

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

June 9, 2017

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

PSF No.: 17HD-028

Hawaii

Sale of General Lease at Public Auction for Hotel-Resort Purposes; Authorization for Staff to Prepare and Publish a Request for Interest in a Long-Term Disposition of State-Owned Lands, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033,034,035,045.

REQUEST:

Sale of General Lease at public auction for resort-hotel purposes as allowed under County zoning.
Authorization for staff to prepare and publish a Request for Interest in long-term disposition on State owned land for 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 Statutes, as amended.

LOCATION:

Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033,034,035,045, as shown on the attached map labeled Exhibit A.

AREA:

79,583 square feet, or 1.83 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban

County of Hawaii CZO: V – Resort – Hotel uses

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:

Currently encumbered under Revocable Permit No. S-7879, Savio HBH Development Company, LLC, for resort-hotel purposes.

CHARACTER OF USE OF SHORT-TERM LEASE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

COMMENCEMENT DATE OF SHORT-TERM LEASE:

The date of sale if the current occupant is the successful bidder, otherwise, 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 FOR SHORT-TERM LEASE:

A base rent of \$54,900.00 or 3% of gross revenues, whichever is higher. The base rent is derived the market rent for land only established by independent appraisal for a month-to-month revocable permit for the property, and approved by the Chairperson on May 27, 2016. The same appraisal report estimated the monthly market rent of land and improvements at 3% of monthly gross revenues. Staff has combined these two elements into the proposed upset rent stated herein. The upset rent may be lower than the current market rent for a short-term lease. However, the property requires substantial improvements and the appraisal statute authorizes the Board to depart from market rates for the purposes of establishing an upset rent under Section 171-17(a), HRS. Staff therefore believes the proposed base rent of \$54,900.00 or 3% of gross revenues, whichever is higher, is appropriate for upset rent purposes. The upset base rent of \$54,900.00 may be bid up at auction, but the percentage rent figure will remain fixed.

METHOD OF PAYMENT FOR SHORT-TERM LEASE:

Semi-annual payments, in advance.

COLLATERAL SECURITY DEPOSIT FOR SHORT-TERM LEASE:

Twice the annual rental.

PROPERTY CHARACTERISTICS:

Utilities – Water, electricity, phone, sewer

Existing improvements – A four (4) story hotel along with a convenience store and restaurant¹ comprising an area of some 67,886 square feet (Exhibit B) along with a paved parking lot fronting the building.

Legal access to property – Staff has verified that there is legal access to the property from Banyan Drive.

Subdivision – Staff has verified that the subject property to be auctioned consists of four (4) legally subdivided lots.

Encumbrances – Staff has verified that the property is currently encumbered under Revocable Permit No. S-7879.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the Department of Land and Natural Resources", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 47 that states "Leases of State land involving negligible or no expansion or change of use beyond that previously existing." (Exhibit B)

A. BACKGROUND:

The subject property was recently encumbered under General Lease Nos. 3265, 3266, 3267 and GL S-4252 issued through mesne assignments to William Kimi, dba Uncle Billy's Hilo Bay Hotel. The hotel was operated as a sole proprietorship until October 1967 when Mr. Kimi incorporated the business as Hilo Bay Hotel, Inc. As a result of this action, the Board of Land and Natural Resources (Board), at its meeting of June 27, 1969 (supplemental agenda), consented to the assignment of lease from William J. Kimi, Jr., as Assignor, to Hilo Bay Hotel, Inc., as Assignee. The cumulative leases were set to expire on March 14, 2015.

At its meeting of February 27, 2015, item D-3, the Board authorized a one-year holdover of the four leases to be immediately followed by the issuance of a month-to-month revocable permit.

¹ The existing restaurant is closed due to several County DPW building code violations. The estimated costs for repair prohibit the facility from reopening.

At its meeting of February 12, 2016 under agenda item D-3, the Board consented to the assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc., Assignor, to Savio HBH Development Company, LLC (Savio), Assignee, and approved the issuance of a single month-to-month revocable permit to Savio upon the expiration of the leases. The assignment of leases was a result of direct negotiations between Hilo Bay Hotel, Inc. and Savio for the remaining terms of the leases.

