

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

May 26, 2023

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawai'i

PSF No.: 21HD-008

Hawai'i District

Sale of Five Individual Leases at Public Auction for Industrial Purposes,
Waiakea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:014, (3) 2-2-
050:077, 078, 079 and 080.

REQUEST:

Sale of lease at public auction for industrial purposes as allowed under County zoning.

LEGAL REFERENCE:

Sections 171-6, -13, -14, -14.5, -16, -17 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION & AREA:

Portion of Government lands of Kanoelehua Industrial Lots situated at Waiakea, South Hilo, Hawai'i, as shown on the attached maps labeled Exhibit A1 and Exhibit A2 and subject to confirmation by the Department of Accounting and General Services, Survey Division

- Parcel 1: (3) 2-2-049:014 15,866 square feet, more or less
- Parcel 2: (3) 2-2-050:077 12,000 square feet, more or less
- Parcel 3: (3) 2-2-050:078 10,500 square feet, more or less
- Parcel 4: (3) 2-2-050:079 10,500 square feet, more or less
- Parcel 5: (3) 2-2-050:080 11,250 square feet, more or less

ZONING:

State Land Use District: Urban
County of Hawai'i CZO: ML 20, limited industrial.

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act
DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: No

CURRENT USE STATUS:

- Parcel 3 is currently encumbered by Revocable Permit No. S-7716 to Hilo Termite & Pest Control, Ltd.
- All other properties are unencumbered.

CHARACTER OF USE:

Industrial purposes as allowed under County zoning.

LEASE TERM:

Thirty (30) years from the commencement date of the lease.

COMMENCEMENT DATE:

The date of sale if the then current authorized occupant, if any, 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, 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 appraiser procured to determine the upset rent shall also separately determine the fair market value of the existing improvements on the land. The cost of the appraisal shall be reimbursed to the Department by the successful bidder at auction pursuant to Section 171-17, HRS.

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:

1. 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 30% 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.

IMPROVEMENT BOND:

Amount of the cost of any improvements made to the premises.

PROPERTY CHARACTERISTICS:

- Utilities – Water, electricity, phone
- Existing improvements – Each property has an existing warehouse structure on it – Staff has verified that there is legal access to all properties from Pookela Street or Wiwoole Street.
- Subdivision – Staff has verified that the subject properties to be auctioned are legally subdivided lots.
- Encumbrances – Staff has verified that parcel 3 is currently encumbered by Revocable Permit No. S-7716 to Hilo Termite & Pest Control, Ltd.

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 of change of use beyond that previously existing.” And, General Exemption Type 2 that states, “Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced, and Part 1, Item 1 that states, “Replacement or reconstruction of existing structures and facilities, including base yards, offices, cabins, sheds, and fencing.” And Item 7, “Replacement of cesspools, with individual wastewater systems located generally on the same site with substantially the same purpose and capacity.” The proposed lease auctions are de minimis actions that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR

REMARKS:

Background:

All five parcels were previously encumbered by leases issued as a result of Act 4, Session Laws of Hawaii (First Special Session 1960), which provided for the direct issuance of leases to victims of natural disaster who were affected by the 1960 tsunami that struck Hilo and other areas of the State. One of the conditions of any lease issued pursuant to the Act was that the lessee:

use the leased land for the first five (5) years of the term of the lease for the same business use or undertaking in which the Lessee was engaged at the time of the natural disaster or a use designated by the Board; provided however, that the Lessee may devote or place said demised premises to a use or uses other than the specific character of use for each business, with the prior written consent of the Board, which consent shall not be unreasonably or arbitrarily withheld....

Parcel 1 was initially encumbered under General Lease No. S-3602 awarded to E.G. Wence and Wallace C. Chow dba Hawaii Pest Control Company and commencing on January 16, 1961. The term of lease was for 55 years, expiring on January 15, 2016.

Parcel 2 was originally encumbered under General Lease No. S-3660 to Katsumi Sakai dba K. Sakai Painting Contractor for the purpose of wholesale and retail of paints and painting supplies, commencing March 30, 1961 for a term of 55 years expiring on March 19, 2006. The lease was amended on September 29, 2011 changing the character of use to those allowed under the County of Hawaii zoning code, ML-20, Limited Industrial use.

Parcel 3 was initially encumbered under General Lease No. S-3729 to Hubert S. Andrews dba Andrews Trucking Service of Hilo Hawaii for the purpose of hauling goods and materials. The original term of the lease was from August 23, 1963 to August 22, 2016. However, the lease was cancelled on August 25, 2006 as a result of a default by the lessee.

