

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

October 23, 2020

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

PSF No: 19KD-051
Kauai

Amend Prior Board Action of August 23, 2020 Item D-2,
*Authorization of Sale of Lease at Public Auction for
Business and/or Commercial Purposes, Hanapepe Town Lots,
Waimea, Kauai, Tax Map Key: (4) 1-9-005:007*

The purpose of the amendment is to clarify that the
minimum upset annual rent for the lease should be
based on land and improvements.

BACKGROUND:

At its meeting of August 23, 2020, under agenda Item D-2, the Board of
Land and Natural Resources approved the sale of a lease at public
auction for business and/or commercial purposes for the subject State
property located in Hanapepe Town Lots, Waimea, Kauai. See Exhibit 1
attached.

REMARKS:

Upon ordering an appraisal for the upset rent, it was noted that the
second sentence of the "MINIMUM UPSET ANNUAL RENT" section on page 2
states that "The appraisal shall determine the upset rent for the
land." However, because the State owns the improvements on the
parcel, the upset rent should be for land and improvements.
Therefore, staff is recommending an amendment of the prior Board
action to change the relevant language to "The appraisal shall
determine the upset rent for the land *and improvements*." This will
allow for the State to collect rent on the land and the existing
commercial improvements on the land.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of August 23, 2020 under
agenda Item D-2 by *adding "and improvements"* at the end of
the second sentence of the "MINIMUM UPSET ANNUAL RENT"
section on page 2.

2. Except as amended hereby, all terms and conditions listed in its August 23, 2020 approval to remain the same.

Respectfully Submitted,

Alison Neustein

Alison Neustein
Land Agent

WTM

APPROVED FOR SUBMITTAL:

RT
Suzanne D. Case

Suzanne D. Case, Chairperson

EXHIBIT 1

D-2

AMENDED

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

August 23, 2019

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

PSF No.: 19KD-051

KAUAI

Authorization of Sale of Lease at Public Auction for Business and/or Commercial Purposes, Hanapepe Town Lots, Waimea, Kauai, Tax Map Key: (4) 1-9-005:007

REQUEST:

Authorization of sale of lease at public auction for business and/or commercial purposes.

LEGAL REFERENCES:

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

LOCATION:

Portion of Government lands of Hanapepe Town Lots situated at Hanapepe, Waimea, Kauai, identified by Tax Map Key: (4) 1-9-005:007, as shown on the attached maps labeled Exhibit A.

AREA:

0.158 acre, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
County of Kauai CZO: CG, General Commercial

as amended

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 23, 2019 *cc.*

D-2

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:

Encumbered by Revocable Permit No. S-7848 (RPS-7848), G & K Kalaheo Shell Repair Shop, LLC, Lessee, for automotive repair shop purposes. See Exhibit B photos.

CHARACTER OF USE:

Business and/or commercial purposes as allowed under County zoning.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

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:

To be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for the land for the first 10 years of the lease, as well as an appropriate stepped increase (as a percentage of the base rent) for the second 10-year period of the lease to provide the successful bidder with rent certainty for the first 20 years of the lease. Rent for the third 10-year period of the lease shall be determined by independent appraisal. The appraiser procured to determine the upset rent shall also separately determine the fair market value of the existing leasehold commercial improvements on the land.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the end of the 20th year of the lease term, by independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

RENT WAIVER:

The first year of rent will be waived if the successful bidder at auction satisfies the following conditions: (1) commits in writing upon commencement of the lease to complete substantial improvements to the subject parcel; and (2) completes the substantial improvements within the first year of the lease. "Substantial improvements" for purposes of the lease will mean renovations or new construction with a value equal to at least 50% of the appraised value of the existing improvements. If the actual cost of the substantial improvements made to the premises is less than an amount equal to one year's rent, then the lessee shall only be entitled to a rent reduction for the first year of the lease equal to the actual cost the substantial improvements. If the proposed substantial improvements are not completed within the first year of the lease, then the rent waiver will be rescinded and the first year of rent will be due and payable no later than one year after lease commencement.

