

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

November 10, 2016

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

PSF No: 16KD-078  
15KD-183

Kauai

Amend Prior Board Action of April 22, 2016, Item D-1, After-the-Fact Issuance of Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.

The purpose of the amendment is to authorize an after-the-fact holdover of General Lease No. S-5822 to Saim Caglayan and Maggie Lea for the period of October 1, 2015 through June 30, 2016, and to change the commencement date of the Revocable Permit previously approved to Katherine Enoka to the first day of the month to be determined by the Chairperson.

BACKGROUND:

The subject parcel was previously leased to Saim Caglayan and Maggie Lea on September 5, 2005, under General Lease No. S-5822, awarded via public auction. The 10-year lease expired on September 30, 2015. Saim Caglayan and Maggie Lea continued to occupy and pay rent on the premises at the same rate that was due under the expired lease from October 1, 2015 through June 30, 2016.

On April 22, 2016, under agenda Item D-1, the Board approved the sale of a lease of the premises at public auction for business purposes” and an after-the-fact issuance of revocable permit to Saim Caglayan and Maggie Lea.

On April 27, 2016, Saim Caglayan and Maggie Lea notified staff in writing that they no longer wished to occupy the property under a revocable permit. Maggie Lea suggested that Katherine Enoka should be issued a Revocable Permit for the property.

On July 22, 2016, under agenda Item D-1, the Board approved an amendment to change the permittee for the Revocable Permit from Saim Caglayan and Maggie Lea to Katherine Enoka. See attached Exhibit A.

REMARKS:

Holdover to Saim Caglayan and Maggie Lea

Since a revocable permit was never issued to former lessees Saim Caglayan and Maggie Lea (Lessees), staff is recommending that a nine-month holdover pursuant to Section 171-40, Hawaii Revised Statutes, be authorized after-the-fact to Lessees to legitimize their continued use of the premises from October 1, 2015 through June 30, 2016. The holdover will be retroactive to October 1, 2015 and the rent will be \$1,117.00 per month, which is the same rent the Lessees were paying under expired General Lease No. S-5822. Staff has verified that Lessees continued to pay rent during holdover period and to post liability insurance and a performance bond.

Revocable Permit to Katherine Enoka

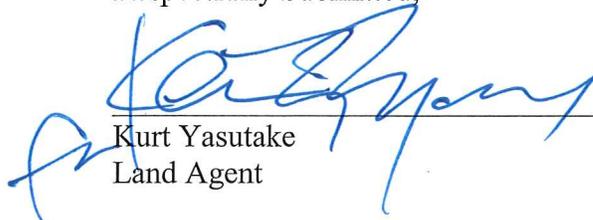
Subsequent to the Board's action of July 22, 2016 under agenda Item D-1, staff sent a revocable permit document identifying Katherine Enoka as permittee to the Attorney General's office for review and approval. The Attorney General's office notified staff that the approved Board actions provided for a commencement date of "Retroactive to October 1, 2015." This date was initially proposed when the permit was going to be issued to Lessees. But as discussed above, a staff is recommending that a holdover take the place of a revocable permit to Lessees. Katherine Enoka's occupancy will commence once the revocable permit has been prepared and executed. Staff therefore recommends that the prior Board action of April 22, 2016, Item D-1, be amended to provide that the commencement date of the Revocable Permit to Katherine Enoka will be "The first day of the month to be determined by the Chairperson."

RECOMMENDATION: That the Board:

1. Amend its prior Board action of April 22, 2016, under agenda item D-1 by
  - a. Authorizing an After-the-Fact Holdover for General Lease No. S-5822 to Saim Caglayan and Maggie Lea for the period of October 1, 2015 to June 30, 2016, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
    - i. The standard terms and conditions of the most current holdover of lease form, as may be amended from time to time;
    - ii. Review and approval by the Department of the Attorney General; and
    - iii. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
  - b. Changing the commencement date of the Revocable Permit to Katherine Enoka to "The first day of the month to be determined by the Chairperson."

2. All other terms and conditions listed in its April 22, 2016 and the amended July 22, 2016 approvals to remain the same.

