

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

January 25, 2013

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

PSF 12OD-021

OAHU

Amend Prior Board Action of February 10, 2012, Item D-5, Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessees; by Extending the Time for the Lessee to Comply with the Requirements and Authorizing a Six-Month Holdover; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003.

BACKGROUND:

On February 10, 2012, under agenda item D-5, the Board authorized a 12-year extension for the subject lease until March 11, 2025. A copy of the approved Board submittal is attached as **Exhibit 1**.

An immediate rental reopening for the extended term was conducted by an independent appraiser. In July 2012, staff notified the Lessee that the annual rental for the extended term would be \$21,800, and requested the Lessee respond within thirty days of such offer letter.

Staff did not receive any responses from the Lessee until late November 2012. Mr. Liew explained that he misunderstood that his attorney would respond to the offer letter for the new rent. After clarification with his attorney, Mr. Liew indicated in writing that he chose to reject the new rent and pursue arbitration.

REMARKS:

In view of the current expiration date of the subject lease which falls on March 2013, staff requests the Board authorize a six-month holdover period which will allow the Department and the Lessees time to resolve the arbitration issue.

Further, Lessee is required to either remove or combine the 3rd and 4th houses on the property within 180 days of the Board approval as mentioned in the Applicant Requirement section in the February 2012 submittal. Lessee requests additional time to comply with the Department

of Health permit. Staff does not have any objection to the requested extension, and recommends the Board authorize the Chairperson to extend such period for good cause.

There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 10, 2012, under agenda item D-5 by:
 - a. Authorizing a six-month holdover commencing from March 12, 2013, further subject to the terms and conditions described above.
 - b. Authorizing the Chairperson to extend the time period for the Lessee to comply with the Applicant Requirements for good cause.
2. All terms and conditions listed in its February 10, 2012 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
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February 10, 2012

Board of Land and Natural Resources
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Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298,
Walter and Ann Liew, Lessees; Waimanalo, Koolaupoko, Oahu, Tax Map Key:
(1) 4-1-010:003.

APPLICANT AND REQUEST:

Consent to mortgage from American Savings Bank, Mortgagee, to Walter & Ann Liew,
in an amount not to exceed \$ 90,000.

For Mortgagor to qualify for this mortgage, Mortgagee requires extension of General
Lease No. S-4298 of twelve (12) years, commencing on March 12, 2013 and expiring on
March 11, 2025 for an aggregate term (initial term plus all extensions) of fifty-five (55)
years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by
Tax Map Key: (1) 4-1-010:003, as shown on the attached map labeled Exhibit A.

AREA:

15.587 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

February 10, 2012

DB

EXHIBIT " / "

CHARACTER OF USE:

General agriculture purposes.

TERM OF LEASE:

Original term of 43 years, commencing on March 12, 1970 and expiring on March 11, 2013.

Requested extension of twelve (12) years commencing on March 12, 2013 and expiring on March 11, 2025.

ANNUAL RENTAL:

Current rent is \$15,000, due on February 12 of each year.

RENTAL REOPENINGS:

Most recent rental reopening occurred on February 12, 2008.

Reopening for the extension shall be on January 27, 2012 [Board date] for the period expiring February 11, 2022; followed by another reopening falling on February 12, 2022 for the period expiring on March 11, 2025.

USE OF LOAN PROCEEDS:

The Mortgagor intends to use the loan proceeds to make any changes necessary to bring the improvements on the subject premises into compliance with the relevant county ordinances.

DCCA VERIFICATION:

Individuals, not applicable.

APPLICANT REQUIREMENTS: The Lessees shall

1. Remove the 2nd house from the property within 90 days from the date of the Board approval.
2. Either combine the 3rd and 4th houses or to remove the 3rd house. This includes obtaining all necessary permits and completing any necessary construction within 180 days from the date of the Board approval.
3. Pay for the appraisal fee for the immediate rental reopening.

REMARKS:

General Lease No. 4298 was sold at public auction on March 12, 1970 to Ambrose Rosehill and Frederick Titcomb for an original term of 20 years. The lease was assigned several times until 1999 when the Board consented to the assignment of the subject lease to Walter and Ann Liew (Lessee). The assignment to the Liewes was from the U.S. Department of Agriculture (USDA) which had received the lease as a result of the foreclosure of its loan to the prior tenant. It appears that the USDA was aware of the problems with the improvements not being in compliance, but that it did not disclose such problems to the Liewes prior to the lease being assigned.

In March 2005, the Department received Notice of Violation (NOV) issued by the Department of Planning and Permitting of the City and County of Honolulu. The subject of the NOV was regarding unauthorized structures on the premises. Notice of Default (NOD) was served and the Board extended the cure period of the NOD to allow the Lessee more time to address the problem. At the time of writing this submittal, the breach has not been corrected.

On April 10, 2007, Lessee filed a lawsuit against the State of Hawaii, Department of Land and Natural Resources, alleging that the State had known that the structures were not in compliance with County ordinances and that it failed to disclose the problems with the structures to the Lessee.

