

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

August 11, 2017

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

Hawaii

Request for Consent to Mortgage Between Alternative Energy Marketing, Inc., and First Hawaiian Bank, Mortgagee, and Extension of Lease Term Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3875 Alternative Energy Marketing, Inc., Lessee; Amendment of Lease to Include Updated Provisions Relating to Assignments, Subleasing and Phase I Environmental Site Assessment Requirement under General Lease No. S-3875, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:093.

APPLICANT AND REQUEST:

Alternative Energy Marketing, Inc., a Hawaii corporation, requesting consent to mortgage from First Hawaiian Bank, Mortgagee, in an amount not to exceed \$150,000.00.

For Mortgagor to qualify for this mortgage, Mortgagee requires an extension of General Lease No. S-3875 of 10 years, commencing on August 12, 2021 and expiring on August 11, 2031 for an aggregate term (initial term plus all extensions) of 65 years.

LEGAL REFERENCE:

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

LOCATION AND AREA:

Portion of Government lands of Kanoiehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-2-50:93, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Limited industrial purposes.

TERM OF LEASE:

Original term of 55 years, commencing on August 12, 1966 and expiring on August 11, 2021.

Requested extension of 10 years commencing on August 12, 2021 and expiring on August 11, 2031

ANNUAL RENTAL:

Annual rent of \$26,600.00, due in quarterly installments of \$6,650.00 on February 12, May 12, August 12, and November 12 of each year.

USE OF LOAN PROCEEDS:

Funds in the amount of \$150,000.00 will be used to perform the following improvements to the property (Photos attached as Exhibit B).

- replacement of the warehouse roof
- installation of photovoltaic system

BACKGROUND:

Under the provisions of the special disaster legislation (Act 32, Session Laws of Hawaii 1962), the Department of Land and Natural Resources was authorized to enter into direct negotiation, leases of public lands to victims of natural disasters. General Lease No. S-3875 was issued to Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno. This lease without the option to purchase was approved by the Board at its meeting of August 12, 1966 under agenda item F-12.

At its meeting of July 7, 1967 under agenda item F-1, the Board consented to the assignment of lease from Harold Sadao Tanouye (for himself) and Harold Sadao Tanouye as Trustee for Harold Tadashi Tanouye, Raymond Hideo Tanouye, and Kenneth Susumu Tanouye, dba Ranch Bruno, as Assignor to Feed-Well, Inc. as Assignee.

Further at its meeting of September 9, 1988, agenda item F-1-g, the Board consented to the assignment of lease from Feed-Well, Inc., as Assignor, to Laupahoehoe

Transportation Company, Inc., as Assignee.

At its meeting of April 11, 1997, under agenda item D-13 the Board consented to the assignment of lease from Laupahoehoe Transportation Company, Inc. to Paradise Auction, Ltd. The Board, at its meeting of August 28, 2009, agenda item D-9, consented to the assignment of lease from Paradise Auction, Inc., Assignor, to Alternative Energy Marketing, Inc., Assignee.

At its meeting of April 8, 2010, under agenda item D-5, the Board amended the character of use from feed-sales business to the current allowable county zoning code, ML-20, limited industrial use.

REQUEST:

The Lessee's current 55-year lease is set to expire on August 11, 2021 and the Lessee is requesting a 10 year extension pursuant to Act 207, Session Laws of Hawaii 2011<sup>1</sup> in order to amortize the cost of improvements to the property. These improvements include the replacement of the warehouse roof, and the installation of a photovoltaic solar energy system at a cost not to exceed \$150,000.00.

Staff additionally notes that the Lessee has made substantial repairs and improvements to the premises in the course of the lease. The warehouse structures are well maintained and in good condition. Such maintenance demonstrates the Lessee's continuing efforts to keep the buildings in good order and repair.

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that are also scheduled to expire between 2016 and 2021. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 and Act 32, Sessions Laws of Hawaii 1962 resulting from the destruction of the Hilo Bay front caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. These acts provided the Lessees with an option to purchase the land within two years. Several businesses exercised this option creating an industrial area of mixed DLNR leases and fee simple properties.

Since the implementation of Act 207, SLH 2011, there have been several leases within the Kanoelehua Industrial Area that have been granted a ten year extension. Several of these leases are direct leases awarded as a result of Act 4. The other leases although in the Kanoelehua Industrial Area, are along Railroad Avenue and were awarded through the

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<sup>1</sup> Act 207, Session Laws of Hawaii 2011 amends Section 171-36(b) of the Hawaii Revised Statutes by allowing the Lessee to: Extend or modify the fixed rental period of the lease: provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.



public auction process.