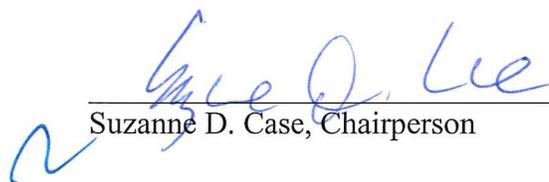
Respectfully Submitted,



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Kurt Yasutake  
Land Agent

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

# Exhibit A

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

July 22, 2016

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

PSF No.: 16KD-078

Kauai

Amend Prior Board Action of April 22, 2016, Item D-1, After-the-Fact Issuance of Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053. The purpose of the amendment is to change the permittee under the Revocable Permit from Saim Caglayan and Maggie Lea to Katherine Enoka.

BACKGROUND:

The subject parcel was previously leased to Saim Caglayan and Maggie Lea on September 5, 2005, under General Lease No. S-5822, awarded via public auction. The 10-year lease expired on September 30, 2015. Saim Caglayan and Maggie Lea continued to occupy and pay rent on the premises at the same rate that was due under the expired lease.

On February 12, 2016, the Board approved "Sale of Lease at Public Auction for Business Purposes" and the "Issuance of Revocable Permit to Saim Caglayan and Maggie Lea." Please see Exhibit A.

REMARKS:

On April 27, 2016, Saim Caglayan and Maggie Lea notified staff in writing that they no longer wished to occupy the property under a Revocable Permit; instead they decided to vacate by July 1, 2016. In a phone call with staff, Maggie Lea recommended that Katherine Enoka should be issued a Revocable Permit for the property.

Katherine Enoka owns The Bright Side Gallery, an art gallery near the State-owned parcel, which has been in business since 2013. Katherine Enoka sells art from various local artists and select mainland artists. The art work mainly consists of surf art paintings, inspired by various locations on Kauai and elsewhere. Katherine Enoka also sells art online through The Bright Side Gallery website.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
July 22, 2016 Co.

Katherine Enoka informed staff that her art gallery is currently in a month-to-month lease. If this amendment is approved by the Board, Katherine Enoka will end her current lease and move into the State-owned building. She intends to "continue to use the historical building as a thriving art business," until the property is ready for public auction.

Katherine Enoka has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. The Bright Side Gallery is in good standing with the DCCA.

Staff recommends amending the prior Board action to replace Saim Cagalayan and Maggie Lea with Katherine Enoka as the applicant for the Revocable Permit.

It is staff's opinion that a month-to-month tenancy with the Katherine Enoka would be the best use for the property. Katherine Enoka understands that the revocable permit is temporary, while KDLO staff prepares the property for lease at public auction.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	"No environmental health concerns."
DLNR-Historic Preservation	"No historic properties affected."
OHA	No response.

County Agencies:

County Planning	No response.
Public Works	"No comments."

RECOMMENDATION: That the Board:

1. Amend its prior Board action of April 22, 2016, under agenda item D-1 replace "After-the-Fact Issuance of Revocable Permit to Saim Cagalayan and Maggie Lea" with "Issuance of Revocable Permit to Katherine Enoka".
2. All terms and conditions listed in its April 22, 2016 approval to remain the same.

Respectfully Submitted,

  
Kurt Yasutake  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

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

April 22, 2016

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

PSF No.:15KD-183

Kauai

Sale of Lease at Public Auction for Business Purposes, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053; After-the-Fact Issuance of Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.

**PUBLIC AUCTION**

**REQUEST:**

Sale of lease at public auction for business purposes as allowed under County zoning.

**LEGAL REFERENCE:**

Sections 171-6, -13, -14, -14.5, -16, -17 and other applicable sections of Chapter 171, Hawaii Revised Statues, as amended.

**LOCATION:**

Portion of Government lands, Lot 11-B, Hanapepe Town Lots, 1st Series, Hanapepe, Waimea, Kauai, identified by Tax Map Key : (4) 1-9-005:053, as shown on the attached map labeled Exhibit A.

**AREA:**

0.136 acres, more or less.

**ZONING:**

State Land Use District: Urban  
County of Kauai CZO: Commercial

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LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
April 22, 2016 uo

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Previously encumbered under General Lease No. S-5822 to Saim Caglayan and Margaret Heide for Business Purposes. Lease expired September 30, 2015.

CHARACTER OF USE:

The lessee shall use or allow the premises leased to be used solely for business purposes.<sup>1</sup>

LEASE TERM:

Ten (10) 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:

To be determined by staff or independent appraisal, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for land and improvements for the term of the lease.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

PERFORMANCE BOND:

Twice the annual rental amount.

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<sup>1</sup> This is the same character of use set forth in recently expired General Lease No. S-5822 that previously encumbered the premises.