Parcel 4 was originally encumbered by General Lease No. S-3631, issued to Harold Ashida effective March 20, 1961, and then assigned to A & A Hawaii, Inc., Mr. Ashida's corporate entity. The lease was subsequently cancelled on February 14, 2003 and has since been occupied by Hilo Termite & Pest Control, Inc. under Revocable Permit No. S-7716.

Parcel 5 was at first encumbered by General Lease No. S-3718 to Hilo Electric & Carburetor Service by direct lease. At its meeting of June 24, 1994, under Agenda Item F-13, as amended, the Board approved the cancellation and forfeiture of General Lease No. S-3718 and approved the issuance of Revocable Permit No. S-6931 to Kent Kaneko dba Kent's Auto Repair. The permit was cancelled November 30, 2021 as a result of a default in rent payment.

Lease at Public Auction:

The subject parcels are located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long-term leases that were scheduled to expire between 2016 and 2026. Most of the DLNR leases in this area were established pursuant to Act 4, First Special Session of 1960 and Act 32, Session Laws of Hawaii 1962 resulting from the destruction of the Hilo bayfront commercial and industrial area caused by the 1960 tsunami. Businesses that were severely impacted by the tsunami were given the opportunity to relocate to the newly created industrial area of Kanoelehua. These acts provided the lessees with an option to purchase the land within two years. Several businesses exercised this option, creating an industrial area of mixed DLNR leases and fee simple properties.

Staff is recommending that the Board authorize the public auction of a new 30-year industrial lease for each of these subject parcels and the improvements thereon. County zoning for this area is "Limited Industrial" (ML-20) and is consistent with the intended purpose of this lease auction proposal. The proposed subject leases are described as follows:

- Parcel 1 is a 15,866-square foot fenced lot with a 6,400-square foot office/warehouse structure on it. The warehouse is in fair condition although there is noticeable leaking from portions of the roof. The office area is in need of minor repair and maintenance work.

- Parcel 2 is a 12,000-square foot, fenced in lot with a 3,840-square foot office/warehouse. The warehouse has been recently vandalized. This warehouse is in poor condition with significant repairs needed for the roof and entrances into the building.
- Parcel 3 is a 10,500-square foot fenced lot with a 2,400-square foot office/warehouse structure on it. The warehouse is in fair condition although there is noticeable leaking from portions of the roof. The office area is also in need of repair and maintenance work.
- Parcel 4 is a 10,500-square foot fenced lot with a 5,000-square foot office/warehouse structure on it and is currently occupied. The warehouse is in good condition and has been well maintained. The office area is also well maintained and in good condition.
- Parcel 5 is an 11,250-square foot fenced lot with a 6,400-square foot office/warehouse structure on it. The warehouse is in poor condition with noticeable leaking from portions of the roof. The office area is in need of repair and maintenance work.

As a result of researching the various underwriting policies of local banking institutions, staff has found that the rent structure under a lease 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. As a result, staff is recommending that the appraisal to determine the upset rent for the first 10 years of the lease also determine the percentage increase in 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 lending institution 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.

A request for comments was distributed to various government agencies with no objections to the proposed use of State lands.

It is currently unknown what type of wastewater disposal system is used for the properties. To the extent the properties are connected to cesspools that have the capacity to serve 20 or more people per day, they could be found to be in violation of United States Environmental Protection Agency (USEPA) and State Department of Health (DOH) Large Capacity Cesspool closure requirements. The successful bidder for each parcel shall not cause or allow wastewater to be discharged into any cesspools on the premises and shall not conduct business on or from the premises until all cesspools are closed to the satisfaction of

USEPA and DOH and an individual wastewater system is installed and operational or a County sewer connection is complete and in service.¹

Staff requests that the Board authorize a rent credit as 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 structure is unknown. The possibilities span a range from continuing to use the structure largely "as is" but with the replacement of the cesspool with a new wastewater system, to renovating and updating it 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 30% 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.