The revocable permit was intended as an interim measure to keep the hotel in operation until such time that the Banyan Drive Hawaii Redevelopment Agency (BDHRA), organized under the supervision of the County of Hawaii, Planning Department, develops a long-term conceptual plan for the future of the Banyan Drive resort area.²

The Department of Land and Natural Resources has been working with architectural and engineering consultants to determine the safest course of action with regards to the continued use of the subject property. Previous evaluations revealed several deficiencies with the building structures along with concerns regarding fire safety measures.

Although the current revocable permit is intended to be a temporary situation until a comprehensive analysis is completed and a determination on the continued use of the property is made, there has been interest from other businesses having a desire in managing the property in the interim.

B. PROPOSED USE:

Short-term Disposition:

Staff is recommending that the Board authorize the public auction of a three-year general lease for resort-hotel purposes covering the subject parcels and improvements.

County zoning for this area is "Hotel and Resort" (V) and is consistent with the intended purpose of this lease at public auction proposal. The subject properties consist of a total of 79,583 square feet, or 1.83 acres with a hotel and accessory use structures³ on the properties. Current Real Property tax assessment values the building at \$4,397,200. There has been significant interest in leasing the subject parcel for the same purpose including inquiries from several businesses looking for long-term leasing.

The structure is currently in poor to fair condition. A site evaluation performed by engineering consultants, SSFM International was conducted to determine the Remaining Useful Life (RUL) of the improvements on the subject property. The study was based on the

² The BDHRA approved a conceptual plan at its meeting in November, 2016. However, the plan has not been presented to the Planning Commission or the County Council for confirmation.

³ Additional structures attached to the hotel include a convenience store, and a restaurant currently closed due to numerous building code violations.

examination of the improvements through meetings, interviews and on-site inspections by a team of experienced professionals including mechanical, structural and electrical engineers.

Based on the results of this study conducted in March, 2014, the RUL for this property was estimated to be 5 to 10 years with continued current usage. Some of the structures comprising the hotel are considered to be in poor condition and would require extensive and costly repair work. All of the structures, exterior walkways, pool area and landscaping are dated in appearance, worn and would require extensive and costly maintenance.

Remaining Useful Life is the duration for which the facilities will be useful to the business, not how long they will actually last. It is based on many factors and can change over time depending on improvements made to the property. The facilities may remain functional past these estimated spans, however, it is expected that widespread, more costly repairs and upgrades would begin to compound and it may no longer be feasible to operate at the status quo.

The Department procured Erskine Architects, Inc. to conduct a detailed analysis of the property to determine whether to demolish or rehabilitate the existing structures thereon. In the course of this work, Erskine Architects identified a number of life and safety issues at the property including unsafe stairwells, fire safety issues and advanced termite damage throughout the common areas and much of the lodging areas. Based on the Erskine Report, the hotel improvements cannot be refurbished and should eventually be torn down.

The lease for the premises will include a representation that the existing improvements will be leased in "as is, where is" condition with all faults and defects, whether latent or patent. The Remaining Useful Like study and Erskine Report will be made available to applicants as part of the auction package.

With that in mind, Land Division staff is proposing an initial three-year lease on the existing parcels. This would allow any prospective party, time to evaluate and put together a proposal for long-term use of the land in conjunction with the proposed conceptual plans as approved by the Banyan Drive Hawaii Redevelopment Agency. The three-year lease will also allow the successful bidder to perform maintenance repairs to the property with the ability to recover some of the expenses.

According to the County of Hawaii Planning Department, the subject property is located within the Special Management Area (SMA). Any repairs and/or improvements proposed for the property must be reviewed against the SMA guidelines set forth in Section 205 A-26, HRS and the SMA guidelines contained in the Planning Commission Rule 9. Lessee shall comply with all applicable SMA laws, ordinances, rules and regulations, and shall apply for a special management area permit (SMP), at Lessee's sole expense, as may be required by the County of Hawaii for the development and/or use of the subject lands.