The East Hawaii economic region is unique in that a majority of the available land suitable for commercial and/or industrial use is under the management of a government agency. As one of the largest stakeholders of commercial/industrial land in the Hilo area, the Department of Land and Natural Resources understands the need for a comprehensive analysis of the area in order to develop an economic strategy that will encourage new enterprises in addition to supporting the established businesses.

As a requirement of the financing consideration, First Hawaiian Bank (lender) is requiring a ground lease termination of no less than 10 years beyond the full amortized term of the loan request. In order to consider a 10-year extension, the lender is requiring the ground lease include a termination date of no sooner than June 1, 2031.

The Lessee is compliant with all lease terms and conditions including rent, insurance (property and liability) and performance bond.

The last rental reopening occurred on August 12, 2016. There are no outstanding rental reopening issues.

#### AMEND LEASE TERMS:

As a condition to the granting of the extension and in an attempt to update various lease terms and conditions, staff is recommending that the lease be amended to modify and/or insert provisions relating to:

1. **Assignments, etc:** (Condition 22)  
Delete portion of the assignment provision of the current lease which states, "...that the Lessee may sublet a part of the leasehold premises without approval of the Board."  
  
Staff believes that requiring prior written approval of the Board for subleases is preferred, which will enable the Division to better monitor the Lessee's operations and its use of the leasehold property.
2. **Subletting:**  
Insert a condition regarding Subletting, which contains current lease language that states: "Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board."
3. **Phase I, Environmental Site Assessment:**  
Insert a condition requiring a Phase I, environmental site assessment to be conducted prior to expiration or termination of the lease, as included in the most current lease document form, which states:  
  
"Phase I, environmental site assessment. Prior to the termination of this lease of the leasehold, Lessee shall conduct a Phase I, environmental site assessment and

conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.”

RECOMMENDATION:

MORTGAGE

1. Consent to the mortgage between Alternative Energy Marketing, Inc., and First Hawaiian 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.

EXTENSION:

2. Authorize the extension of General Lease No. S-3875 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. Review and approval by the Department of the Attorney General; and
  - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

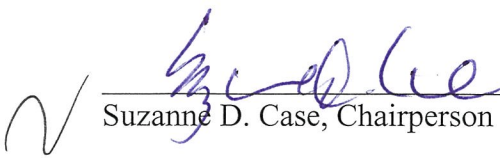
AMENDMENT:

3. Authorize the amendment of General Lease No. S-3875 to update the lease provision titled "Assignments, etc." (Section 22 of the lease), insert a condition for subletting utilizing current language as approved by the Department of the Attorney General, and insert a provision requiring a Phase I, environmental site assessment be conducted prior to expiration of the lease. The amendment of the lease 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 amendment of lease 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,

  
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Gordon C. Heit  
District Land Agent

