

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

August 25, 2023

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

PSF No.:23KD-054

Kauai

Amend Prior Board Action of July 28, 2023, Item D-4, *Issuance of Direct Lease to The Gas Company, LLC for Storage Site and Tank Farm, Operating Yard, Related Activities and Appurtenant Pipelines to Said Tanks, Nawiliwili, Lihue, Kauai Tax Map Key: (4) 3-2-003:030.*

The purposes of the amendment are to: (1) authorize a one-year holdover of General Lease No. S-4250 (GLS-4250) and include a citation to Section 171-40, Hawaii Revised Statutes, for the Board's authority to approve a holdover; and (2) clarify that lease rent for the new direct lease approved by the Board in its prior action shall be based on land only because the existing facilities on the lease premises are trade fixtures used for gas storage and distribution that will not be owned by the State upon expiration of GLS-S-4250.

BACKGROUND:

At its meeting of July 28, 2023, Item D-4, the Board of Land and Natural Resources approved the issuance of a direct lease to The Gas Company, LLC (TGC) for storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks, Nawiliwili, Lihue, Kauai. See attached Exhibit 1.

REMARKS:

The Board approved a new lease to TGC, but Land Division staff neglected to request a holdover of the existing lease at the time. The current GLS-4250 is scheduled to expire on September 8, 2023 and there is not enough time to conduct an appraisal of the rent payable for the new lease and for the Department of the Attorney General to prepare the new lease document before the lease expiration date under GLS-4250. Staff is therefore requesting a one-year holdover to run from September 8, 2023 through September 7, 2024 or until issuance of a new lease, whichever occurs first.

Staff also requests the holdover rent continue at the same rate currently payable under GLS-4250, which is \$75,860 per annum. The LEGAL REFERENCE section on page 1

of the prior Board action will need an amendment to refer to Section 171-40, Hawaii Revised Statutes (authorizing the holdover), and staff includes a new recommendation 2 below specifically authorizing the holdover.

Staff further notes in retrospect that the staff submittal on the new lease to TGC did not elaborate on the ownership of improvements and fixtures on the lease premises upon expiration of GLS-4250. At the time it was issued in 1969, the parties to the lease struck the standard surrender provision of the lease and included the following amended provision in its place:

That upon expiration or sooner termination of this lease, the Lessee may, if the Lessee is not in default of any terms and conditions of the lease, remove any and all buildings, structures or improvements located on the demised premises; provided, however, that if such removal shall not have been accomplished within ninety (90) days after the expiration, termination or cancellation of the lease, then such improvements shall, at the Lessor's option, become the property of the Lessor, or the Lessor may have the improvements removed at the cost and expense of the Lessee.

The lease premises are improved with multiple gas storage tanks, pipes and other distribution equipment and a small shed or outbuilding. See Exhibit 2 attached, which is a report prepared by Kauai Land Division staff for an inspection conducted on August 9, 2023. The gas tanks, pipes, other distribution equipment and shed that are currently present are removable and specific to TGC's business. Staff therefore believes these fixtures qualify as trade fixtures owned by TGC that should not become the property of the State upon expiration of GLS-4250. Rather, these trade fixtures will continue to be owned by TGC even after the new lease is issued to TGC.

Because TGC will continue to own its trade fixtures upon expiration of GLS-4250 and issuance of the new lease, the annual rent for the new lease will be based on land only. Staff therefore includes a recommendation below to amend the ANNUAL RENT section on page 2 of the lease to clarify this point.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of July 28, 2023, under agenda Item D-4, by:¹
 - a. Revising the LEGAL REFERENCE section on page 1 of the prior Board action to read as follows:

Sections 171-6, -13, -26, -40 and -95 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

¹ In the amendments that follow, new material is indicated by underscoring.

- b. Revising the ANNUAL RENT section on page 2 of the prior Board action to read as follows:

Fair market annual rent for land only to be determined by independent appraiser, subject to review and approval by the Chairperson. The appraisal shall be procured by the State pursuant to Section 171-17(b), HRS, but paid for by applicant, The Gas Company, LLC.

- c. Inserting a new recommendation 2 to read as follows:

2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the holdover of General Lease No. S-4250 to The Gas Company, LLC covering the subject area 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 lease holdover document form, as may be amended from time to time; provided that the holdover shall expire in one year or upon issuance of the new lease to TGC, whichever shall first occur;

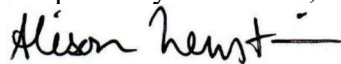
B. Review and approval by the Department of the Attorney General; and

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

- d. Renumber existing recommendations 2 and 3 as recommendations 3 and 4, respectively.

2. Except as amended hereby, all terms and conditions listed in its July 28, 2023 approval to remain the same.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

EXHIBIT 1

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

July 28, 2023

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

PSF No.:23KD-054

Kauai

Issuance of Direct Lease to The Gas Company, LLC for Storage Site and Tank Farm, Operating Yard, Related Activities and Appurtenant Pipelines to Said Tanks, Nawiliwili, Lihue, Kauai Tax Map Key: (4) 3-2-003:030.

