

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

February 26, 2021

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

PSF No: 19KD-051  
Kauai

*Amend Prior Board Action of October 23, 2020, Item D-2,  
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 prior amendment was to clarify that  
the minimum upset annual rent for the lease should be  
based on land and improvements.*

The purpose of the current amendment is to correct an  
error in the reference to the date of a prior Board  
action. The reference should have been August 23,  
2019, Item D-2, instead of August 23, 2020, Item D-2.

BACKGROUND:

At its meeting of October 23, 2020, under agenda Item D-2, the Board of Land and Natural Resources amended its prior action approving 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. The purpose of the amendment was to clarify that the minimum upset annual rent for the lease should be based on land and improvements. See Exhibit 1 attached.

REMARKS:

Upon ordering an appraisal for the upset rent, it was noted that the staff submittal referenced the incorrect date of the Board's prior action. The reference should have been to August 23, 2019, Item D-2, instead of August 23, 2020, Item D-2. Staff is therefore including a recommendation below that the date of the prior Board action be corrected to August 23, 2019, Item D-2, wherever the date is referenced in the submittal.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 23, 2020 under agenda Item D-2 by correcting the date of the prior Board action to August 23, 2019, Item D-2 wherever the date is referenced in the submittal.
2. Except as amended hereby, all terms and conditions listed in its October 23, 2020 approval to remain the same.

Respectfully Submitted,

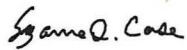


WTM

---

Alison Neustein  
Land Agent

APPROVED FOR SUBMITTAL:





---

Suzanne D. Case, Chairperson

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.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
October 23, 2020 *Go.*

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

Respectfully Submitted,

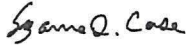


---

Alison Neustein  
Land Agent

WTM

APPROVED FOR SUBMITTAL:



---

Suzanne D. Case, Chairperson

**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 *co.*



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.

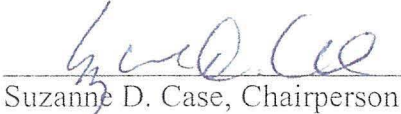
Respectfully Submitted,



---

Alison Neustein  
Land Agent

APPROVED FOR SUBMITTAL:

---

Suzanne D. Case, Chairperson

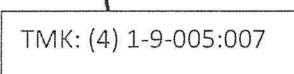
Land Board Meeting: August 23, 2019; D-2: Approved as amended.

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...”