PROPERTY CHARACTERISTICS:

Utilities – Water, electricity, phone and sewer.

Existing improvements – Air conditioner, painted interior, 320' fencing, 3 custom gates and a garden.

Legal access to property – Staff has verified that there is legal access to the property off of Hanapepe Road.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that the property is currently unencumbered.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

See Exhibit 'B' attached.

REVOCABLE PERMIT

APPLICANT(S):

Saim Caglayan and Maggie Lea, Husband and Wife.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

CHARACTER OF USE:

Business purposes.

COMMENCEMENT DATE:

Retroactive to October 1, 2015.

MONTHLY RENTAL:

\$1,117.00 per month (same as last rent under expired General Lease No. S-5822).

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit 'B' attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

The subject State property is a 5,909 square foot lot in Hanapepe town, with a 960 square foot State historic structure located on property. The property is commercially zoned and in close proximity to retail stores, art galleries, gift shops and cafes in the area. The subject property has been utilized as an art gallery and studio for the past ten years.

The subject parcel was previously leased to the Applicants on September 5, 2005, under General Lease No. S-5822, awarded via public auction. The 10-year lease expired on September 30, 2015. Applicants have continued to occupy and pay rent on the premises at the same rate that was due under the expired lease.

Prior to the lease, the property had been vacant for extended periods, following three unsuccessful attempts at public auctions. The subject property has also been under two or more revocable permits, which were later terminated and/or rescinded due to permittee default. The last being rescinded by the Board at its March 25, 2004 meeting under agenda item D-5, for permittee failure to meet appraiser requirements (Exhibit C).

During their tenancy, under General Lease No. S-5822, the Applicants made considerable investments and improvements into the building, including landscaping and the parking area (Exhibit D). The Applicants failed to request Board consent for an extension of their 10-year lease before its expiration and are now requesting issuance of revocable permit pending re-auction of the property. The Applicants intend to continue to utilize the property for business purposes and operation as Hanapepe Fine Art Gallery.

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Due to the unsuccessful previous efforts to auction property and the reliability and success of current occupants/Applicants, it is staff opinion that at current time, a month-to-month tenancy to the Applicants/current occupants is most appropriate use of subject parcel, until such time that a lease can be awarded through public auction. The Applicants understand that the revocable permit is temporary, while KDLO staff prepares the property for lease at public auction.

Comments were solicited from the agencies identified below with the results indicated.

**State Agencies:**

DOH	No objections
DLNR-Historic Preservation	No response by suspense date
OHA	No response by suspense date

**County Agencies:**

County Planning	No response by suspense date
Public Works	No objections

**RECOMMENDATION:** That the Board:

**PUBLIC AUCTION:**

1. Find the area to be an economic unit in terms of the intended use.
2. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
3. Declare that, after considering the potential effects of the proposed disposition 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.
4. Authorize the sale of a lease at public auction covering the subject area for business 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 business or commercial general lease 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.

**REVOCABLE PERMIT:**

1. Declare that, after considering the potential effects of the proposed disposition 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. Authorize the issuance of an after-the-fact revocable permit to Saim Caglayan and Maggie Lea covering the subject area for business 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 revocable permit 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.

