

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

July 23, 2021

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

Hawaii

Approve an After-the-Fact Holdover of General Lease No. S-3935, Alan R. Nagakura and Lori E. Nagakura, Trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:066;

Authorize the Chairperson to Approve and Execute a Development Agreement for a 39-Year Extension of Lease Term and to Execute Lease Extension Document for General Lease No. S-3935, Alan R. Nagakura and Lori E. Nagakura, Trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:066; and

Consent to Mortgage, General Lease No. S-3935, Alan R. Nagakura and Lori E. Nagakura, Trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:066.

APPLICANT AND REQUEST:

Alan R. Nagakura and Lori E. Nagakura, as Trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996.

Request an After-the-Fact 1-Year Holdover of General Lease No. S-3935, which will provide time to process the additional request for a 39-Year term extension of the subject lease pursuant to Act 149 of the 2018 Session Laws of Hawaii.

Request for consent to mortgage from First Hawaiian Bank, mortgagee, in an amount not to exceed \$250,000.

LEGAL REFERENCE:

Sections 171-22, -40, -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018.

LOCATION:

Portion of Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-037:066, as shown on the attached map labeled Exhibit A.

AREA:

13,250 square feet, 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

CHARACTER OF USE:

Business purposes.

TERM OF LEASE:

Original term of 55 years, commencing on October 18, 1965 and expiring on October 17, 2020.

Requesting a 1-year holdover of lease, commencing on October 18, 2020 and expiring October 17, 2021.

Requesting lease term extension of 39 years commencing on October 18, 2021 and expiring on October 17, 2060.

ANNUAL RENTAL:

Current rent is \$19,200, due in semi-annual installments of \$9,600 on the 18th of October and April of each year.

Staff is recommending the rent remain the same for the holdover period of October 18, 2020 through October 17, 2021.

The rent for the 39-year extended term of October 18, 2021 through October 17, 2060 will be fair market value for the land as determined by independent appraisal procured by the State but paid for by the Lessee.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 15th, 30th, and 45th years of the term. The last rental reopening occurred on October 18, 2010.

The rent for the 39-year extended term of October 18, 2021 through October 17, 2060 will be determined by independent appraisal and will include scheduled, periodic increases throughout the extended term.

PROPOSED IMPROVEMENTS and USE OF LOAN PROCEEDS:

The Lessee's proposed improvements include replacement of in-slab cast iron plumbing pipes within the building envelope all the way to the septic system and replace floor coverings demolished during work, upgrade electrical fixtures in reception area and surgical room, remodel reception area and records room to increase safety and traffic flow and repave parking area. Refer to Exhibit B for itemized list.

Prior improvements include conversion of cesspool to septic system in 2006, installation of 63 solar panels in 2012 and exterior painting and rust treatment of building in 2017.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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," Part 1, Item 40 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." The proposed extension of a long-term lease is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

With respect to the improvements proposed by Lessee, which include replacement of building wastewater lines, re-pavement of the parking lot, upgrade of electrical fixtures and remodel/renovate reception area and records room along with other renovations to the premises, the improvements are exempt from the preparation of an environmental assessment pursuant to General Exemption Type 3 that states:

Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities, including but not limited to: (A) Single family residences less than 3,500 square feet, as measured by the controlling law under which the proposed action is being considered, if not in conjunction with the building of two or more such units; (B) Multi-unit structures, designed for not more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty individuals or fewer per structure, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures or facilities; accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences; and acquisition of utility easements.

Part 1, Item 14 that states, "Construction or placement of utilities (telecommunications,

electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities.”

Part 1, Item 22 that states, “Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include: a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems; b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations; c. renovations that will result in energy or other operational/cost savings; or d. other similar interior alterations.”

The proposed improvements are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

DCCA VERIFICATION:

The Lessees as individuals/trustees are not required to register with the DCCA.