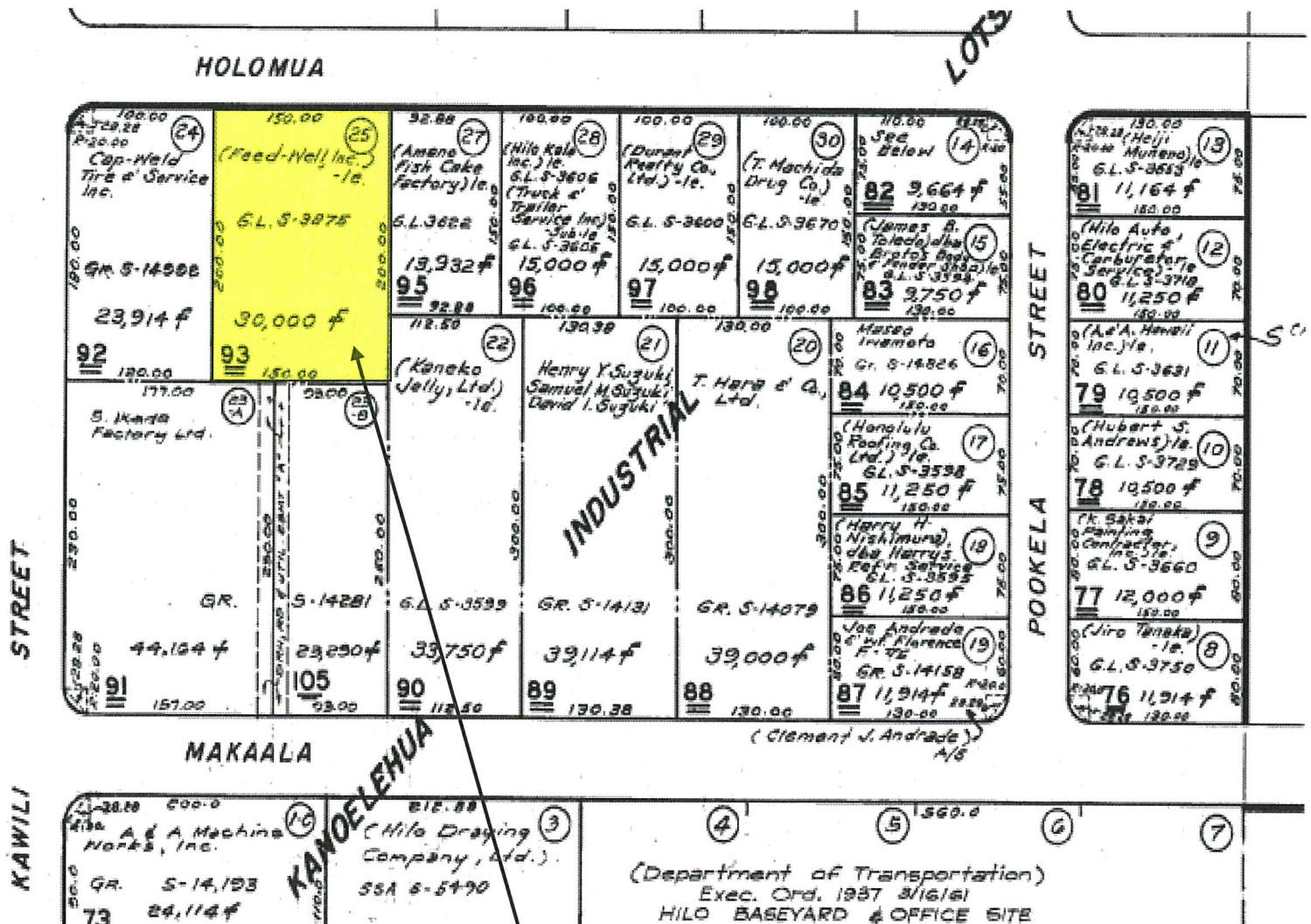
APPROVED FOR SUBMITTAL:

  
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Suzanne D. Case, Chairperson



