

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

August 12, 2016

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

PSF No.: 12OD-132

OAHU

Second Amendment of Prior Board Action of October 26, 2012, Item D-10, as amended by Prior Board Action of December 14, 2012, Item D-9; Sale of Lease at Public Auction for Industrial Purposes, Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006.

The Amendment is to Change the Permitted Use of the Lease to Open Storage or Parking Purposes, Rent and Waiver Provision, and the Lease Term to 20 Years.

BACKGROUND:

On October 26, 2012, under agenda item D-10, the Board authorized the sale of a 30-year lease for industrial use. On December 14, 2012, under agenda item D-9, the Board amended its prior action by elaborating the character of use, extending the lease term, and imposing an automatic increase of rent for the second and third 10-year periods of the 65-year lease. The previous submittals are consolidated and attached as **Exhibit A-1**. The basic terms include the following:

1. 65 year lease term at a minimum upset rent of \$61,600 per annum;
2. Industrial uses or any other uses permitted under the City and County of Honolulu Land Use Ordinance;
3. 30% increase for the Years 11 – 20; and another 30% increase for the Years 21-30; and
4. Depending on the proposed improvement, an environmental assessment may be required.

The auction was advertised in June 2013, but the Division received no application. Since 2013, staff received inquiries from small business owners and realtors asking about the subject parcel. The planned uses ranged from portable office with parking to open storage or parking.

Following discussion within the Division, staff recommends the Board amend some provisions for the forthcoming auction, as detailed in the following paragraphs.

Character of Use

The current approved character of use is industrial use and any uses as permitted by the county zoning ordinance. Recently, Land Division procured an independent appraisal

which determines the minimum upset rent for such permitted use shall be \$60,780 per annum.

The subject lot is relatively smaller than other lots in the neighborhood. It is only 9,005 square feet, further subject to a 15-foot landscaping easement and a 20-foot building set back requirement along Nimitz Highway. Such physical limitations render the subject lot incapable of developing into something similar to other lots in the area, e.g. a warehouse/office plus adequate parking. The previous tenant used the subject lot for parking until the lease was mutually terminated in 2012.

In view of the above mentioned, staff believes “open storage or parking” would be the highest and best use of the subject lot. Minor improvements, e.g. perimeter fencing or security booth, could be exempt from preparation of an environmental assessment under the Department’s exemption list.

The same appraisal determines the minimum upset rent for the “open storage or parking use” is \$27,351 per annum.

Lease Term

The current approved term is 65 years. From the inquiries received, people were asking for a term from monthly tenancy to between 10 and 20 years. If the Board approves today’s request of “open storage or parking uses”, staff does not expect substantial developing costs will be involved, and construction loan is unlikely. Therefore, a longer term with fixed rental will not appear to be necessary to attract any lenders/bidders. On the other hand, the proposed 20-year term, if approved, will expire around the same time as the other four (4) leases (See **Exhibit A-2**) managed by the Division in the same block in 2034.¹ It will provide the Division more flexibility in planning for a consolidated lot, if considered appropriate.

Fixed Rental during the Term

The same appraisal mentioned above determines the automatic step-up increase for the second 10-year period of the lease would be 28% to the initial rent. Using the minimum upset rent for the purpose of illustration, the rent for the second 10-year period of the proposed lease will be \$35,009.

Rent Waiver

The current approved rent waiver is 12-month rental waiver. Staff recommends the Board eliminate the waiver as the developing cost and time will be substantially lower in the case for an open storage or parking uses.

¹Assuming no lease extension as permitted by the statutes is approved by the Board for these four (4) DLNR leases.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

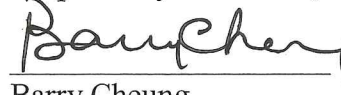
In accordance with the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, that states “lease of State land involving negligible or no expansion or change of use beyond that previously existing”, and Class No. 3, Item 9 that states “construction of security features, including fencing, gates, cameras, lighting, and other similar items.” See **Exhibit A-3**.

Department of Planning and Permitting, Department of Facility Maintenance, Board of Water Supply, and Department of Parks and Recreation have no comment/objection to the subject request. Department of Health, Department of Transportation, Highways Division, and Office of Hawaiian Affairs have not provided responses before the deadline.