Staff understands that the State and the Lessee's attorney are working a settlement regarding the lawsuit mentioned above. Under the proposed settlement, the Lessee will apply for a mortgage and the loan proceeds will be used to correct the default, for example, hiring a consultant to prepare engineering drawings as required by DPP, modification of the existing improvements to meet the current standards etc. With the loan, the lender requests the term of the lease be extended for an additional 12 years. In the meantime, the State will recommend approval from the Board for the lease extension request notwithstanding the lessee is not in compliance with the lease terms and conditions.

During inspection, staff has noted that there are four (4) dwellings on the property. The subject lease only allows one primary residence plus one employee dwelling. Approximate locations of the dwellings are marked on Exhibit A, and photos of the dwellings are attached as **Exhibit B**. Following discussion between the Lessees and the State, it was agreed that the Lessees will remove the 2nd house from the property within 90 days of the Board approval of the lease extension request. Further, the Lessees agree to combine the 3rd and 4th houses into one single house with proper county approval and construction completed within 180 days of the Board approval of the lease extension. If the proposed combination is not feasible, the Lessees agree to remove either the 3rd or the 4th house from the property. Lessees acknowledge that all construction, demolition, or removal occurred on the property as mentioned above shall be conducted with proper authorization or permit from the county.

In addition, Department of Agriculture (DOA) has been maintaining a reservoir located

mauka of the subject property since 1993. Flowage easement over the subject property and access to the control box for the reservoir and water system are required for the proper operation and maintenance of the reservoir. After discussion, the Lessees agree to a condition being placed in the extension requiring the Lessees to provide access to the control box for the reservoir and water system, and designating flowage easements over the subject property. Staff understands the exact delineation of the access and flowage easement area will be determined by the Engineering Division of the Department, DOA, and the Lessees.

Staff recommends the Board consent to the mortgage and authorize the lease extension in view of the proposed settlement, which will elaborate on the specific structures/improvements that need to be corrected. In short, the defaults cited in the NOD (Exhibit B) will be rectified.

There are no other pertinent issues or concerns.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant Requirement listed above:

1. Consent to the mortgage between Walter and Ann Liew, Mortgagor, and American Savings Bank, Mortgagee, subject to the following:
 - A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
 - 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.
2. Authorize the extension of General Lease No. S-4298 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 lease extension form, as may be amended from time to time;
 - B. The State reserves an easement over the subject property for access purpose to the adjacent reservoir and its control system;

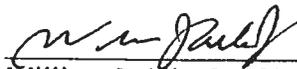
- C. The State reserves flowage easement(s) over the subject property;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Failure to comply the Applicant Requirement within the time stipulated therein shall result in automatic revocation of this approval.