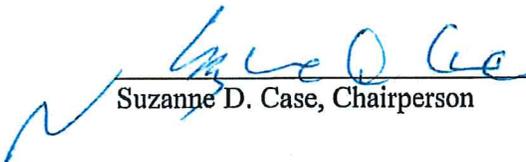
Respectfully Submitted,



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Kurt Yasutake  
Land Agent

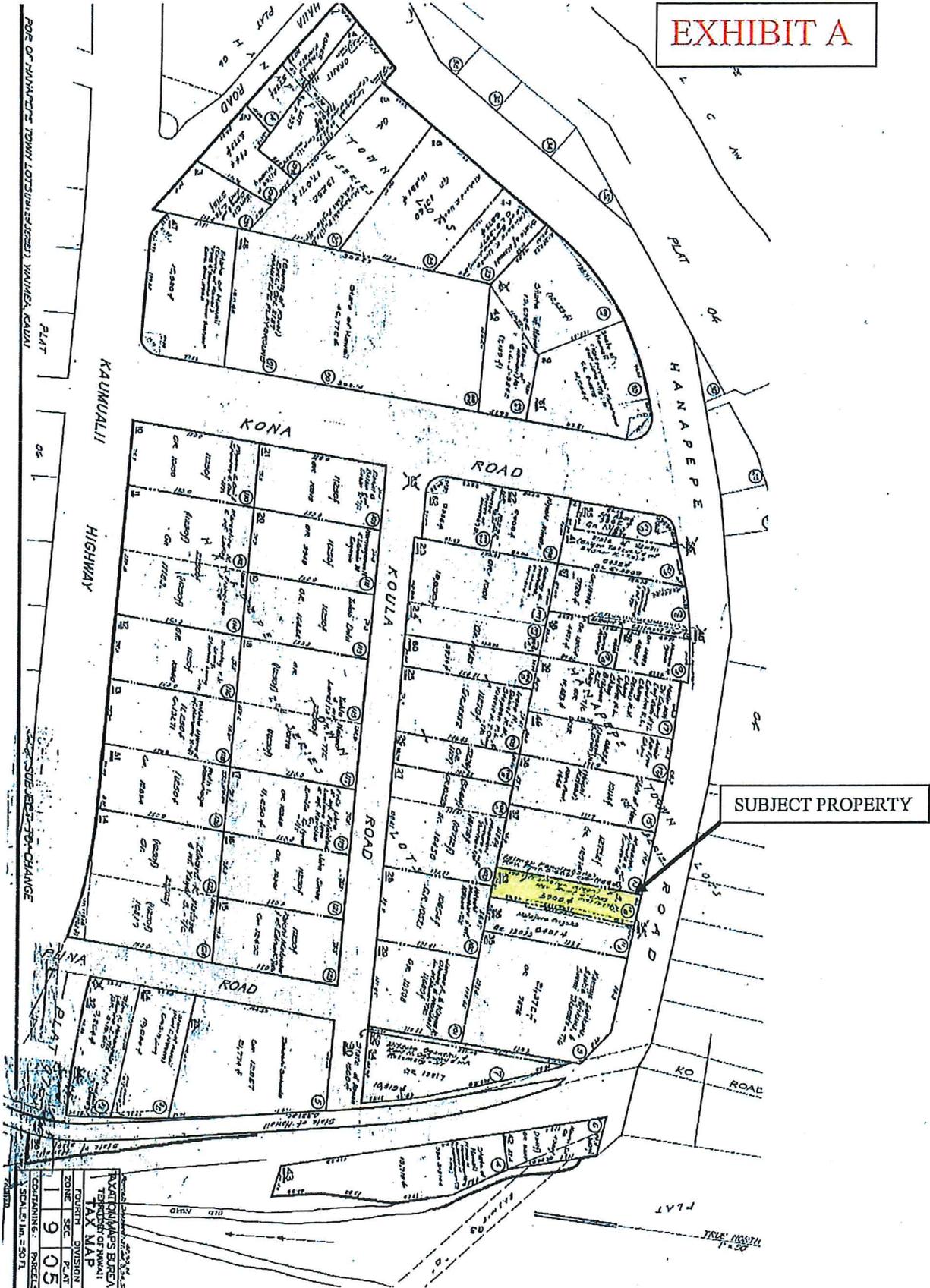
APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

**EXHIBIT A**



DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

April 22, 2016

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKO A KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIIOOLAWA ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

TO: Land Division  
THROUGH: Suzanne D. Case, Chairperson  
FROM: Kurt Yasutake, Land Agent

DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR SALE OF LEASE AT PUBLIC AUCTION AND ISSUANCE OF A REVOCABLE PERMIT TO SAIM CAGLAYAN AND MAGGIE LEA, LOT 11-B HANAPEPE TOWN LOTS, 1<sup>ST</sup> SERIES, HANAPEPE, WAIMEA, KAUAI, TAX MAP KEY: (4) 1-9-005:053.

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

**PSF Number:**

15KD-183

**Project Title:**

Sale of Lease at Public Auction and Issuance of a Revocable Permit to Saim Caglayan and Maggie Lea, Lot 11-B Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:053.

**Project Description:**

The subject State property is a 5,909 square foot lot in Hanapepe town, with a 960 square foot State historic structure located on property. The property is commercially zoned and in close proximity to retail store, art galleries, gift shops and cafes in the area. The subject property has been utilized as an art gallery and studio for the past ten years.

The Applicants for the revocable permit do not intend to utilize the subject property for purposes other than its previous use as an art studio and retail gallery.