¹ Staff has confirmed there is no sewer system within proximity of these parcels.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the proposed action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. Find the areas to be economic units in terms of the intended use.
3. Find that the subject areas are not suitable for hunting, nor will they become so during the term of the lease.
4. Authorize the sale of a lease at public auction covering the subject areas for business, commercial or industrial 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, commercial or industrial general lease form, as may be amended from time to time;
 - b. The rent may be waived for a maximum period of twelve (12) calendar months upon completion of substantial improvements to the subject parcel. "Substantial improvements" for purposes of this lease shall mean renovations or new construction with a value equal to at least 30% 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;
 - c. The public auction notice and leases shall expressly provide that the subject land and improvements will be leased "AS IS, WHERE IS", with all faults and defects whether latent or patent, and that it will be the lessee's obligation to maintain and repair any improvements now located or hereafter constructed on the premises at its sole cost and expense;
 - d. The successful bidder for each lease shall comply with current USEPA and DOH and not cause or allow wastewater to be discharged into any cesspools on the premises and shall not conduct business on or from the premises until all cesspools are closed to the satisfaction of USEPA and DOH and an individual wastewater system is installed and operational or a County sewer connection is complete and in service;

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

Respectfully Submitted,

Gordon C. Heit

for

Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



RT

Dawn N.S. Chang, Chairperson

TMK: (3) 2-2-49:014

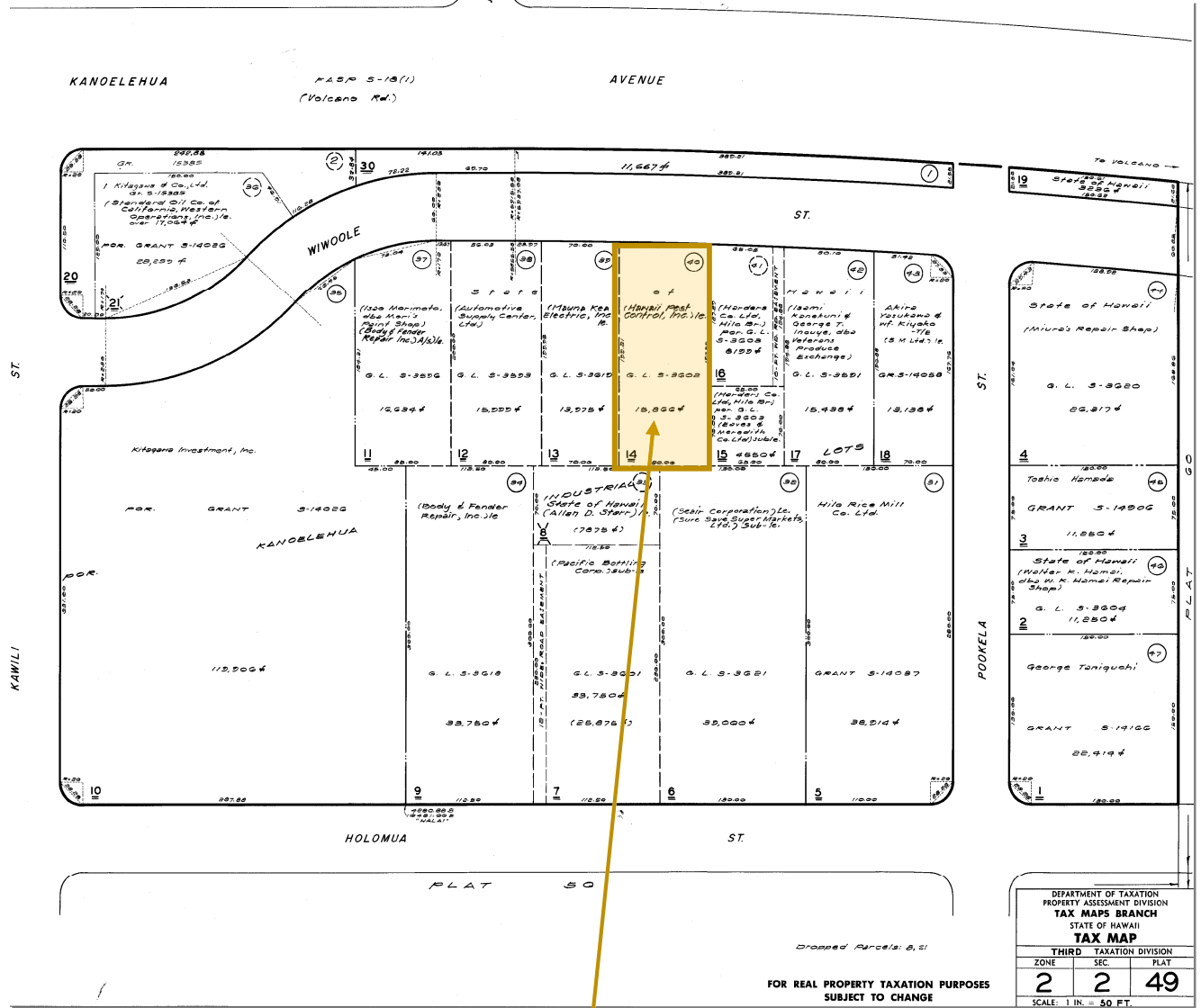


EXHIBIT A₁

TMK: (3) 2-2-050:077, 078, 079, 080

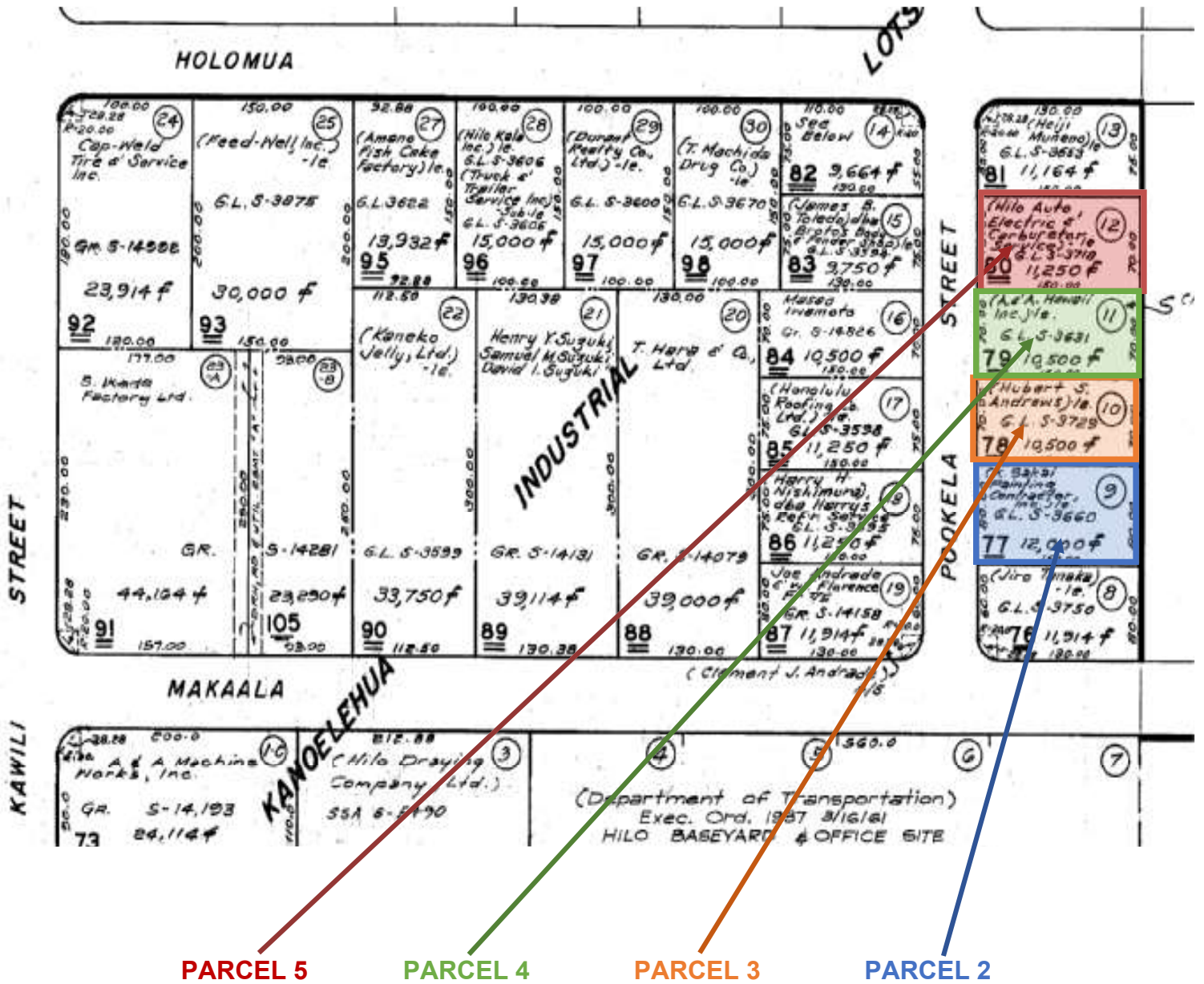


EXHIBIT A₂

EXHIBIT A



Industrial Properties Available for Lease in Hilo, Hawaii

INDUSTRIAL LEASE PROPERTIES FOR AUCTION



PARCEL 1



INDUSTRIAL LEASE PROPERTIES FOR AUCTION



PARCEL 2



INDUSTRIAL LEASE PROPERTIES FOR AUCTION



PARCEL 3



INDUSTRIAL LEASE PROPERTIES FOR AUCTION



PARCEL 4



INDUSTRIAL LEASE PROPERTIES FOR AUCTION



PARCEL 5