THE PET HOSPITAL – HILO, INC. (SUBLESSEE)

Place of business registration confirmed: YES

Registered business name confirmed: YES

Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

Applicant shall be required to comply with the requirements of Act 149 Sessions Laws of Hawaii 2018, negotiate a development agreement with department staff, and execute the development agreement.

BACKGROUND:

General Lease No. S-3935 (GLS 3935), covering an area of 13,250 sf was sold to Roy S. Nagakura and Martha S. Nagakura at public auction on October 18, 1965 for the bid rental of \$420.00 per year. The term of the lease was for 55 years, commencing on October 18, 1965 and expiring on October 17, 2020. The lease included a provision requiring construction of a building with costs greater than or equal to \$35,000 to be completed within the first year of the lease. The building was completed on December 23, 1966 and Doctor Roy S. Nagakura opened his veterinary clinic on the premises in 1967.

At its meeting on February 8, 1980, agenda item F-3, the Board granted a waiver of the performance bond requirement contained in the lease.

At its meeting on July 10, 1998, agenda item D-3, the Board consented to the sublease of the premises to the lessee’s business entity, The Pet Hospital – Hilo, Inc.

Through mesne assignments GLS 3935 was assigned to Alan R. Nagakura and Lori E.

Nagakura, trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996. Alan R. Nagakura is the son of Roy S. Nagakura and the current practicing veterinarian of the clinic.

HOLDOVER:

In late July 2020, the lessee submitted a request for a lease extension pursuant to Act 149 of the Session Laws of Hawaii 2018 (Act 149). Due to the disruption to office operations caused by the COVID-19 pandemic and the short time between the request for an extension and the expiration of the lease, staff was unable to process the request as submitted. Unfortunately, staff did not seek approval for a holdover of the lease prior to its expiration.

After seeking guidance from the Department of the Attorney General, staff is requesting an after-the-fact holdover of GLS 3935 which will provide time to process the extension request.

LEASE EXTENSION:

Act 149 allows extensions of up to 40 years beyond the original lease term for leases located in the Hilo Community Economic District (HCED). The subject original lease term was for 55, plus a one-year holdover (if approved) results in the eligibility of up to a 39-year extension.

The Lessee is requesting the full 39-year extension pursuant to Act 149 in order to amortize the cost of substantial improvements to the property. Act 149 defines “substantial improvements” as follows:

“Substantial improvements” means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty percent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

GLS 3935 is located within the HCED as defined in Act 149. The Lessee’s proposed improvements include replacement of in-slab cast iron plumbing pipes within the building envelope all the way to the septic system and replace floor coverings demolished during work, upgrade electrical fixtures in reception area and surgical room, remodel reception area and records room to increase safety and traffic flow and repave parking area at a cost exceeding \$130,000 (refer to Exhibit B).

The lessee made prior major improvements such as the conversion of the cesspool to a septic system (\$16,250) in 2006, installation of 63 solar panels (\$110,000) in 2012 and exterior paint and rust treatment/prevention of the building (\$14,800) in 2017. While the costs of these improvements are not included in the request, it is only fair to recognize that they increase the appraised value of the existing improvements.

An appraisal evaluation performed by a certified appraiser has determined that the

economic life of the proposed improvements will exceed the thirty-nine-year period necessary to amortize the improvements. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$372,500. The Lessee's proposed expenditure of \$130,000 represents 35.0% of the value of the existing improvements which exceeds the threshold of 30% required by Act 149.

Act 149 also stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and, in determining whether to approve the development agreement, consider:

- 1) Whether the development proposed is of sufficient worth and value to justify the extension;
- 2) The estimated time to complete the improvements and the expected completion date;
- 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage of rent where gross receipts exceed a specified amount.

The Lessee has submitted plans and specifications for the total development and a proposed development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192. Upon approval of the one-year holdover, an appraisal will be ordered to determine the fair market rent for the extension period.