IMPROVEMENT BOND:

Amount of improvements.

PROPERTY CHARACTERISTICS:

Utilities - Electricity, telephone, water and sewer.

Existing Improvements – The subject is developed with a single, one-story 3,500 square foot steel and masonry building that is being used as an auto repair and service garage. See Exhibit B.

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 following encumbrances exist on the property: Revocable Permit No. S-7848.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", 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, 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," and item No. 47 that states: "Leases of State land involving negligible or no expansion or change of use beyond that previously existing." Once the lease is acquired, should the successful bidder desire to change the use materially from the use made by the permittee under RPS-7848, the successful bidder will be responsible for compliance with Chapter 343, HRS, with respect to any increased development or change in use of the property from the previously existing use.

REMARKS:

The subject property was originally vacant and unencumbered land that was leased in 1966 (GL No. S-3977) to Barbara and Richard K. Ueoka. The original tenants built the current building in 1967. The building was sublet five times to different commercial businesses over the next 42 years (coffee shop, offices as well as general retail). The original tenant assigned the lease in 2009 to P.I.K.A. Inc. The building was then used as an automotive repair and body shop. In 2013, P.I.K.A.'s lease was cancelled due to a failure to pay rent. It was at that time that G & K Kalaheo Shell Repair Shop (G & K) informed DLNR that they were subletting from P.I.K.A and were unaware of the requirement to apply for the Board's approval. G & K initially requested an ROE in order to continue operating their business uninterrupted until they were able to obtain a long term lease or revocable permit. In 2014 G & K conducted a Phase 1 Environmental Site Assessment. There were no potential environmental conditions at the subject property, and no serious environmental concerns identified on nearby properties. G & K was issued current RPS-7848 in April 2015 and has continued to operate as an automotive repair shop. The monthly rent is \$947.50.

This property has had roll-over use with no break in occupancy since 1967 and the use is consistent with the county's General Commercial zoning codes.

At this time, the staff feels that commercial or business use is the highest and best use for this property since any significant change in the type of use could require an environmental assessment. Staff is therefore recommending that the Board authorize the auction of a new 30-year lease for business and/or commercial purposes covering the subject parcel and improvements to the successful bidder. County zoning for this area is General Commercial (CG) and is consistent with the intended purpose of this lease auction proposal. As mentioned above, the subject property consists of a 0.1578-acre (6,873 sf) lot with a 3,500 square foot commercial structure on it. Current Real Property tax assessment values the land as improved at \$443,600.00.

As a result of researching the various underwriting policies of local banking institutions, Land Division has found that the rent structure can significantly impact the terms and conditions of available financing. The most limiting policy is that both the amortization

period and term of the loan will be restricted to the fixed rental period of the lease. Accordingly, staff is recommending that the appraisal to determine the upset rent for the first 10 years of the lease also determine an appropriate stepped increase (as a percentage of the base rent) for the second 10 years of the lease, thereby giving the successful bidder known rent for the first 20 years of the lease. The banks have indicated that the fixed increase is much more manageable in their lending policies since it is a known number and can be incorporated into the borrower's business plan. This would allow the bank to offer a more typical 20-year amortization loan with a balloon in 10 to 15 years which would result in a realistic financing package.

State leases typically include the following standard language:

Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

To provide clarity that this language extends to the aged improvements on the premises, staff is recommending the standard language be amended to read:

Non-warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is with all faults and defects, whether latent or patent.