APPLICANT:

The Gas Company, LLC, a Hawaii limited liability company and a public utility company registered with the Hawaii Public Utilities Commission (PUC).

LEGAL REFERENCE:

Sections 171-6, -13, -26 and -95 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Nawiliwili Harbor Disposal Area, situated at Nawiliwili, Lihue, Kauai identified by Tax Map Key: (4) 3-2-003:030, as shown on the attached map labeled Exhibit A.

AREA:

1.399 acres, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Industrial

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

July 20, 2023 KH

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:

The parcel is currently encumbered under General Lease S-4250 to The Gas Company, LLC, which commenced on September 9, 1968 and expires on September 8, 2023.

CHARACTER OF USE:

Storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks.

LEASE TERM:

Fifty-five (55) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent appraiser, subject to review and approval by the Chairperson. The appraisal shall be procured by the State pursuant to Section 171-17(b), HRS, but paid for by applicant, The Gas Company, LLC.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th, 30th, 40th, and 50th years of the lease term, by staff or independent appraisal. The initial lease rent shall be determined for the first two 10 year periods and then reopen at the 30th, 40th, and 50th years of the lease term, by staff or independent appraisal. The appraiser shall determine an appropriate step-up at the end of the 5th year during the first two 10-year periods of the initial valuation and reopening valuation.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - None

Existing Improvements – 1 Sphere propane gas storage tank, 11 cylinder gas storage tanks, 1 small storage building and 1 operations building.

Legal access to property – Staff has verified that there is legal access to the property off of Waapa Road.

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

Encumbrances – Staff has verified that the parcel is currently encumbered under General Lease S-4250 to The Gas Company, LLC.

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 minor expansion or minor 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:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine initial rent.

REMARKS:

At its meeting of July 26, 1968 under agenda item F-15, the Board of Land and Natural Resources (Board) approved the direct issuance of a lease to Honolulu Gas Company, Ltd. In the same Board action, the Board approved a perpetual non-exclusive easement for fuel pipelines covering approximately 9000 SF, more or less, of government land set aside

under Executive Order No 1332 to the Department of Transportation (DOT) at the Nawiliwili Harbor.

At its meeting of December 13, 1968, under agenda item F-15, the Board amended the July 26, 1968 Board action and authorized the direct issuance of a fifty-five (55) year lease to Honolulu Gas Company, Ltd., who was subsequently issued General Lease No. 4250 (GL4250). GL4250 commenced on September 9, 1968 and is set to expire on September 8, 2023.

At its meeting of September 25, 1987, under agenda item F-5, the Board approved an expansion of the Nawiliwili Harbor and set aside additional lands to the DOT, Harbors Division. Parcel 30 was omitted since it was encumbered by GL 4250, but as a result, some of Honolulu Gas Company's pipelines were now under DOT jurisdiction.

At its meeting of May 22, 1992, the Board approved a consent to assignment from Honolulu Gas Company, Limited to Gasco, Inc., dba The Gas Company.

On December 31, 1994 the DOT issued Harbor Lease No. H-94-1 to Gasco, Inc., dba The Gas Company for a nonexclusive subsurface pipeline easement together with four (4) cathodic bed easements. Harbor Lease No. H-94-1 was made coterminous with GL4250.

At its meeting of May 23, 1997, under agenda Item D-12, the Board approved, as amended the transfer of GL4250 from Gasco, Inc. to Citizens Utility Company.

At its meeting of June 13, 2003, under agenda Item D-20, the Board consented to the assignment from Citizens Utility Company, dba the Gas Company, to The Gas Company LLC.

The Gas Company, LLC (TGC) submitted its application for use of State lands through direct negotiation on December 29, 2022. TGC provides both synthetic natural gas and propane gas service to the community as a public utility company registered affiliate and therefore qualifies for issuance of a lease by direct negotiation.

The Land Board is authorized to lease State lands to qualifying public utilities. The statutory authority is as follows:

§171-95 Disposition to governments, governmental agencies, public utilities, and renewable energy producers. (a) Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

- (1) Lease to the governments, agencies, public utilities, and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;
- (2) Grant licenses and easements to the governments, agencies, public utilities,

and renewable energy producers on such terms and conditions as the board may determine for road, pipeline, utility, communication cable, and other rights-of-way.

Since 1904, TGC, under various names or predecessor entities, has been the only franchised gas utility in the State of Hawai'i. Over the years, it has installed gas pipeline infrastructure and built bulk storage facilities with access to the harbor. Gas is now a critical part of TGC's fuel mix in Hawaii providing a cleaner and lower cost alternative for residential, commercial and industrial customers.

