

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813
December 9, 2022

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

PSF No.: 22KD-048
Kauai

Issuance of Revocable Permit to Lappert's, Inc. for Business Purposes; Sale of Lease at Public Auction for Business and Commercial Purposes Consistent with County Zoning; Termination of Revocable Permit to Lappert's, Inc. on 30 Days' Written Notice in the Event of a Successful Sale of Lease at Public Auction, Lot 15, Brodie Lots, Hanapepe, Waimea (Kona), Kauai, Hawaii, Tax Map Key: (4) 1-8-008:062.

APPLICANT:

Lappert's, Inc., a Hawaii profit corporation.

LEGAL REFERENCE:

Sections 171-13, -14, 16, -17, -41 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Hanapepe situated at Hanapepe, Waimea (Kona), Kauai, Hawaii, identified by Tax Map Key: (4) 1-8-008:062 as shown on the attached maps labeled Exhibit A.

AREA:

0.385 acre, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	C-G (general commercial)

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 General Lease No. S-4739, Lappert's, Inc., Lessee, for business purposes.
Lease expired on July 15, 2022.

REVOCABLE PERMIT:

CHARACTER OF USE:

Business purposes.

COMMENCEMENT DATE:

July 16, 2022

MONTHLY RENTAL:

Monthly installments of \$2,250. The fair market rent that was last being charged under GLS-4739 (a ground lease) was \$21,600 per year or \$1,800 per month. Since the State now owns the improvements, staff is recommending a 25% increase over the rent last paid under GLS-4739. See discussion in Remarks section.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

AUCTION LEASE:

CHARACTER OF USE:

Business and commercial purposes consistent with 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 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 reopened in accordance with HRS Section 171-17(d), and the terms and conditions of the State's most current standard form lease. The appraised rent should reflect a "net" lease where all maintenance obligations are the responsibility of the lessee.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

Upset rent will be set by independent appraisal, and rent for the first 10 years of the term will be determined by auction with a known step-up for the second 10 years. The lease rent shall be reopened at the end of the 20th year of the lease term in accordance with HRS Section 171-17(d), and the terms and conditions of the State's most current standard form lease.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – Electric and Water available to lot.

Existing Improvements – Two buildings; one is approximately 300 square feet, more or less, and the other is approximately 1200 square feet, more or less.

Legal access to property – Staff has verified that there is legal access to the property from Kaunualii Highway.

Subdivision – Staff has verified that the subject property to be auctioned is legally subdivided.

Encumbrances – Staff has verified that no encumbrances exist on the property (an encumbrance that existed until recently, General Lease S-4739, expired July 15, 2022).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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 Part 1, Item 40 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." See attached Exhibit B.

DCCA VERIFICATION FOR REVOCABLE PERMIT:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

JUSTIFICATION FOR REVOCABLE PERMIT:

A Revocable Permit (RP) is appropriate at this time since Lappert's, Inc. (Lapperts) is no longer is requesting a long-term disposition or extension of its recently expired lease. The RP will be temporary until the Land Division is able to prepare the property for lease auction.

REMARKS:

General Lease No. S-4739 was sold at public auction and originally issued to Walter Lappert, for a term of forty (40) years, commencing on July 16, 1981 and expiring July 15, 2021. At the time of the lease auction, the parcel was vacant and unimproved. Walter Lappert built the business structure that is onsite and acts as an ice cream factory and small storefront with a walk-up counter for retail sales. See attached photos labeled Exhibit C.

On August 12, 1996, Walter Lappert assigned the lease to Lappert's, Inc. (Lappert's), to which the Board consented at its meeting of July 12, 1996, under agenda Item D-27.

On July 16, 2020, Lappert's requested an extension of the lease for business purposes. Land Division advised Lappert's that its current lease allowed for a twenty-five (25) year extension, but that extensions can only be approved by the Board in exchange for the lessee making substantial improvements to the property. The owner explained that although they had permits in hand to start construction, those plans had been put on hold due to financial constraints caused by COVID-19.

On May 28, 2021, under agenda item number D-1, the Land Board approved a one-year holdover of the lease. Once the lease went into holdover status, it was no longer eligible for extension.