RECOMMENDATION: That the Board

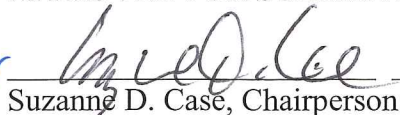
1. Declare that, after considering the potential effects of the requested lease as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Amend its prior action of October 26, 2012, item D-10, as amended by December 14, 2012, item D-9 by:
 - A. Replacing the Character of Use with “Open Storage or Parking Purposes”;
 - B. Revising the lease term to 20 years;
 - C. Setting the minimum upset rent at \$27,351 per annum;
 - D. Fixing the rent of Year 11 to 20 of the lease at 128% of the rental payable in the first 10 years of the lease;
 - E. Eliminating the 12-month rent waiver.
 - F. All other terms and conditions listed in its October 26, 2012 and December 14, 2012 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

D-9

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

December 14, 2012

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

PSF No.: 12OD-132

OAHU

Amend Prior Board Action of October 26, 2012, Item D-10 by Elaborating the Character of Use, Revising the Lease Term, and Fixing the Rent for the First Thirty Years; Sale of Lease at Public Auction for Industrial Purposes, Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064: 006.

BACKGROUND:

On October 26, 2012, under agenda item D-10, the Board authorized the sale of a 30-year lease for industrial use. A copy of the approved submittal is attached as **Exhibit 1**.

Subsequently, the Development Team of the Division discussed with the staff and both agreed that some revisions need to be made to the approved submittal. Staff brings the revisions to today's agenda.

Character of Use

Staff recommends the character of use be revised by adding "any uses as permitted by the county zoning ordinance." Staff believes the elaborated character of use will foster greater interest in the forthcoming auction.

Lease Term

The prior action approved a 30-year term. Pursuant to the discussion mentioned above, staff understands that a lender will normally agree to a mortgage term about 60-70% of a known rental period. In our prior submittal, the rent was subject to 10 year rental reopening periods. Applying the normal practice by the lender on the known rental period, the mortgage will be for a period of 6-7 years. Staff does not believe such mortgage will provide the necessary funding for improvement on the subject parcel and ongoing operation expense of the activities.

Staff recommends the Board revise the lease term to 65 years, which is consistent to another industrial lease sold in 2011.

Rental Reopening

The prior action approved a normal 10-year rental reopening. Subject to the approval of the revised lease term mentioned above, staff recommends the Board revise the rental

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *BN*
AT ITS MEETING HELD ON
December 14, 2012

EXHIBIT "A-1"

D-9

reopening provision by fixing the rent at the end of the 10th, 20th, and 30th year of the lease as follows:

- a. Annual rent for years eleven (11) through twenty (20) shall be equal to the first year's rent multiplied by 1.30;
- b. Annual rent for years twenty-one (21) through thirty (30) shall be equal to the first year's rent multiplied by 1.60; and
- c. The annual rental reserved shall be reopened and redetermined on the thirtieth (30th), fortieth (40th), fiftieth (50th), and sixtieth (60th) years.

Rent Waiver

For the Board's information, the discussion also touched on the need for a 12-month rental waiver in view of "multiple inquiries for leasing the subject parcel". Staff is aware that some interested parties do not necessarily mean the party will bid at the auction. To foster greater interest in the forthcoming auction among potential bidders, staff believes the 12-month rental waiver as authorized in the prior approval should be kept in the auction packet.

RECOMMENDATION: That the Board amend its prior action of October 26, 2012, agenda item D-10 by:


1. Replacing the Character of Use with "industrial uses and any other uses allowed under the applicable County zoning;"
2. Revising the lease term to 65 years;
3. Fixing the rent of the lease in accordance with the Rental Reopening section discussed above; and
4. All terms and conditions listed in its October 26, 2012 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

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

October 26, 2012

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

PSF No.: 12OD-132

OAHU

Sale of a Lease at Public Auction for Industrial Use Purposes, Moanalua,
Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006.

REQUEST:

Sale of lease at public auction for industrial use purposes

LEGAL REFERENCE:

Sections 171 -6, -14, -16, -17, -41 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Moanalua, Honolulu, Oahu, identified by Tax Map Key: (1) 1-1-064:006, as shown on the attached map labeled Exhibit A.

AREA:

9,005 square feet, more or less

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: I-2

TRUST LAND STATUS:

Section 5(e) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered

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

October 26, 2012

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D-10
EXHIBIT " 1 "

CHARACTER OF USE:

Industrial use purposes

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

The Division does not have a licensed appraiser on staff¹, therefore, staff recommends the Board authorize use of the current land tax assessed value of the subject parcel, and take an eight (8) per cent rate of return for the purpose of setting the minimum upset annual rent. The calculation is provided below:

Land Assessed Value as of October 1, 2011	\$ 769,900
8% rate of return	\$ 61,592
Say	\$ 61,600

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the end of the 10th and 20th years of the lease term.

