAGE
HONOLULU HARBOR, ISLAND OF O'AHU



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

Board of Land and
Natural Resources
Honolulu, Hawaii

OAHU

REQUEST TO REDUCE THE PERFORMANCE BOND REQUIREMENT; HARBOR LEASE NO. H-03-17 ISSUED TO UNITED FISHING AGENCY, LTD, UNIT FV1, DOMESTIC COMMERCIAL FISHING VILLAGE, PIER 38, HONOLULU HARBOR, IWILEI, HONOLULU, OAHU, TMK: 1ST/1-5-42 (PORTION)

BACKGROUND:

Harbor Lease No. H-03-17 ("Lease") was issued by direct negotiation on September 30, 2003 for a term of fifty-five (55) years for the construction, installation, operation, use, maintenance and repair of improvements necessary for the storage, processing, and wholesale distribution of seafood products and ancillary services and products, including but not limited to, the operation of a seafood restaurant and retail sales of seafood products and produce. The current annual rent is \$173,245.23 and is paid in monthly installments in the amount of \$14,437.10. Under the Lease, United Fishing Agency, Ltd. ("Lessee") is required to post a performance bond equivalent to the annual rental amount. Currently the required bond amount is \$173,245.23 and the Lessee is in compliance.

REMARKS:

Lessee has requested for a waiver of the performance bond requirement as a result of the company's substantial financial investment in the construction of improvements. Paragraph 8 of the subject Lease required the Lessee to make substantial improvements to the lease area in an amount not less than two million dollars (\$2,000,000), including, without limitation, constructing and installing utility lines, equipment and appurtenances necessary for the purpose of the lease. As a result of the improvements made by Lessee their obligation to pay rent was waived during the first year of the lease.

Paragraph 46 of the subject Lease provides for a waiver or modification of the performance bond provision upon substantial compliance by the Lessee of the terms, covenants, and conditions of the Lease. It also reserves the right of the State to reactivate or reimpose the bond if need be at any time throughout the term of the Lease. Records indicate that in addition to the completion of the improvements constructed on the property, Lessee's lease payments have been received on a timely basis and the account is current. In view of the Lessee's good financial standing, Staff recommends the Board reduce the performance bond requirement to an amount equal to three (3) months rent or one quarter (1/4) of the annual rental amount then owed, subject to the condition that in the event that the Lessee violates any term or condition of the Lease in the future, then the Director of the Department of Transportation may, upon thirty (30) days written notice, reimpose the full performance bond requirement (equivalent to the anticipated annual rental payable for that year). The Lessee's failure to thereupon timely post the required bond as required shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

RECOMMENDATION:

That the Board reduces the performance bond requirement for Harbor Lease No. H-03-17 to an amount equivalent to three (3) months of rent or one quarter (1/4) of the annual rental amount then owed, further subject to the following:

In the event the Lessee violates any term or condition of the Lease in the future, then the Director of Transportation may, with thirty (30) days written notice, require that the full performance bond (equivalent to the anticipated annual rental payable for that year) be posted. The failure to timely post the required bond shall be deemed a material default and the State may terminate the Lease and pursue all other rights and remedies it may have.

Respectfully submitted,



GLENN M. OKIMOTO, Ph.D.
Director of Transportation

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member