Long-term Disposition – Request For Interest:

At the Land Board meeting of January 27, 2017, under agenda item D-4, Land Division staff submitted a report on the status of Revocable Permit No. S-7879. Although no action was taken, the Board recommended staff evaluate the feasibility of developing an auction package for a long-term, 65-year ground lease, with a right-of-entry tied to the winning bidder for a certain amount of time to go through the permitting and demolition of the existing hotel structures.

Land Division recommends publishing a Request for Interest (RFI) to gauge whether there is interest among prospective developers in obtaining a long-term lease of the property for hotel-resort purposes that would include an obligation to secure the permitting and approvals needed to demolish the existing structures, complete the demolition, and construct a new hotel on the site. The RFI would additionally seek to estimate the amount of rent credit that would induce a potential developer to incur all costs associated with the demolition of the existing structures and construction of a new hotel. Staff will then report back to the Board on the responses to the RFI with an assessment of whether the Department should proceed with a public auction of a long-term lease to include a requirement to demolish and rebuild, or whether it would be more appropriate to pursue a Request for Qualifications (RFQ) or Request for Proposals (RFP) and directly negotiate a long-term lease pursuant to Section 171-59, HRS.

The following agencies were consulted regarding this matter with the results indicated:

Agency:	Comment:
State Agencies	
DOH Environmental Division	No Comments
Historic Preservation	No Response
DHHL	No Comments
Office of Hawaiian Affairs	No Response
County Agencies	
County Planning Department	Comments attached (Exhibit C)
County Department of Public Works	No Response
Fire Department	All fire protection equipment shall be maintained and serviced properly
Police Department	No Comments or Concerns
Water Department	No Objections

Among the comments received, the County Planning Department indicated its reluctance to support the sale of a three-year lease by auction of the subject property based on the information and recommendations provided in the Erskine report (Exhibit C).

RECOMMENDATION: That the Board:

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.

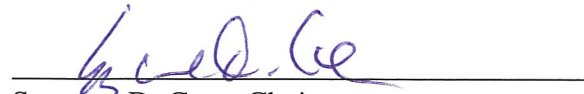
2. Find the area to be an economic unit in terms of the intended use.
3. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
4. Authorize the sale of a three-year lease at public auction covering the subject area for Hotel- Resort purposes under 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 Hotel-Resort use general lease form, as may be amended from time to time; provided that the lease will include a representation that the existing improvements will be leased in "as is, where is" condition with all faults and defects, whether latent or patent;
 - 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.
5. Authorize staff to prepare and publish a Request for Interest in a long-term disposition of the subject property for hotel-resort uses to gauge whether there is interest among prospective developers in obtaining a long-term lease of the property for hotel-resort purposes that would include an obligation to secure the permitting and approvals needed to demolish the existing structures, complete the demolition, and construct a new hotel on the site. The Request for Interest will additionally seek to estimate the amount of rent credit that would induce a potential developer to incur all costs associated with the demolition of the existing structures and construction of a new hotel. Staff is directed report back to the Board on the responses to the RFI with an assessment of whether the Department should proceed with a public auction of a long-term lease to include a requirement to demolish and rebuild, or whether it would be more appropriate to pursue a Request for Qualifications or Request for Proposals and directly negotiate a long-term lease pursuant to Section 171-59, HRS.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

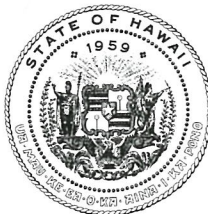
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 9, 2017

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

KEKOA 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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title: Sale of General Lease at Public Auction for Hotel- Resort Purposes; Authorization for Staff to Prepare and Publish a Request for Interest in a Long-Term Disposition of State-Owned Lands.

Project / Reference No.: PSF 17HD-028

Project Location: Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033,034,035,045,

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

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and 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 "Leases of state land involving negligible or no expansion of change of use beyond that previously existing", and Item 51 that state "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

EXHIBIT B

Project Description:

The subject property was recently encumbered under General Lease Nos. 3265, 3266, 3267 and GL S-4252 issued through mesne assignments to William Kimi, dba Uncle Billy's Hilo Bay Hotel. Prior to the expiration of these leases, the Board consented to an assignment of the leases to Savio HBH Development Company, LLC (Savio) and subsequently, approved a month-to-month revocable permit (RP S-7879) to Savio.