PERFORMANCE BOND:

Twice the annual rental amount.

RENT WAIVER:

The rent may be waived for a maximum period of twelve (12) calendar months upon a completion of substantial improvements on the subject parcel. See the "REMARKS" section.

¹ Staff notes that neighboring properties are assessed at a substantially higher land value. Nevertheless, in light of the fact that the Division does not have a licensed appraiser and because we are only establishing here the minimum upset, staff recommends proceeding with the formula noted above.

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PROPERTY CHARACTERISTICS:

Utility services such as water, sewer and power are available.

There are no existing site improvements.

Staff has verified that there is legal access to the subject parcel off of Kilihau Street.

Staff has verified that the subject parcel is a legally subdivided lot.

Staff has verified that no encumbrances currently exist on the subject parcel.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed disposition of a lease at public auction does not constitute a use of State lands or funds, and therefore, is not a trigger for the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as Chapter 343 environmental requirements apply to the successful lessee's use of the lands, the successful lessee shall be responsible for compliance with Chapter 343, HRS, as amended, prior to the issuance of the proposed lease.

REMARKS:

The subject parcel is rectangular in shape and is located at the corner of Kakoi Street to the east, and at Kilihau Street to the north, situated in Mapunapuna. The H-1 freeway airport viaduct and Kamehameha Highway are located to the south. The U-Haul Company of Hawaii, Inc. is located to the west. Ingress and egress to the subject parcel is via Kilihau Street, only. Currently, the subject parcel is unpaved. Surrounding land usage consists predominately of industrial use.

In 1999, Island Demo, Inc. ("ID") was the successful bidder of a public auction previously held to lease the subject site, formerly encumbered by GL 5590. At that time, ID was also the successful bidder for the property encumbered by GL 5564, located nearby on the same block. Both leases were finalized for a period of thirty five (35) years, for industrial use purposes.

Flooding issues allegedly affected the subject parcel in early December 2003, triggering a civil lawsuit filed by ID, against the State of Hawaii, as a co-defendant, claiming monetary losses.

In December 2008, an appraisal firm was hired to conduct the rent reopening for the above-mentioned two leases.

Subsequently, ID was advised of the new lease rent. ID did not agree to the increased lease rent, and subsequently initiated the arbitration process for both leases.

In April 2012, ID requested that the Board agree to the release of all its bonds held on deposit for the subject parcel encumbered by GL 5590, and to mutually agree to its termination without any further monetary penalty or financial obligation. Following a successful completion of a Phase I environmental study for the subject site, the Board, on April 27, 2012, under agenda item D-10, approved the mutual termination of GL 5590. ID continues to occupy the other site encumbered by GL 5564.

Since GL 5590 was terminated, staff received multiple inquiries for leasing the subject parcel. Staff expects to hold a successful auction for a new lease encumbering the subject parcel. In order to enhance the attractiveness of the auction, staff recommends that the Board waive the rent for a period up to the first twelve (12) months provided the tenant completes its proposed improvement as approved by the Chairperson. Staff notes that such rent waiver shall only become effective retroactively when the completion of improvements is evidenced by a Notice of Completion issued by the county.

Further, in the event that a bid is not tendered at the public auction, staff recommends that the Board authorize the Chairperson to adjust the minimum upset rent for a subsequent auction of the subject parcel.

Based upon its current zoning for industrial use, staff believes that the highest and best use for the subject parcel is for industrial use.

Staff did not solicit comments on the subject request from other governmental agencies since the prior and proposed use of the subject parcel will be identical.

Staff is not aware of any further issues regarding the subject request.

Staff now brings the subject request to the Board for its approval.

RECOMMENDATION: That the Board:

1. Find the subject parcel to be an economic unit in terms of the intended use.
2. Find that the subject parcel is not suitable for hunting, nor will it become so during the term of the lease.
3. Authorize the sale of a lease at public auction covering the subject parcel for industrial use purposes 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 industrial lease form, as may be amended from time to time;
 - b. Waive the rent for up to a period of twelve (12) months contingent upon the tenant's successful completion of its proposed improvements.

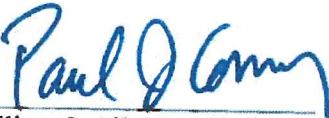
- c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the Chairperson to adjust the minimum upset rent in the event that there is no bid tendered at the time of the public auction.