Respectfully Submitted,

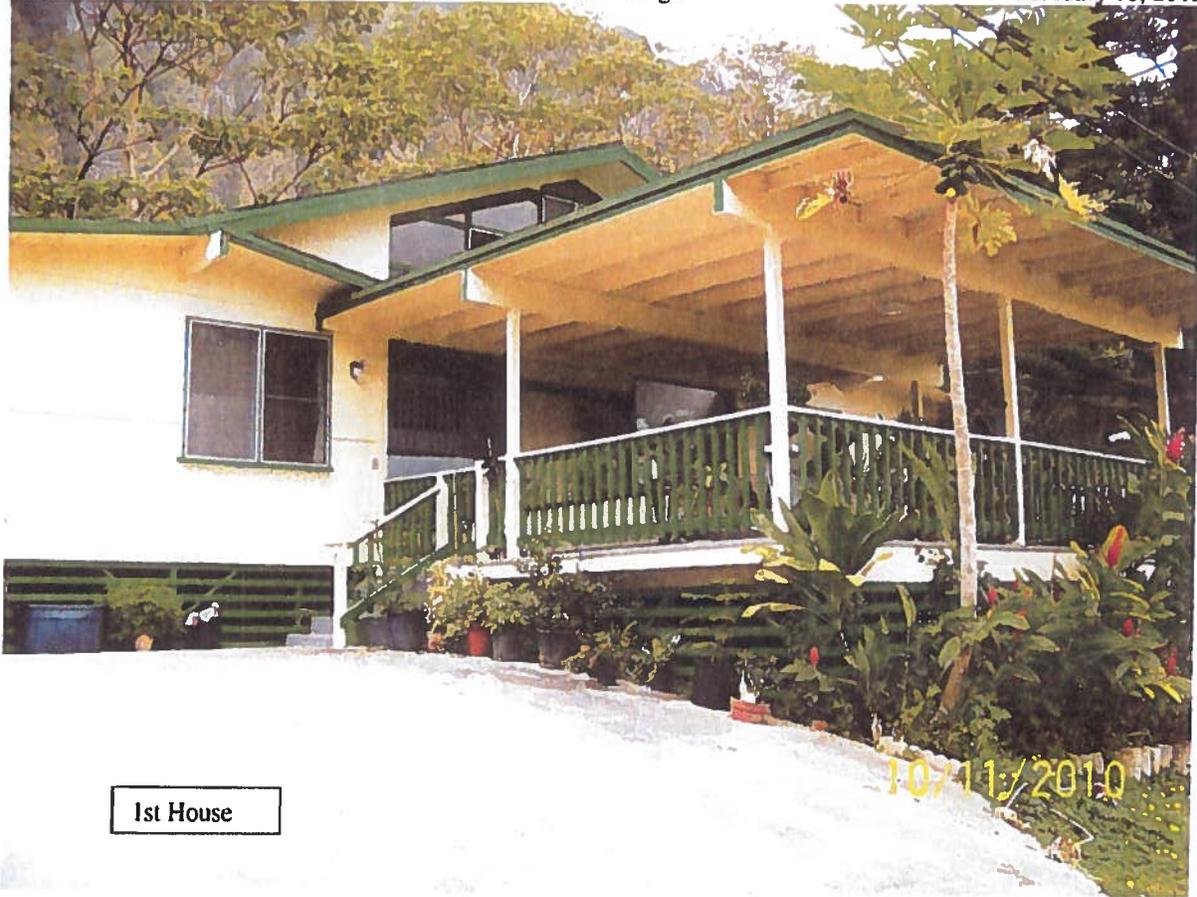


Barry Cheung
District Land Agent

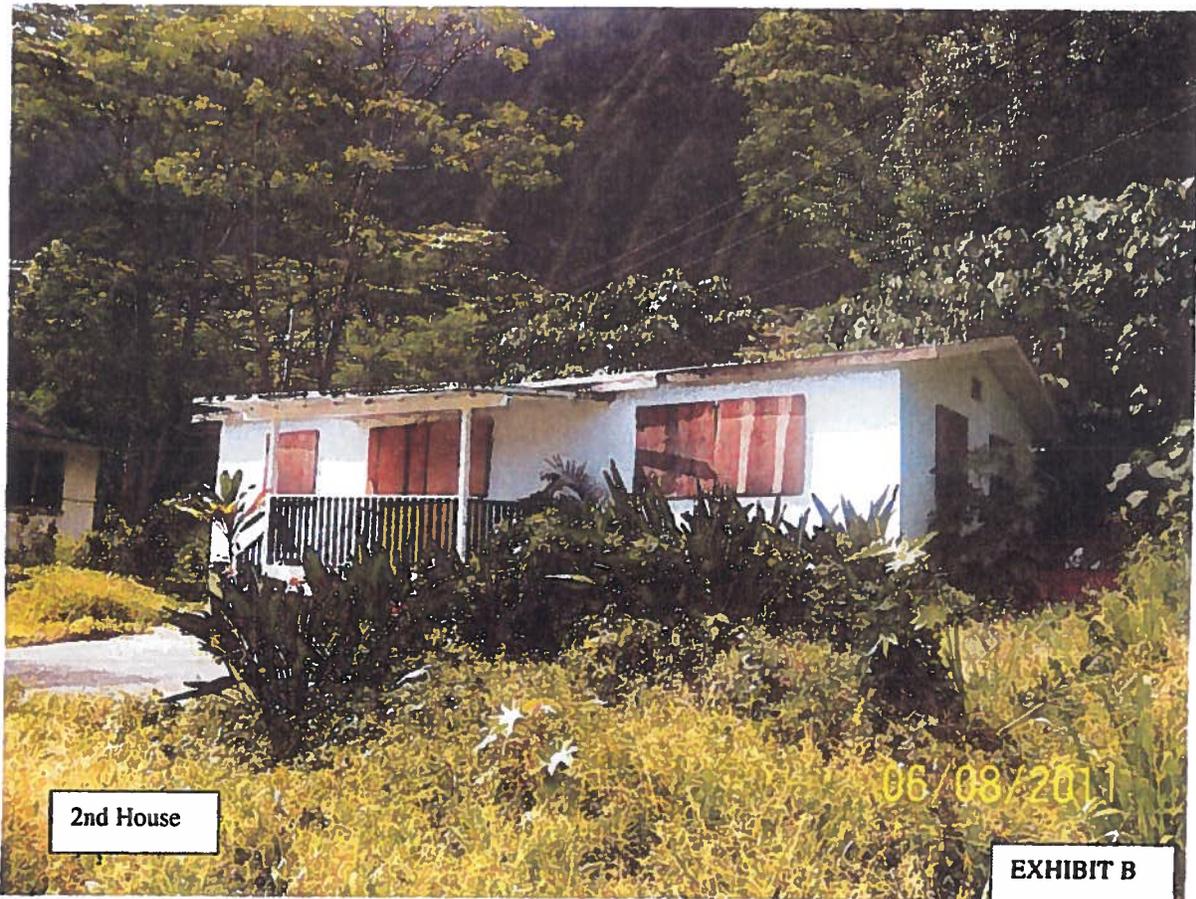
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



1st House



2nd House



3rd House



4th House