The public auction for a three-year lease will allow the successful bidder to maintain the current hotel business and keep the property occupied. The three-year period will also allow the winning bidder to evaluate the feasibility of developing the property for future long-term use. The publication of a Request for Interest in a long-term lease of the property will allow staff to assess developer interest in a long-term lease of the site for hotel-resort purposes.

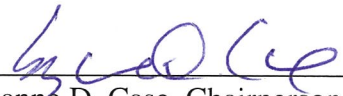
The use of the property will remain the same and no expansion of use is proposed or planned.

Consulted Parties

Agencies listed in the attached 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.


Suzanne D. Case, Chairperson



Date

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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101 Pauahi Street, Suite 3
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Fax (808) 961-8742

April 4, 2017

Mr. Gordon C. Heit, District Land Agent
Department of Land and Natural Resources
75 Aupuni Street, Room 204
Hilo, HI 96720

Subject: Comments on Request for Sale of Lease at Public Auction, Ref. No.: 17HD-028
TMKs: (3) 2-1-005:033, 034, 035 and 045, Waiākea, South Hilo, Hawai'i

Dear Mr. Heit:

The County of Hawai'i Planning Department received your request for comment dated March 21, 2017, concerning a request for sale of lease at public auction involving TMKs: (3) 2-1-005:033, 034, 035 & 045 (Ref. No.: 17HD-028). We understand that the Department of Land and Natural Resources, Land Division, is supporting the issuance of a three year general lease for resort-hotel purposes covering the subject parcels and improvements. The improvements on the property, formerly known as the Uncle Billy's Hilo Bay Resort and currently operated as the (Pagoda) Hilo Bay Hotel on a month-to-month revocable permit, are identified as a four-story hotel with convenience store and restaurant. Footnotes in the communication indicate then restaurant is closed due to several County DPW building code violations.

The recently released assessment report of Banyan Drive properties conducted by Erskine Architects, Inc. dated June 29, 2016 (the Report), raises strong concerns with the current suitability of the property for hotel or resort use. Specifically in regard to the subject property the Report states: "*Uncle Billy's is considered an iconic hotel and held in high regard by many in the public. Strong opposition can be anticipated to any announcement of demolition of this nostalgic piece of Banyan Drive. Regardless of public opposition, the building contains numerous life safety issues, various building and accessibility code violations, fire protection concerns, large quantities of hazardous materials, drastically exceeds the allowable building height and floor area given its wooden construction, unprotected and comprised stair towers, does not include a fire sprinkler system and has extensive termite damage; the protection of the health, safety and welfare of the public should take precedence.*" Given this information, the Planning Department cannot reasonably support the sale of a three-year lease of the subject

Mr. Gordon Heit
April 4, 2017
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properties and improvements for intense resort-level use in their current state. Doing so would be contrary to the preservation of public health, safety, and welfare.

The County of Hawai'i has been supporting the Banyan Drive Hawai'i Redevelopment Agency (BDHRA) in their execution of the redevelopment of the Waiākea Peninsula. To date, the BDHRA has developed a conceptual land use master plan for the area with which to extend further consultation and research into the development of a Master Plan for the peninsula. The Master Plan may be two or more years away from adoption. The Planning Department notes that the areas occupied by the current improvements do preliminarily maintain their "resort" designation in the adopted conceptual master plan. Until such time that the Master Plan has been adopted by the BDHRA, the current State and County zoning (as well as any existing permits) guide the allowable uses on the property. Currently, the property is in the State Land Use Urban district and zoned Resort (V-.75) by the County.

Mahalo for the opportunity to comment on the proposed sale of lease at public auction. Do not hesitate to contact me should you have questions concerning our response.

Sincerely,



MICHAEL YEE, Director
Planning Department

LM:klt

Ref: COR-17-110548

EXHIBIT C