## EXHIBIT A



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

**EXHIBIT A**



# EXHIBIT A

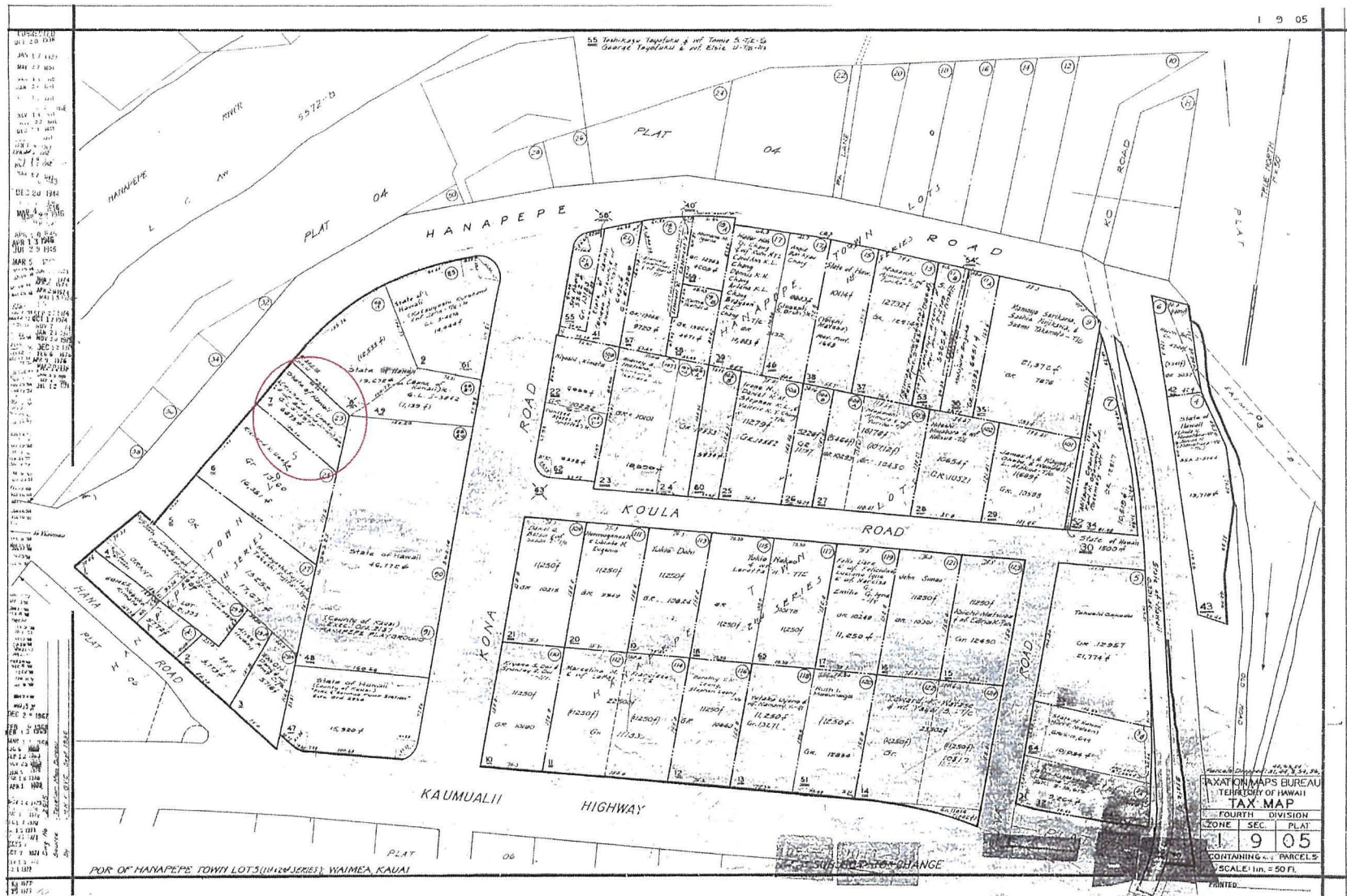




EXHIBIT B

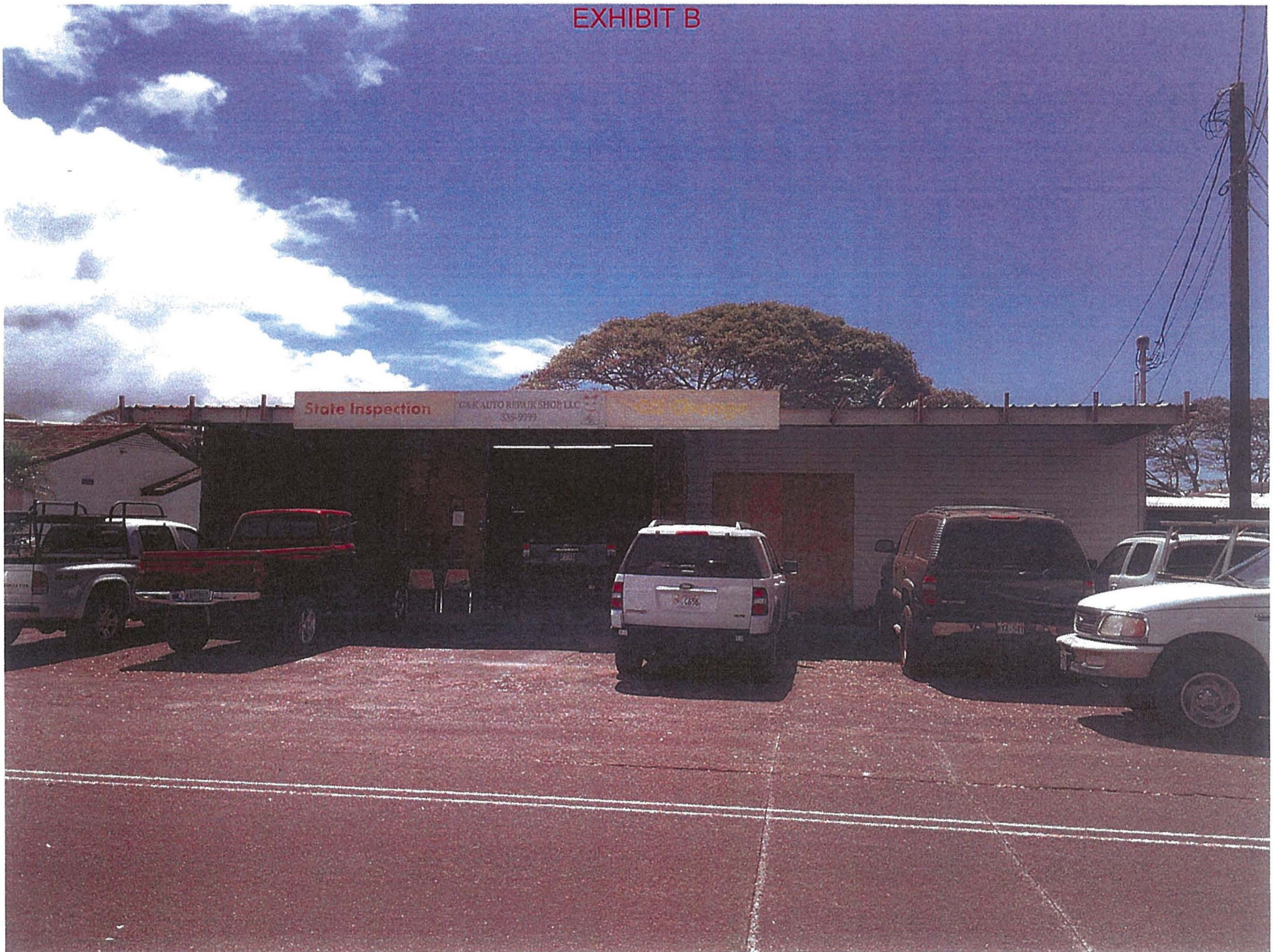




EXHIBIT B