Respectfully Submitted,

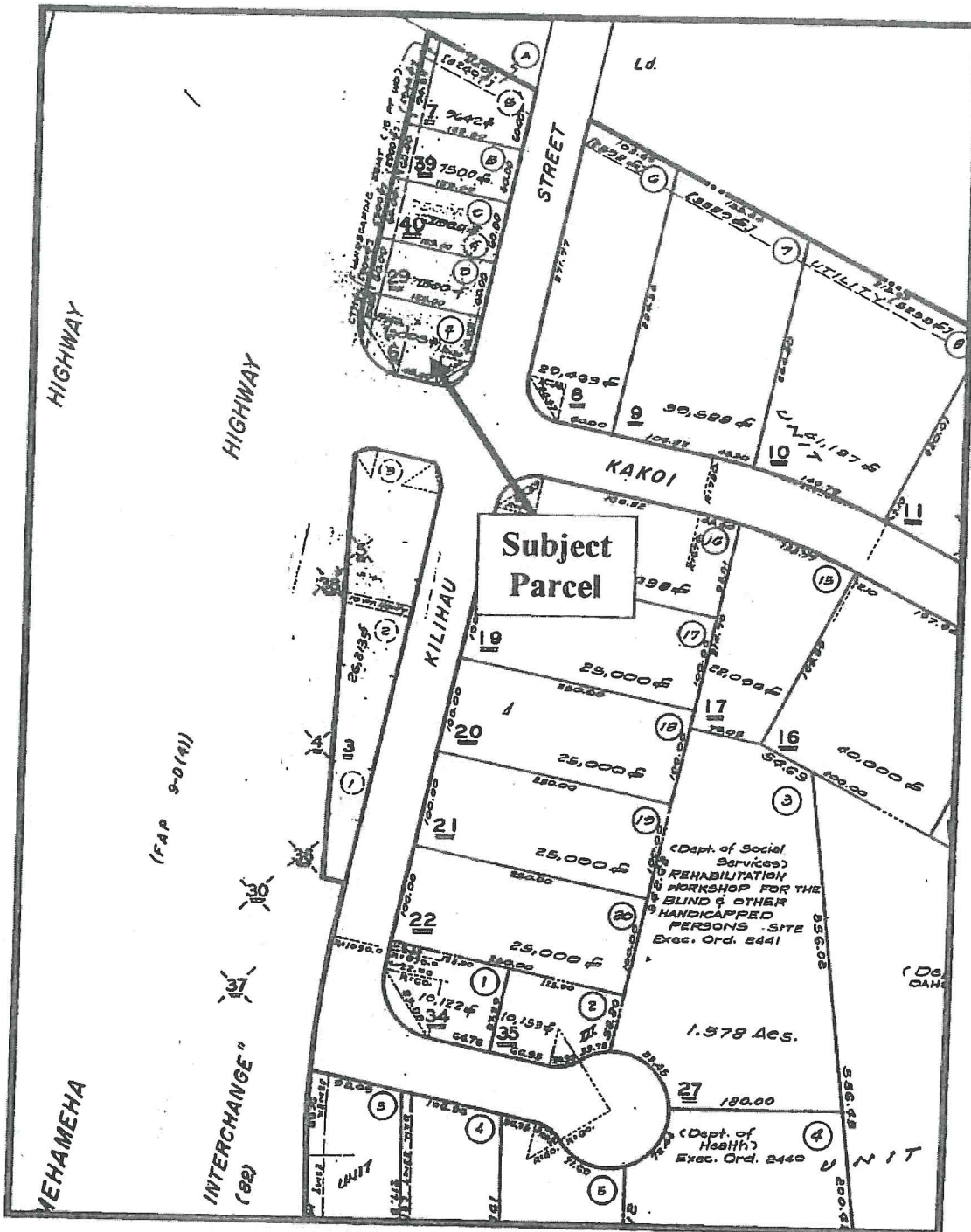


Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:

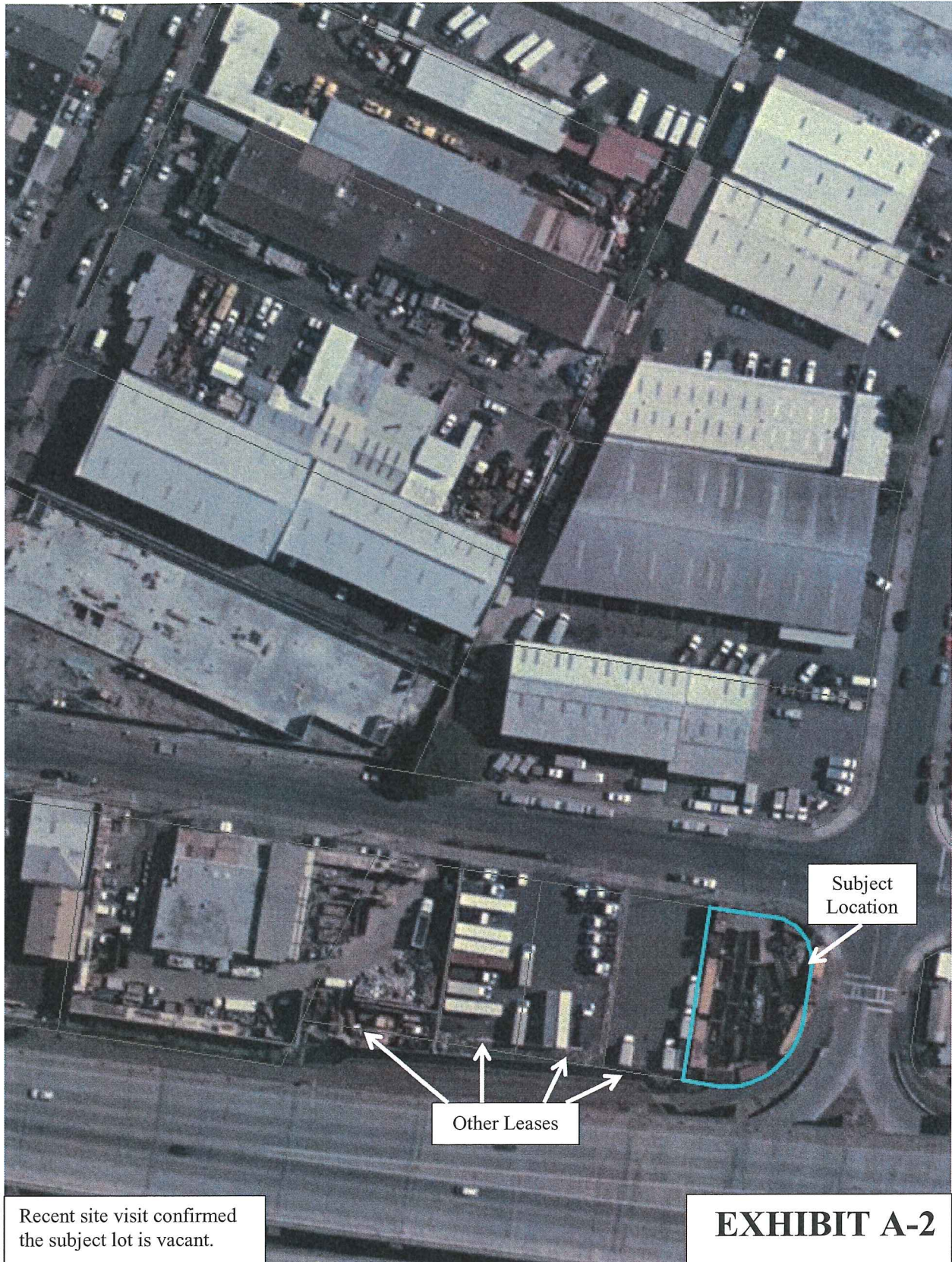


William J. Aila, Jr., Chairperson
for



TMK (1) 1-1-064:006

EXHIBIT A



EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Sale of Lease at Public Auction

Project / Reference No.: 12OD-132

Project Location: Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006

Project Description: Proposed sale of lease at public auction for open storage or parking purposes.

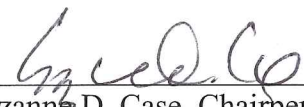
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47, that states “lease of State land involving negligible or no expansion or change of use beyond that previously existing”, and Class No. 3, Item 9 that states “construction of security features, including fencing, gates, cameras, lighting, and other similar items.”

The previous tenant utilized the subject parcel for open storage and parking before the lease was mutually terminated in 2012. The proposed use does not involve any expansion or change of use from the previous situation, and staff does not anticipate any major improvement, other fencing or guard booth will be placed on the premises. Therefore, staff believes the subject request has no significant effect on the environment.

Consulted Parties: Agencies noted in the submittal.

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Suzanna D. Case, Chairperson
Date 7/21/16

EXHIBIT A-3