MORTGAGE CONSENT:

The Lessee will obtain \$250,000 in financing from First Hawaiian Bank (FHB) to cover the development costs of the proposed improvements. FHB has issued a prequalification letter to the Lessee for the amount to be financed. A condition of the financing is a requirement to obtain the lease extension with a known fixed rent for a minimum of 35 years. This requirement will be made a part of the appraisal determining fair market rent for the extension period and will be included in both the development agreement and extension documents.

REMARKS:

Upon the Board's approval of the one-year holdover of GLS 3935 and the terms and conditions of the development agreement as set forth above, staff is recommending that the Chairperson be authorized to approve and execute the development agreement once it is finalized and thereafter to execute the lease extension and consent to mortgage documents.

The Lessee has continued to pay rent and maintain required insurance since expiration of the lease on October 17, 2020. The bond requirement was waived by the Board in 1980. During the previous five years, Lessee was in compliance with all terms and conditions of the lease.

The current Lessee is the son of the original lessee and has continued the same use of the premises as a veterinary clinic since the inception of the lease.

No agency comments were solicited on the request because it is for a lease extension; not a new disposition.

RECOMMENDATION:

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

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the extension of a long-term lease is a de minimis action under Section 11-200.1-16, HAR, and Type 1, Part 1, Item 40 of the Exemption List for the Department dated November 10, 2020, will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment and the requirements of Section 11-200.1-17, HAR. Similarly, the proposed improvements including replacement of building wastewater lines, repavement of the parking lot, upgrade of electrical fixtures and remodel/renovate reception area and records room along with other renovations to the premises are de minimis actions under Section 11-200.1-16, HAR, and General Exemption Type 3, Part 1, Items 14 and 22 will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment and the requirements of Section 11-200.1-17, HAR.
2. Authorize a one-year holdover of General Lease No. S-3935 for the period of October 18, 2020 to October 17, 2021, 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 holdover document form;
 - b. Lessee shall comply with all terms and conditions of General Lease No. S-3935 during the one-year holdover period;
 - c. The annual rent will remain at the current amount of \$19,200.00, payable in 2 equal installments of \$9,600, due as per the terms of the lease;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the Chairperson to approve and execute a development agreement for a 39-year extension of the terms of General Lease No. S-3935 and thereafter to execute lease extension documents pursuant to Act 149, Session Laws of Hawaii 2018 and Section 171-192, HRS, as amended, 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 development

agreement and lease extension document forms conforming with Section 171-192, HRS, and Act 149 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.
4. Consent to the mortgage between Alan R. Nagakura and Lori E. Nagakura, Trustees under Irrevocable Trust of Roy S. Nagakura dated March 4, 1996, Mortgagor, 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 "Proposed Improvements and 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.