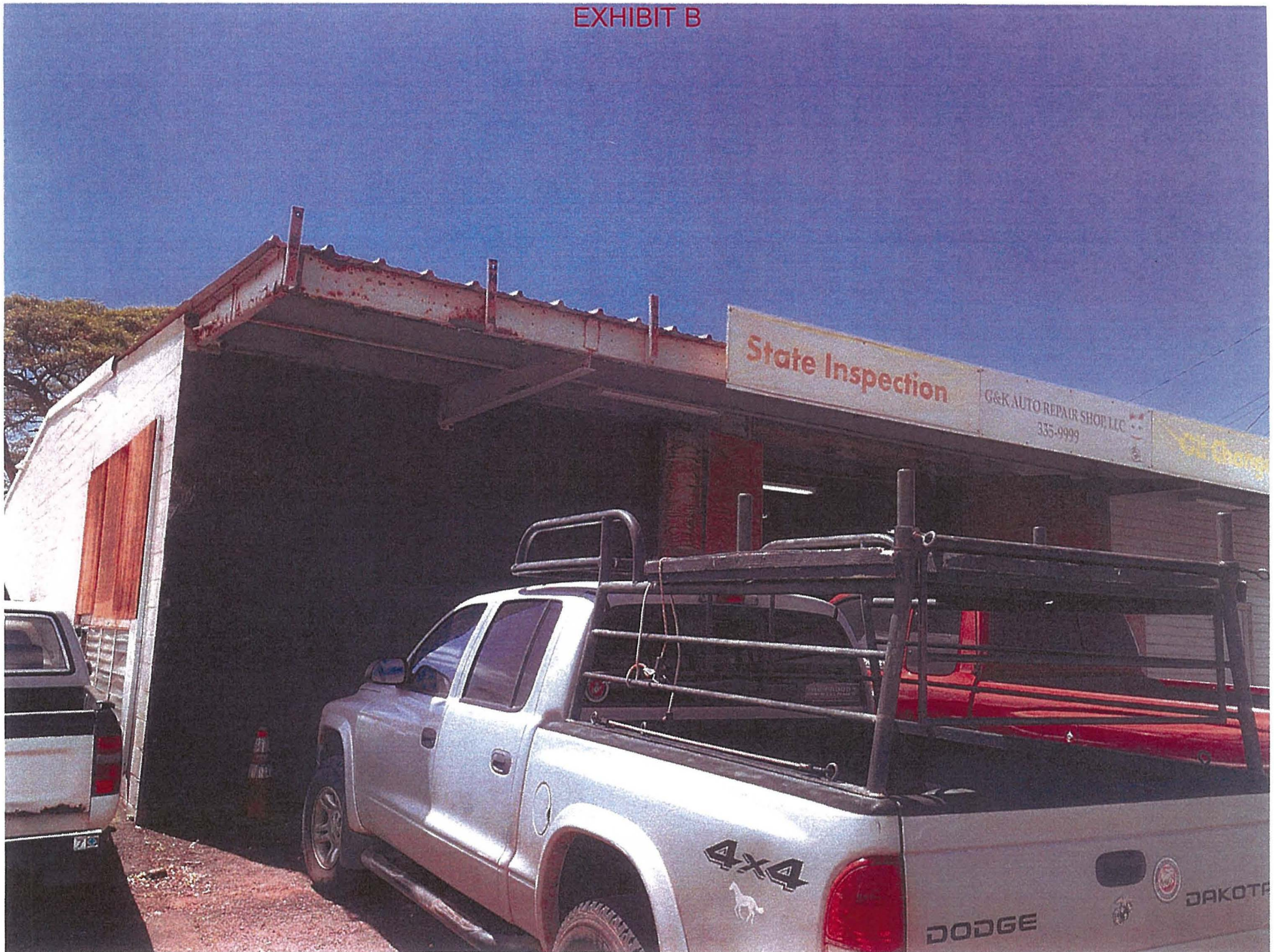


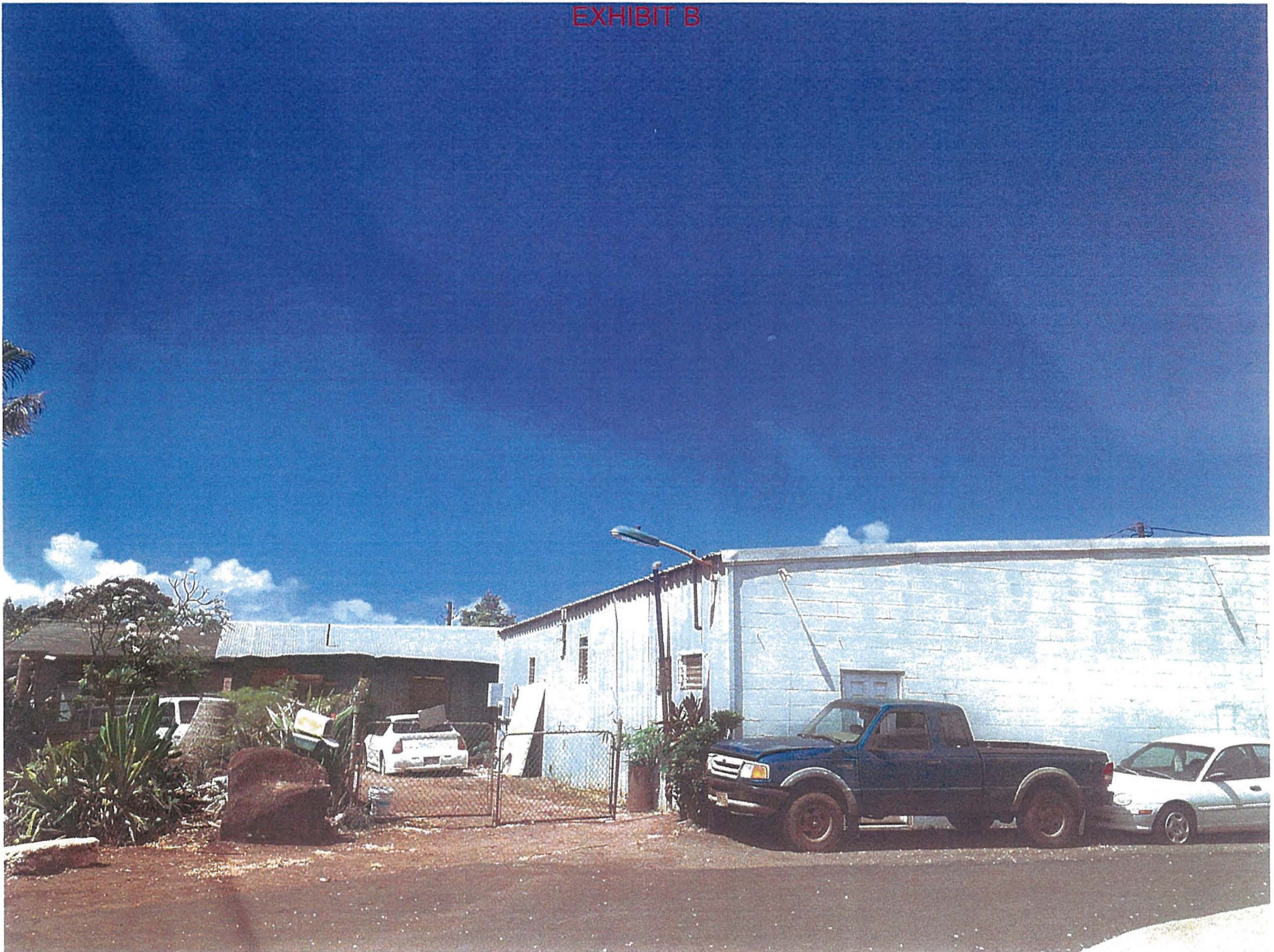


EXHIBIT B





EXHIBIT B





DAVID Y. IGE  
GOVERNOR OF HAWAII



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

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

3060 Eiwa Street, Room 208  
Lihue, Hawaii 96766  
PHONE: (808) 274-3491  
FAX: (808) 241-3535

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.