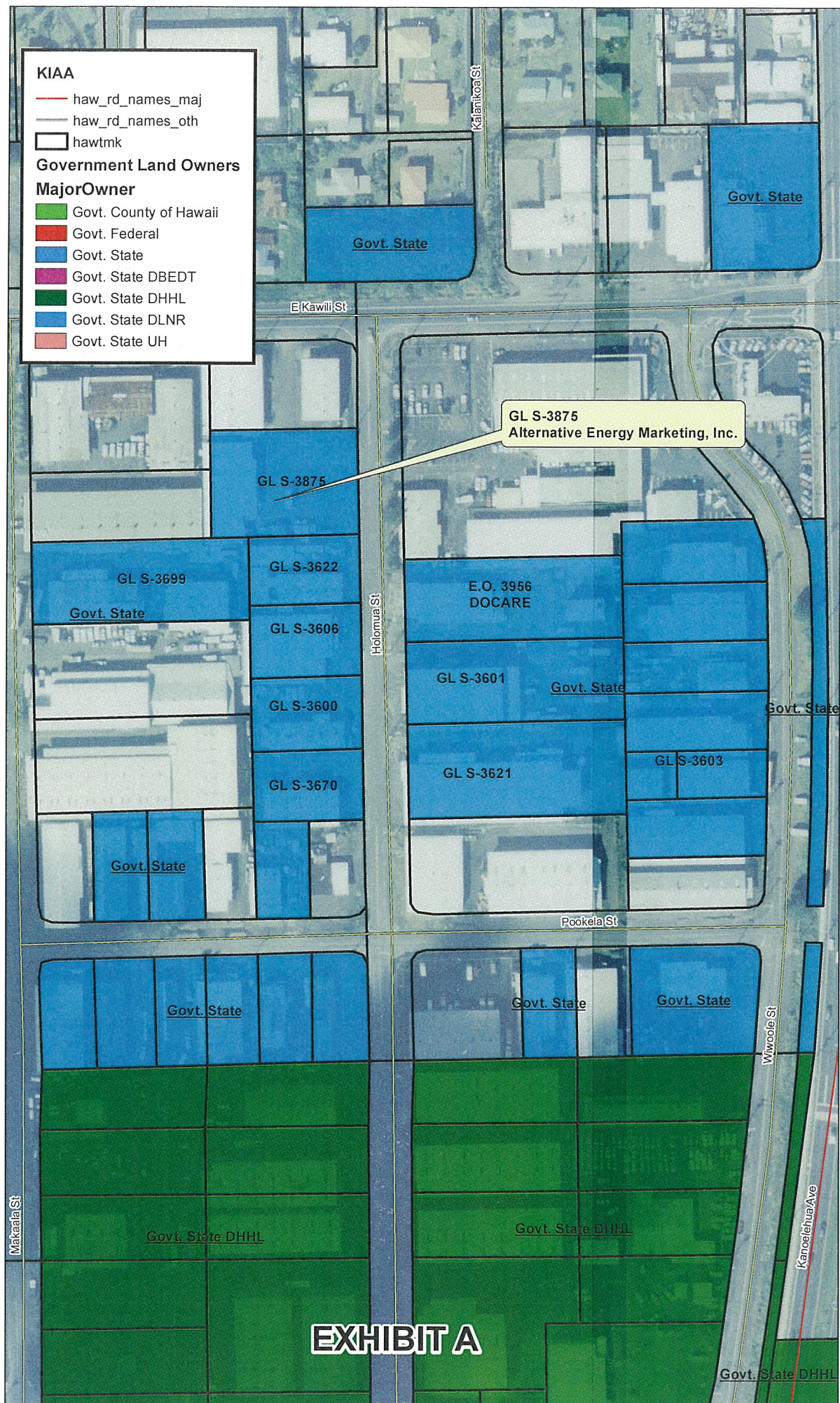
## EXHIBIT A

TMK: (3) 2-2-050:093



SUBJECT PROPERTY







GL S-3875 INSPECTION 7/24/17



STREET VIEW

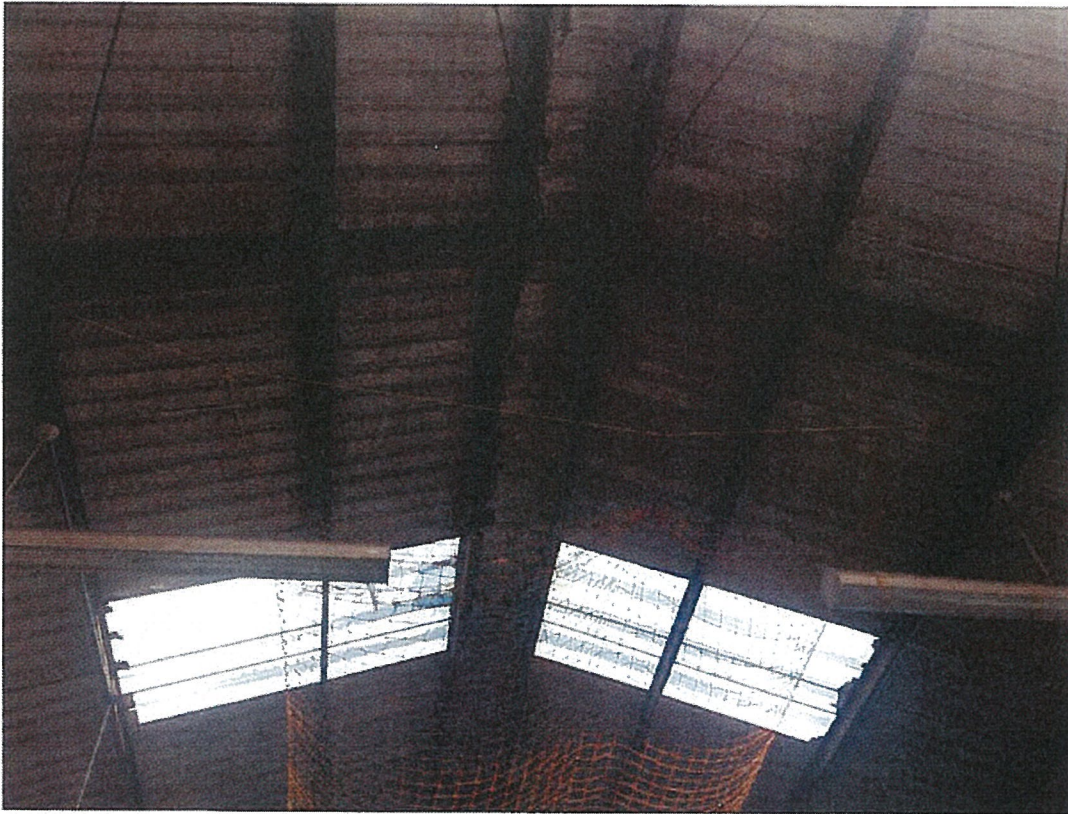


STREET VIEW

**EXHIBIT B**



GL S-3875 INSPECTION 7/24/17



INTERIOR VIEW OF ROOF



INTERIOR VIEW OF ROOF