

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: 20KD-062  
  
Kauai

Amend Prior Board Action of October 12, 2001, Item D-4, *Sale of Lease at Public Auction for Business/Commercial Purposes, Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-005:049.*

The purpose of the amendment is to: change the lease term from 10 to 30 years; clarify that the appraisal for the upset rent will be conducted by an independent appraiser procured by the State instead of a staff appraiser; provide for the upset rent appraisal to set rent for the first 10 years of the term with a known step-up for the second 10 years; and provide that the lease rent shall be reopened at the end of the 20<sup>th</sup> year of the lease term.

BACKGROUND:

At its meeting of October 12, 2001, Item D-4, the Board of Land and Natural Resources approved the sale of a 10-year lease at public auction for business/commercial purposes for the subject State property located in Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai. See Exhibit 1 attached.

REMARKS:

Upon ordering an appraisal for the upset rent, it was noted that the first sentence of the "MINIMUM UPSET ANNUAL RENT" section on page 2 of the submittal states: "To be determined by staff appraisal, subject to review and approval by the Chairperson." At the time of this submittal, DLNR Land Division had an appraiser on staff but no longer does. Additionally, a lease term longer than 10 years is preferred by both DLNR staff and the current revocable permit tenant. Staff is recommending increasing the term of the lease to 30 years with the upset rent appraisal covering the first 10 years of the term with a known step-up for the second 10 years. Therefore, this section of the prior Board action to should be amended to read as follows:

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 first 10 years of the lease, as well as a percentage increase 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 remaining 10-year period of the lease shall be determined by independent appraisal. The appraised rent should reflect a "net" lease where all maintenance obligations are the responsibility of the lessee.

Staff is further recommending an amendment of the prior Board action to change the lease term from "10 years" to "30 years" on page 1 of the submittal under the "LEASE TERM" section.


To be consistent with the foregoing amendments, the "RENTAL REOPENING" section on page 2 of the submittal should be changed from "At the end of 5 years" to "At the end of the 20th year of the lease term, by staff or independent appraisal".

Finally, in the "APPROVED AS AMENDED" section on page 4, the sentence, "Instead of a 5-year reopening, there shall be a fixed percentage increase to be determined by the staff appraiser" should be removed for consistency with the foregoing amendments.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 12, 2001, under agenda Item D-4, as set forth above.
2. Except as amended hereby, all terms and conditions listed in its October 12, 2001 approval to remain the same.

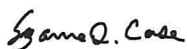
Respectfully Submitted,



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Alison Neustein  
Land Agent

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

RT

# EXHIBIT 1

State of Hawaii  
Department of Land and Natural Resources  
Land Division  
Honolulu, Hawaii 96813

*AAA  
preformed  
3-4  
D-4*

October 12, 2001

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii 96813

KAUAI

Sale of Lease at Public Auction for Business/Commercial Purposes,  
Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, Tax Map  
Key 1-9-5: 49

**REQUEST:** Sale of lease at public auction for business purposes

**LEGAL**

**REFERENCE:** Sections 171-13, -14, -14.5, -16, -17 and other applicable sections of Chapter 171, Hawaii Revised Statutes

**LOCATION:** Government lands of Hanapepe situated at Hanapepe Town Lots, 1<sup>st</sup> Series, Hanapepe, Waimea, Kauai, identified by Tax Map Key 1-9-5: 49

**AREA:** 15,001 sq.ft., more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division, plus State owned improvements consisting of 2,200 sq.ft. masonry structure in good condition.

**ZONING:** State Land Use District: Urban  
County of Kauai CZO: General Commercial

**LAND TITLE**

**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-6946 to Bank of Hawaii, Commencing 7/6/94

**CHARACTER OF**

**USE:** Business/commercial

**LEASE**

**TERM:** 10 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

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

*October 12, 2001. [Signature]*

ITEM D-4

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Sale of Lease

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month, the commencement date shall be the first date of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

## MINIMUM ANNUAL UPSET ANNUAL

**RENTAL:** To be determined by staff appraisal, subject to review and approval by the Chairperson. Rental shall include the State owned improvements on the land. The rental rate should reflect a "net" lease where all maintenance obligations are the responsibility of the tenant.

## METHOD OF

**PAYMENT:** Semi-annual payments, in advance

## RENTAL

**REOPENING:** At the end of 5 years, by staff or independent appraisal

## PROPERTY

### CHARACTERISTICS:

Utilities - electric and water to existing 2,220 sq.ft. commercial structure  
Legal access to property - off of Hanapepe Road, owned and improved to standards by the County of Kauai  
Subdivision - staff has verified that the subject property to be auctioned is a legally subdivided lot.  
Encumbrances - staff has verified that none exist on the property.  
Paved parking - exists

## ENVIRONMENTAL

### REVIEW:

As the proposed use for the subject land is a continuation of an existing use, this action is exempt from the requirements of Chapter 343, Hawaii Revised Statutes, as amended, relating to Environmental Impact Statements, and Chapter 200, Title 11 of the Hawaii Administrative Rules of the Department of Health, pertaining to Environmental Impact Statement Rules.

## REMARKS:

Background. The site covered by this submittal is the location of the Hanapepe Branch of the Bank of Hawaii in operation since 1944 under a series of long term leases. Prior to the expiration of the last lease in mid-1994, staff obtained Board approval, with the bank's participation, to the public auction sale of a new 35 year lease, the new lease to cover a reduced land area as compared to the previous lease. Anticipating delays in being able to offer the new lease right away because of the need to subdivide the property, the Board also approved issuance of a

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revocable permit. By the time the lease was offered at public auction, the bank was undergoing a major restructuring. Because the future of the Hanapepe branch was in question, the bank chose not to bid at the auction, preferring instead to continue under the revocable permit. Currently, the bank has rethought its strategy and is now interested with acquiring a shorter lease. Their property management functions are now handled by C.B. Ellis, Inc., whose attached letter confirms the bank's desire to obtain a 5 year lease with options to renew the lease for five year intervals. Such an arrangement is statutorily not possible so staff with the concurrence of C.B. Ellis is proposing a 10 year lease term with a rent renegotiation at the end of the fifth year.

Interest in property. There has been no other interest expressed in the property other than by BOH.

Zoning. Based on the County's zoning of the property, the requested use is its highest and best use.

**RECOMMENDATION:** That the Board:

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 / 3. Find that, after considering the potential effect to of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the disposition will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- 4 / 3. Authorize the sale of a lease at public auction covering the subject area for business/commercial purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. Standard terms and conditions of the applicable business/commercial document forms, unless modified herein.
  - b. Review and approval by the Department of the Attorney General; and

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Sale of Lease

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- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



SAM LEE

 Kauai District Land Agent

APPROVED FOR SUBMITTAL:



GILBERT S. COLOMA-AGARAN, Chairperson

APPROVED AS AMENDED. The Board amended the submittal as follows:

- Correction on page 3 - There are two Recommendation No.3; the second should be relabeled as item 4.
- Instead of a 5-year reopening, there shall be a fixed percentage increase to be determined by the staff appraiser.
- Add the following recommendation - The lease contain a performance bond requirement.

# EXHIBIT 1



# EXHIBIT 1