If the successful bidder elects to make substantial improvements to the premises, then it will be entitled to a rent waiver for the first 12 months of the lease. "Substantial improvements," for the purposes of this submittal, means renovations or new construction with a value equal to at least 50% of the appraised value of the existing improvements.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

Agency:	Comment:
Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
Department of Health	No comments
Department of Hawaiian Homelands	No response by suspense date
Department of Transportation	No response by suspense date
COK Department of Public Works	No comments

Agency:	Comment:
COK Planning Department	No response by suspense date
COK Water Department	No comments
COK Fire Department	No comments
COK Police Department	No response by suspense date

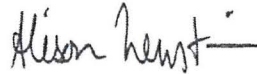
RECOMMENDATION: That the Board:

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 lease at public auction covering the subject area and improvements for business and/or commercial 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 and/or commercial lease form, as may be amended from time to time; provided that the lease shall include language to the following effect: "Non warranty. The Lessor does not warrant the conditions of the premises or any improvements thereon, as the same are being leased as is, where is with all faults and defects, whether latent or patent," or such other language as the Department of the Attorney General may determine appropriate and in the best interests of the State;
 - b. The first year of rent shall be waived if the successful bidder at auction satisfies the following conditions: (1) commits in writing upon commencement of the lease to complete substantial improvements to the subject parcel; and (2) completes the substantial improvements within the first year of the lease. "Substantial improvements" for purposes of the lease shall mean renovations or new construction with a value equal to at least 50% of the appraised value of the existing improvements. If the

actual cost of the substantial improvements made to the premises is less than an amount equal to one year's rent, then the lessee shall only be entitled to a rent reduction for the first year of the lease equal to the actual cost the substantial improvements. If the proposed substantial improvements are not completed within the first year of the lease, then the rent waiver shall be rescinded and the first year of rent shall be due and payable no later than one year after lease commencement.;

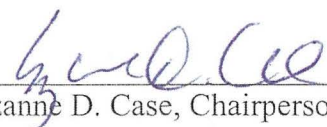
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Alison Neustein
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: August 23, 2019; D-2: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: August 23, 2019; D-2: Approved as amended.

Approved as amended. The text of the submittal was amended: (1) on page 2, the section on the Commencement Date, deleted *“[T]he date of sale if the current occupant is the successful bidder, otherwise,”* to read *“[S]ixty (60) days after the date of sale; provided that if such date is not on the first day...”* and (2) top of page 4, last sentence of first paragraph, deleted *“Once the lease is acquired, should the successful bidder desire to change the use materially from the use made by the permittee under the RPS-7848, the successful bidder will be responsible...”*



TMK: (4) 1-9-005:007

EXHIBIT A

EXHIBIT B



EXHIBIT B



EXHIBIT B



EXHIBIT B





STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

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August 23, 2019

EXEMPTION NOTIFICATION

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

Project Title:	Authorization of Sale of Lease at Public Auction for Business and/or Commercial Purposes, Hanapepe Town Lots, Waimea, Kauai, Tax Map Key: (4) 1-9-005:007
Project / Reference No.:	PSF No.: 19KD-051
Project Location:	Portion of Government lands of Hanapepe Town Lots situated at Hanapepe, Waimea, Kauai, identified by Tax Map Key: (4) 1-9-010:042
Project Description:	Authorization of Sale of Lease at Public Auction for Business and/or Commercial Purposes.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item No.:	In accordance with Section 11-200-8 of the Hawaii Administrative Rules 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, 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," and item No. 47 that states: "Leases of State land involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, the request is a single occurrence in the area.

EXHIBIT C

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the action proposed will have no significant impact to any particularly sensitive environment.

Analysis:

This property has had roll-over use with no break in occupancy since 1967 and is consistent with the county's General Commercial zoning code. The property is currently used as an auto repair shop and the lease to be sold at auction will allow the continuation of such use as well as other uses that involve negligible or no expansion or change of the existing use.

Consulted Parties:

Comments from The State Historic Preservation Division, Office of Hawaiian Affairs, Department of Health, Department of Transportation, COK Public Works, COK Water Department, COK Fire Department, COK Police Department, and COK Planning were solicited. No agency had any objection to the proposed exemption.

Recommendation:

It is recommended that the Board find 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.