Respectfully Submitted,

Candace Martin

KEM

Candace Martin
Land Agent

JCH

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

EXHIBIT A

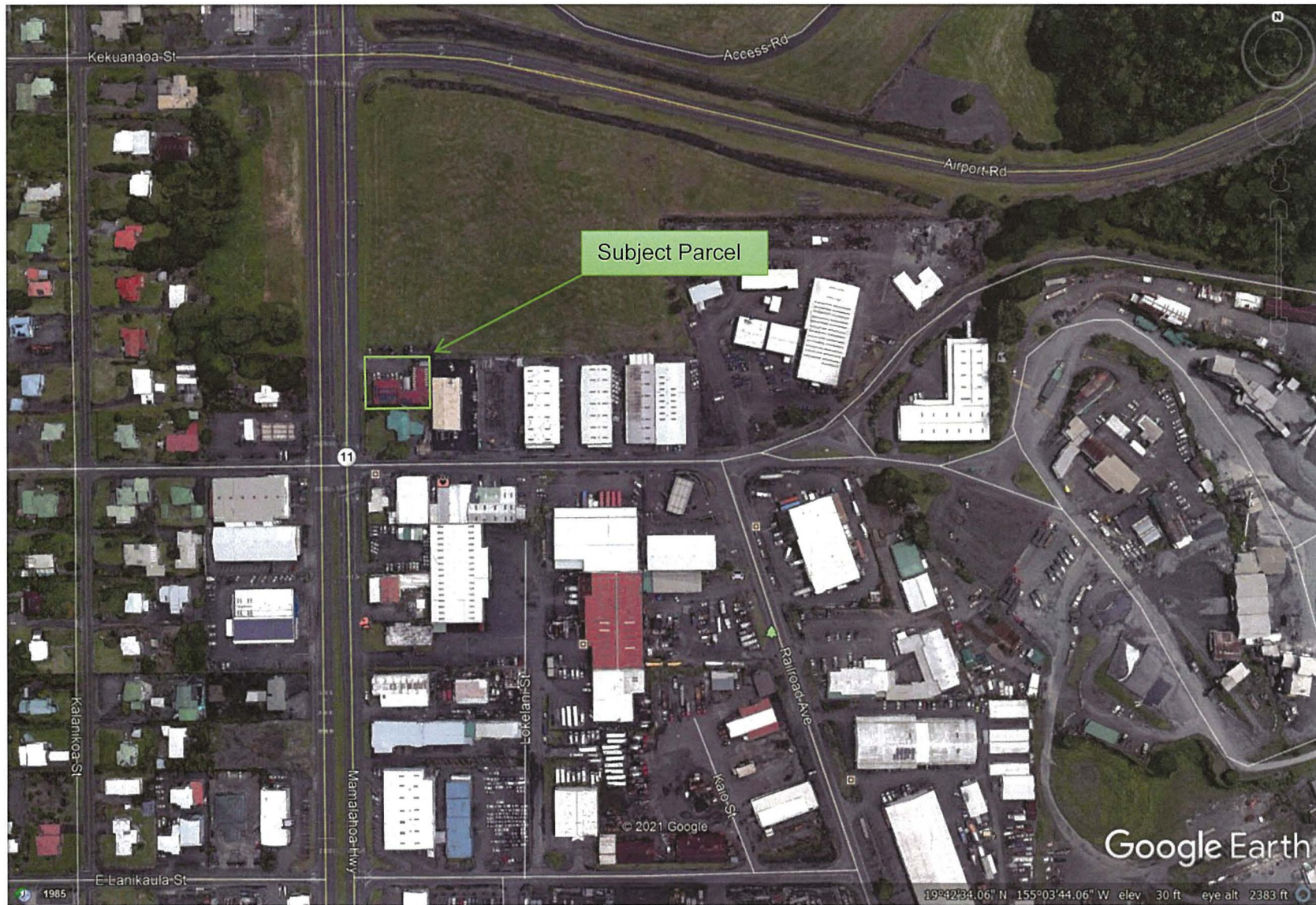


EXHIBIT B

DEVELOPMENT PLAN PROPOSED IMPROVEMENTS

General Lease No. S-3935

Lessee: Alan R. and Lori E. Nagakura, Trustees under Irrevocable Trust of Roy S. Nagakura

Sublessee: The Pet Hospital – Hilo, Inc.
667 Kanoelehua Avenue
Hilo, HI 96720

Appraised value of existing improvements:	\$372,500
Value of additional improvements required (30% of existing)	111,750

Itemized costs of proposed improvements:

Replace cast iron in-slab wastewater piping with PVC	\$ 27,540
New vinyl plank flooring to replace demolished tile	18,654
Upgrade electrical fixtures in reception and surgery rooms	2,315
Renovate reception area and records room	57,444
Resurface parking lot	26,119
Total	\$132,072

Prior major improvements (costs not included in above):

2006 conversion of cesspool to septic system	\$ 16,250
2012 installation of 63 solar panels	110,000
2017 rust treatment and exterior paint of building	14,800
Total	\$141,050