By letter dated April 13, 2022, Lappert's requested a month-to-month revocable permit for the premises.

Section 31 of GLS-4739 provides as follows:

The Lessee shall, at the end of said term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the demised premises, together with all improvements existing or constructed thereon unless provided otherwise.

The existing improvements on the premises are relatively small and were constructed in the early 1980s at a cost of about \$64,000 according to records maintained by the County Real Property Assessment Division. Due to their size and age, staff is recommending a 25% increase over the fair market ground rent last charged under GLS-4739 to cover land and improvements under the revocable permit, which results in a rent increase from \$1,800/month to \$2,250/month.

With respect to the lease to be issued by public auction, staff requests that the Board authorize rent credits allowed by Section 171-6(7), HRS, if applicable to the successful bidder's proposed use of the property. This section provides that the Board may:

Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that the reduction or waiver shall not exceed one year for land to be used for resort, commercial, industrial, or other business use. When a lease for resort, commercial, industrial, or other business or residential purposes requires a lessee to demolish existing improvements or provide basic infrastructure, including drainage, sewer, water, electricity, and other utilities, before the lessee can make productive use of the land, the board may approve a reduction or waiver of lease rental for a period of up to twenty years; provided that the aggregate amount of the reduced or waived lease rental shall not exceed the amount of the lessee's total expenditures for demolition or provision of the infrastructure.

Until a lease is sold at auction, the extent to which the successful bidder will invest in modifications of the existing structures is unknown. The possibilities span a range from continuing to use the structures "as is," renovating and updating them to meet the lessee's operational needs, to demolishing and rebuilding. Accordingly, staff recommends that the public auction bid packet made available to prospective bidders in advance of the auction provide substantially as follows:

The Chairperson, in his/her sole discretion, may waive rent for a maximum period of twelve (12) calendar months upon a completion of Substantial

Improvements to the premises. "Substantial improvements" for these purposes shall mean renovations or new construction with a value equal to at least 50% of the appraised value of the existing improvements. A request for a rent waiver greater than twelve (12) calendar months pursuant to Section 171-6(7), HRS, shall be subject to review and approval by the Board in its sole discretion.

The proposed use has continued since the 1980s and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Lappert's has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions nor has the Lessee ever been cited for any illegal or unlawful activity on the State property.

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

Agency:	Comment:
Office of Hawaiian Affairs	No response by suspense date
County of Kauai (COK) Planning Department	No response by suspense date
COK Department of Public Works	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 11-200.1, 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 that approving the revocable permit, under the conditions and rent set forth herein, would serve the best interest of the State.
3. Authorize the issuance of a revocable permit to Lappert's, Inc., covering the subject area for business 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 revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and

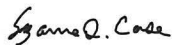
- c. The Department is authorized to terminate the revocable permit to Lappert's, Inc. on 30 days' written notice in the event of a successful sale of a lease of the property at public auction under Recommendation 5 below; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 4. Find the area to be an economic unit in terms of the intended use.
 - 5. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
 - 6. Authorize the sale of a lease at public auction covering the subject area for business 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 or commercial general lease form, as may be amended from time to time;
 - 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.

