

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

October 25, 2019

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

Ref: GL 5954

OAHU

Amend General Lease No. 5954, Diamond Head Theatre, Lessee, Kaimuki, Honolulu, Oahu, TMK (1) 3-2-030:001.

The purpose of the amendment is to revise the mortgage provision of the lease to allow mortgaging subject to Chairperson’s approval.

APPLICANT:

Diamond Head Theatre, a domestic nonprofit organization. (“DHT”)

LEGAL REFERENCE:

Sections 171-22 and -43.1, Hawaii Revised Statutes, as amended. (“HRS”)

LOCATION:

Portion of Government lands situated at Kaimuki, Honolulu, Oahu, identified by Tax Map Key: (1) 3-2-030:001, as shown on the attached map labeled Exhibit A.

AREA:

2.735 acres, more or less.

ZONING:

State Land Use District: Urban  
City and County of Honolulu LUO: Residential(R-5)/theater (Non-conforming)

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:

Encumbered by General Lease No. 5954 issued to Diamond Head Theatre for production of live theater and allied purposes, including education in the theater arts, cultural community and educational purposes.

LEASE TERM:

Sixty-five (65) years commencing on August 18, 2008 and expiring on August 17, 2073.

ANNUAL RENT:

\$480.00. Semi-annual payments, in advance and 10% of the gross rental receipts received by the Lessee when it rents out the facility to third parties.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the Diamond Head theatre Redevelopment was published in the Office of Environmental Quality Control's The Environmental Notice on December 23, 2017 with a finding of no significant impact (FONSI).

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>

APPLICANT REQUIREMENTS:

None.

REMARKS:

The subject property, including the improvements, was acquired by the federal government in 1923 and used as an army theater. It was leased in 1961 to DHT, who was then called the Honolulu Community Theatre. In 1964, the property was conveyed to the State as federal surplus. A 50-year lease was issued to DHT pursuant to an auction in 1966.

At its meeting of July 28, 2006, under agenda item D-3, the Board authorized the mutual cancellation of the 50-year lease and issued a 65-year lease to DHT. The new lease (“GL 5954”) was intended to facilitate DHT’s ongoing fund-raising campaign for the refurbishment of the improvements.

DHT and its consultant are currently working toward the authorization from the City and County of Honolulu on the project. For example, Department of Planning and Permitting granted is partial approval of zoning variance in June 2018. Meanwhile, DHT continues to explore options to raise funding for the project. The option of placing a leasehold mortgage on the premises was also brought to the attention to DHT.

The current lease does not allow DHT to mortgage the leasehold. By its letter dated September 25, 2019 (**Exhibit B**), DHT requests the Board to amend the pertinent lease condition to allow DHT to mortgage the leasehold, further subject to Chairperson's approval.<sup>1</sup> DHT is discussing loans with various potential lenders and the loan amount is anticipated to be around \$2.5M.

The subject lease was issued pursuant to §171-43.1, HRS. Staff is not aware of any statutory provision in the HRS which would prohibit a non-profit entity from obtaining a mortgage. Staff understands that additional funding opportunities will help DHT to achieve its goal of providing the general public with programs/activities in an improved facility.

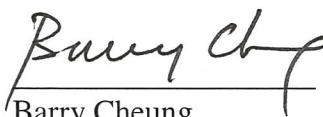
Upon approval of today's request, which is only pertaining to the lease amendment, DHT will bring a formal request for consent to mortgage at a later date.

Applicant is compliant with the terms and conditions of the subject lease and there are no other pertinent issues or concerns.

**RECOMMENDATION:** That the Board authorize the amendment of General Lease No. 5954 by revising the mortgage provision, subject to the terms and conditions cited above, and further subject to the following:


1. Most current amendment of lease form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

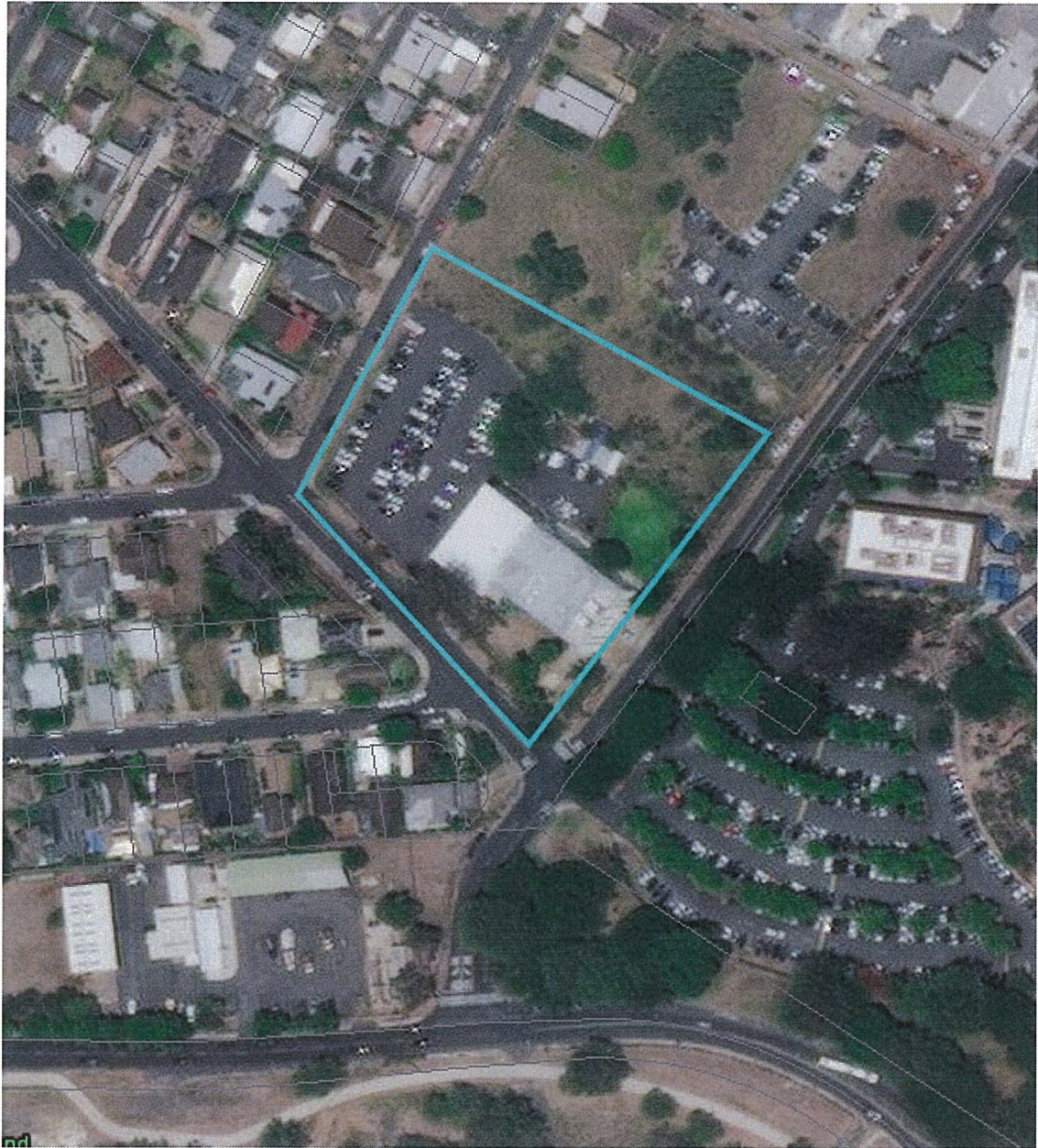


Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

<sup>1</sup> §171-22, HRS authorizes the Chairperson gives consent on mortgage.



**TMK (1) 3-2-030:001**

**EXHIBIT A**



# Diamond Head Theatre

RECEIVED  
LAND DIVISION

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2019 SEP 30 AM 10:52

2019 SEP 27 AM 10:21

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Executive Director

John Rampage  
Artistic Director

September 25, 2019

Suzanne D. Case  
Chairperson  
Board of Land and Natural Resources  
Department of Land and Natural Resources  
State of Hawaii  
1151 Punchbowl Street, Room 130  
Honolulu, HI 96813

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

Re: Request to Amend General Lease No. S-5954, by and between the State of Hawaii, as Lessor, and Diamond Head Theatre, a Hawaii nonprofit corporation, as Lessee

Dear Chairperson Case:

The purpose of this letter is to request the Board of Land and Natural Resources to amend the above-referenced General Lease No. S-5954 (the "**Lease**") to allow for a mortgage with consent, as we anticipate obtaining bank financing for some of the cost of constructing the new theatre. Paragraph 20 of the Lease currently provides that "Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease."

As you know, Diamond Head Theatre (DHT) is in the process of building a new theater on the state-leased land. The DHT facility, also known as Fort Ruger Theatre, was originally built in the 1930's as a USO movie theatre. It has been minimally upgraded over the years but essentially is the same structure which the Army turned over to the State in the early 1950's. The State of Hawaii leased the theatre to Honolulu Community Theatre in 1952, which became "Diamond Head Theatre" in 1990. The building has been rapidly deteriorating, despite attempts to shore it up as much as possible. We will be demolishing the current theatre auditorium, while keeping the 1980's addition which currently houses the studio/rehearsal hall, the costume shop and the scene shop. A height variance has been approved for construction of a fly loft, which allows set scenery and staging to be moved more safely and efficiently above the stage.

Final construction drawings are nearing completion, with groundbreaking targeted for the late spring or summer of 2020. For the new theatre budget, total construction and projects costs are estimated at \$24 million. DHT has raised over \$16.7 million so far. Although we will continue to raise additional funds, we will also need bank financing 1) to cover some of the anticipated construction costs until pledged donations are received and 2) to have as a backstop should philanthropy come up short. We anticipate seeking at this point a \$2.5 million loan.


**EXHIBIT "B"**

Suzanne D. Case  
September 25, 2019  
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The lender, or a group of lenders, will require a lien to secure DHT's repayment of the loan. If the Board agrees to amend the Lease to allow a mortgage, the form of the mortgage will be submitted for the Lessor's consent once the loan terms are finalized. The amount of the loan will also be finalized at that time.

Thank you for your assistance and consideration of this request. Please feel free to contact me if there are any questions.

With warm aloha,



Deena Dray  
Executive Director  
Diamond Head Theatre