**Exhibit B**

April 22, 2016

Page 2

The month-to-month revocable permit will allow the property to be occupied until such time that the DLNR is prepared to issue a new lease by public auction for the same character of use that was permitted under the prior lease for the property – business purposes. The Applicants understand that the revocable permit is temporary, while KDLO staff prepares the property for lease at public auction.

The use of the property will remain the same and no expansion of use is proposed or planned.

**Consulted Parties:**

Staff solicited comments from the Department of Health, DLNR-Historic Preservation, Office of Hawaiian Affairs, County of Kauai Planning Department and the County of Kauai Public Works Department and no objection nor concerns were received.

**Exemption Determination:**

After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment.

According to the Exemption List for the Department of Land and Natural Resources, as reviewed and approved by the Environmental Council on 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 “Leases of state land involving negligible or no expansion of change of use beyond that previously existing”, and Item 51, “Permits, licenses, regulations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing”, respectively.

**Conclusion:**

It is recommended that the Board declare that 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.

  
\_\_\_\_\_  
Suzanne D. Case  
Board of Land and Natural Resources

  
\_\_\_\_\_  
Date

EXHIBIT "C"

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

March 25, 2004

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

File: 03KD-143

KAUAI

Rescind Land Board Approval of 6/13/2003, Item D-6;  
Issuance of Revocable Permit to Sharlene K. Mata dba  
Hawaii's Keepsakes, Hanapepe Town Lots, Waimea, Kauai,  
Tax Map Key (4) 1-9-5: 43

**BACKGROUND:**

On June 13, 2003, the Board approved the issuance of a revocable permit to Sharlene K. Mata dba Hawaii's Keepsakes for business purposes. This revocable permit was to place the first tenant in a recently repaired and renovated State historic structure in Hanapepe town.

On July 20, 2003 the applicant was requested to remit a check in the amount of \$3,750 in order to retain the services of an independent appraiser. This was necessary in order to determine the monthly rent since the Land Division did not have a staff appraiser. Followup letters sent on 9/6/03 and 11/12/03 resulted in confirmation that she still wanted the permit, but did not submit the appraisal deposit nor arrange staff requested meetings to resolve her concerns.

It has now been 8 months since staff initially requested the appraisal fee. On January 13, 2004, staff sent a copy of a rescission submittal and requested comments from her. No response was received. Staff can only conclude that the applicant is no longer interested in the permit and that a rescission is in order. Staff can then seek a replacement tenant for the property, or prepare for the sale of a lease at auction.

**RECOMMENDATION:** That the Board:

- A. Rescind its action of June 13, 2003, under Agenda Item D-6.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
*March 25, 2004*