Respectfully Submitted,



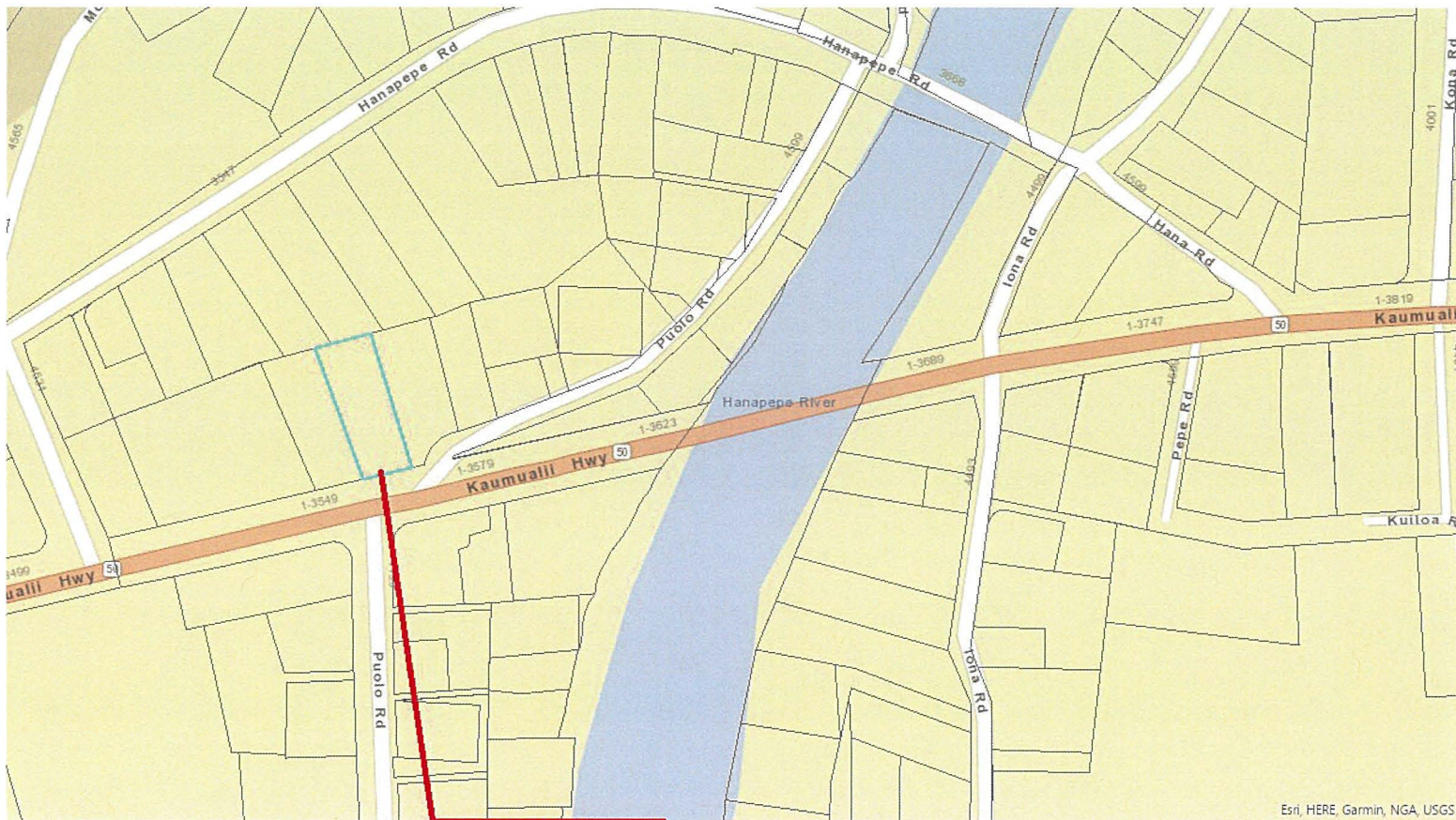
Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT



SUBJECT

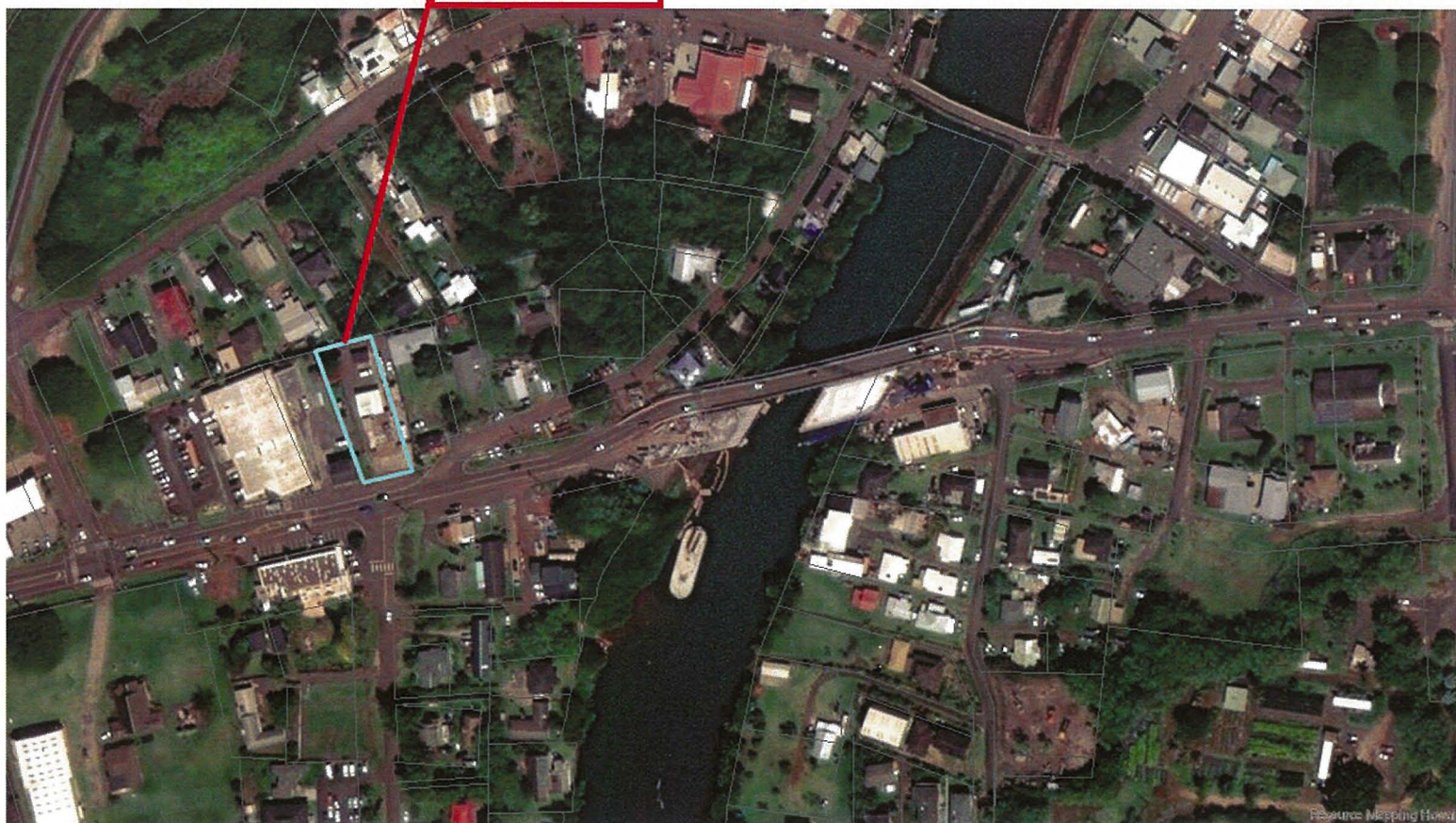


EXHIBIT A

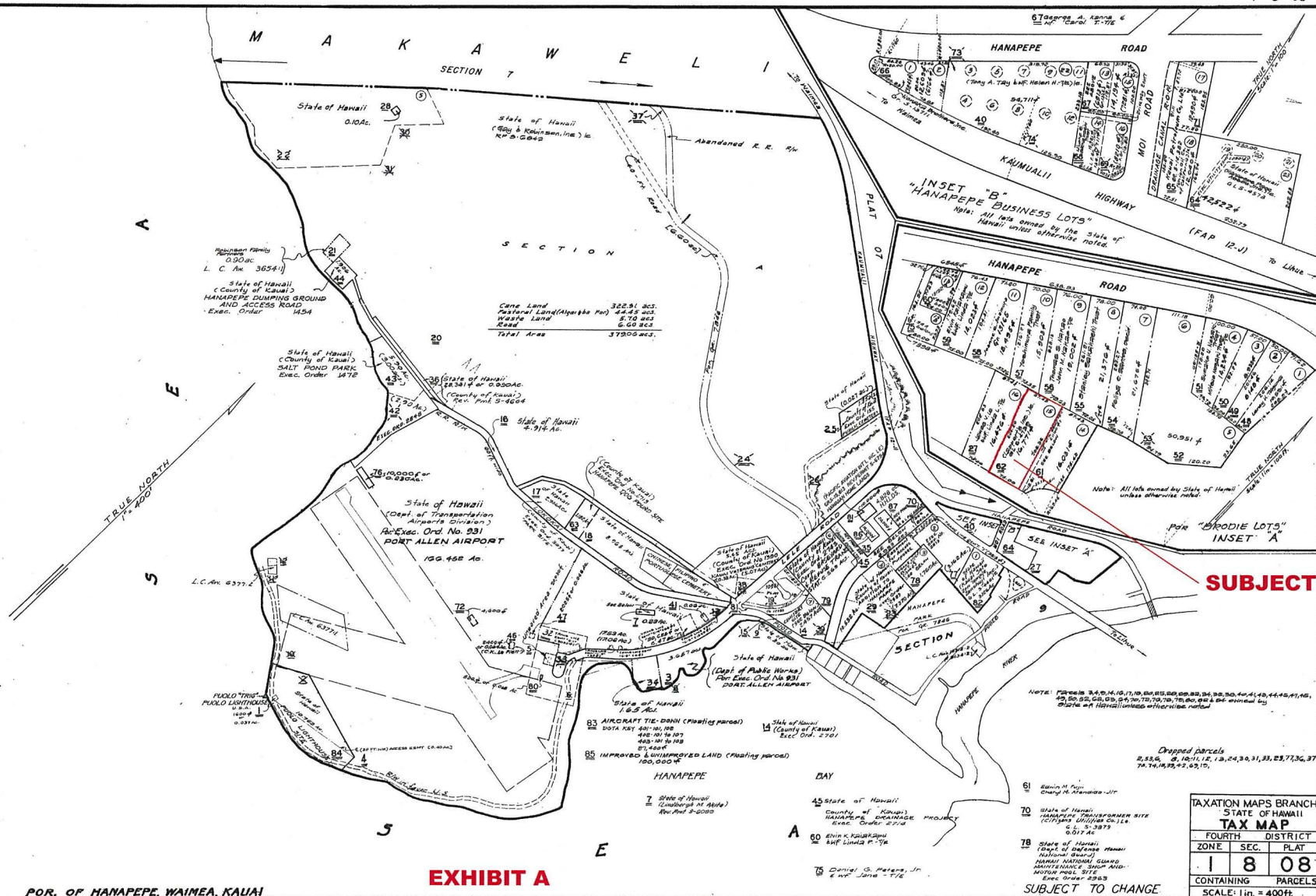


EXHIBIT A

POR. OF HANAPEPE, WAIMEA, KAUAI

TAXATION MAPS BRANCH		
STATE OF HAWAII		
TAX MAP		
FOURTH		DISTRICT
ZONE	SEC.	PLAT
1	8	08
CONTAINING PARCELS		
SCALE: 1 in. = 400 ft.		

EXEC ORDER 2963
SUBJECT TO CHANGE

PRINTED...

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
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December 9, 2022

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-15, Hawaii Administrative Rules (HAR):

Project Title:	Issuance of Revocable Permit to Lappert's, Inc. for Business Purposes; Sale of Lease at Public Auction for Business and Commercial Purposes Consistent with County Zoning; Termination of Revocable Permit to Lappert's, Inc. on 30 Days' Written Notice in the Event of a Successful Sale of Lease at Public Auction.
Project / Reference No.:	PSF No. 22KD-048
Project Location:	Lot 15, Brodie Lots, Hanapepe, Waimea (Kona), Kauai, Hawaii, Tax Map Key: (4) 1-8-008:062
Project Description:	Issuance of Revocable Permit to Lappert's, Inc. for Business Purposes and Sale of Lease at Public Auction for Business and Commercial Purposes.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item No.:	In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, 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

EXHIBIT B

beyond that previously existing." Item 40, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existed."

**Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?**

No, the request is a single occurrence in the area.

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?**

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

Analysis:

Since at least 1981, the subject property has been used for business purposes. As such, staff believes that the requests would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties:

Comments from The State Office of Hawaiian Affairs, COK Public Works Department, and COK Planning were solicited. No agency had any objection by the suspense date to the proposed exemption.

Recommendation:

That the Board find the proposed project will probably have minimal or no significant effect on the environment and is therefore presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B



EXHIBIT C



EXHIBIT C