ITEM D-5

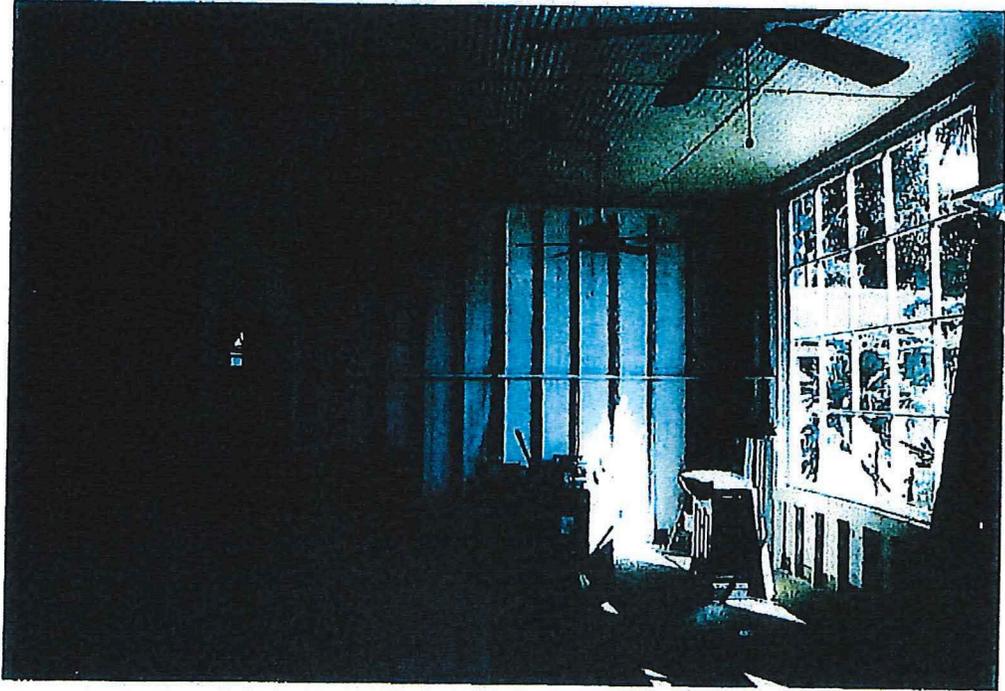
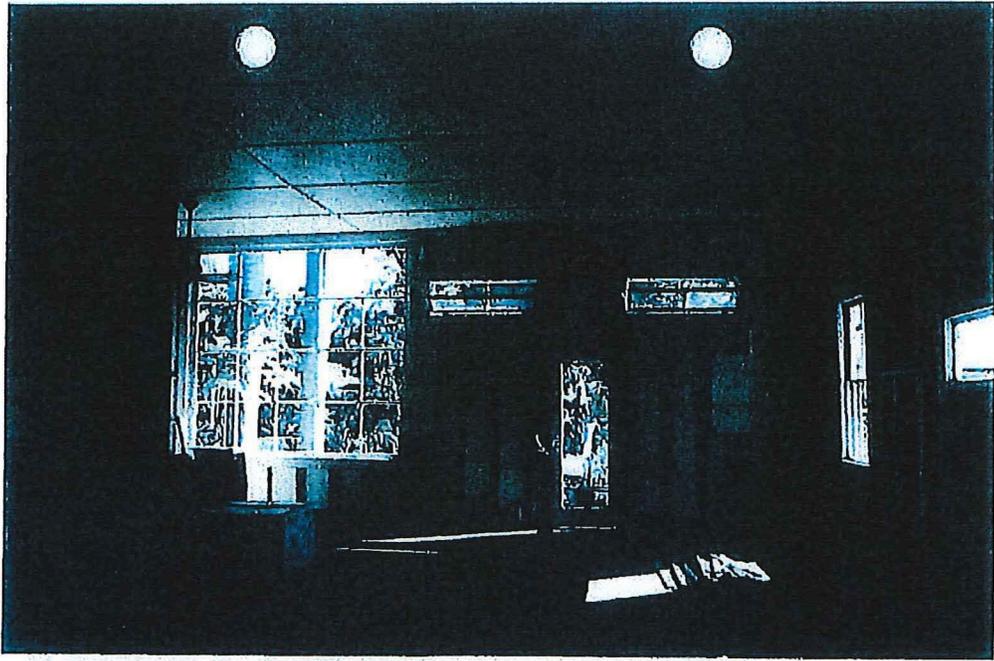
**Hanapepe Artworks** ~ Saim and Heidi Caglayan, Gallery Owners  
Actual Costs for Improvements @ Hanapepe, HI 96716  
TMK: (4) 1-9-5: 53  
General Lease No S-5822

## EXHIBIT "D"

2005-06	
Carpentry/Materials	\$9600
Rough Plumbing	\$6600
Sewer Hook Up	\$4996
Electrical	\$9700
Ceiling Treatment	\$6597
Painting	\$5000
Dry Wall	\$8000
Insulation	\$1020
Carpet Floors	\$5466
Screens	\$1910
French Door	\$359
3 Wood Doors	\$710
4 Ceiling Fans	\$1000
Toilet	\$202
Bathroom Sink/Mirror	\$769
Faucet	\$189
Work Counter/Granite	\$1500
Work Sink/Faucet	\$758
36" Cabinet	\$405
2x24" Cabinet	\$349
36" Cabinet Doors	\$290
24" Cabinet Doors	\$264
Electric Water Heater	\$719
Track Lights Installed	\$2739
Bath Vanity Light	\$175
Bath Ceiling Light	\$100
Back Lanai Light	\$100
2 Front Lanai Lights	\$320
Refrigerator	\$649
Bathroom Fixture	\$219
Air Conditioner	\$1329
Gardening/Gravel	\$2531
Business Sign	\$1300
Phone/Fax	\$320
Telephone/Installed	\$500
Sales Tax	\$3188
Total:	\$79,873

2010-15	
Air Conditioner	\$500
Interior Painting	\$3000
320' Fencing	\$9500
3 Custom Gates	\$3000
Garden Restored	\$4000
Total:	\$20,000

2005-15	
Total Invested ~ 10 years	\$99,873



2005-06  
Belrose

October 14, 2015