The current DLNR leased area consists of a tank and operating yard and there are no planned changes from the current leased area and purpose. DOT's Harbor Lease No. H-94-1 is a pipeline easement that is essentially underground and runs along the edge of Waapa Road (to the tank and operating yard site). Since DOT Lease No. H-94-1 is to run coterminous with the DLNR lease, TGC is also seeking a new pipeline easement from DOT that will also run coterminous with the new DLNR lease.

Staff is requesting authorization to issue a direct lease to TGC as a public utility pursuant to Section 171-95, HRS.

TGC has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from the agencies below with the results indicated:

Agency:	Comment:
DLNR-DOFAW	No Response By Suspense Date
DLNR-DOBOR	No Objection
Office of Hawaiian Affairs	No Response By Suspense Date
Kauai County Public Works	No Response By Suspense Date
Kauai County Planning Department	No Response By Suspense Date

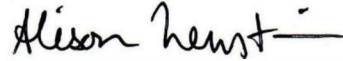
The proposed use has continued since 1968 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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 the public interest demands the issuance of this direct lease to The Gas Company, LLC for the purposes of storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to The Gas Company, LLC covering the subject area 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 utility lease document 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,



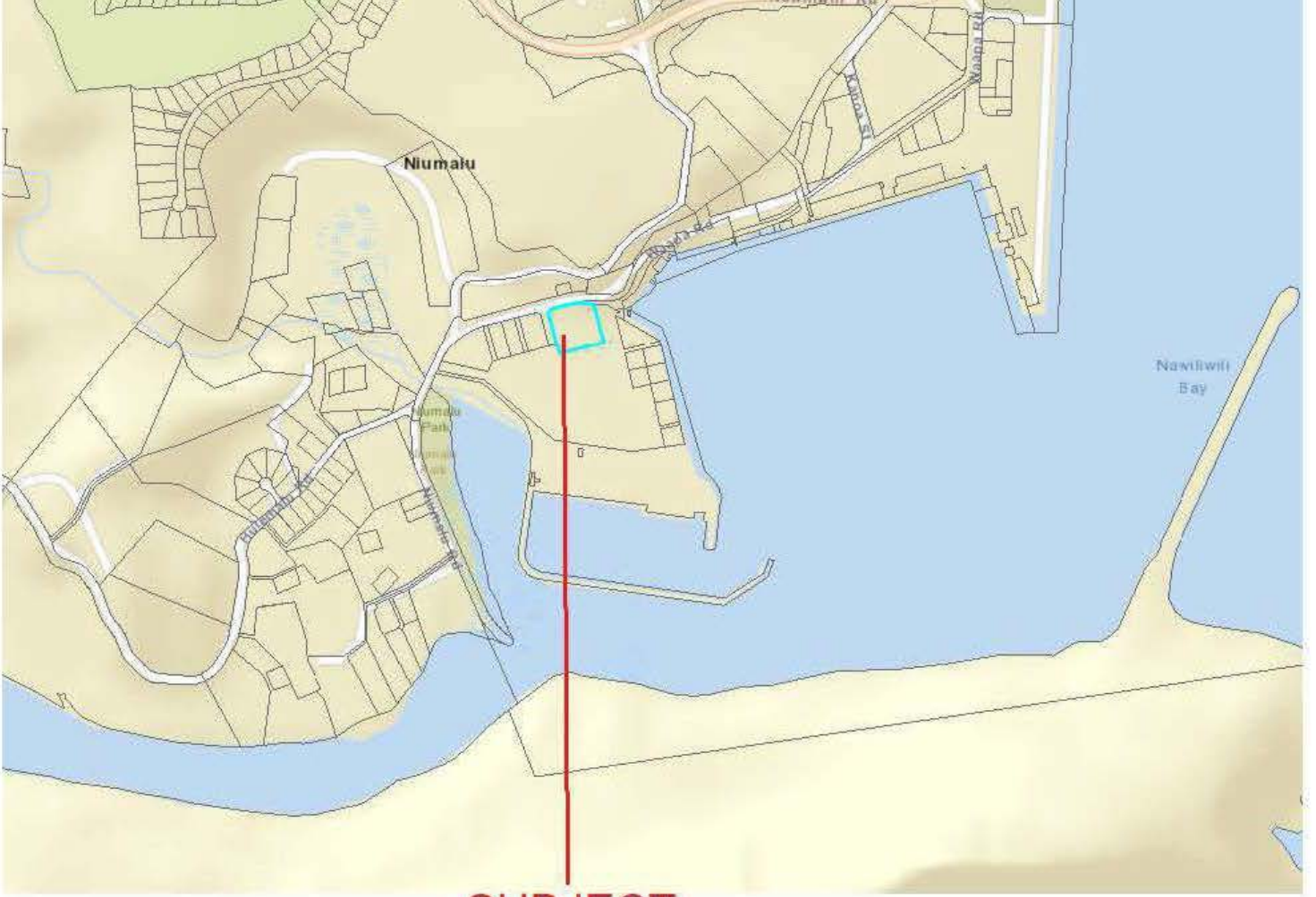
Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT



SUBJECT



EXHIBIT A

1947

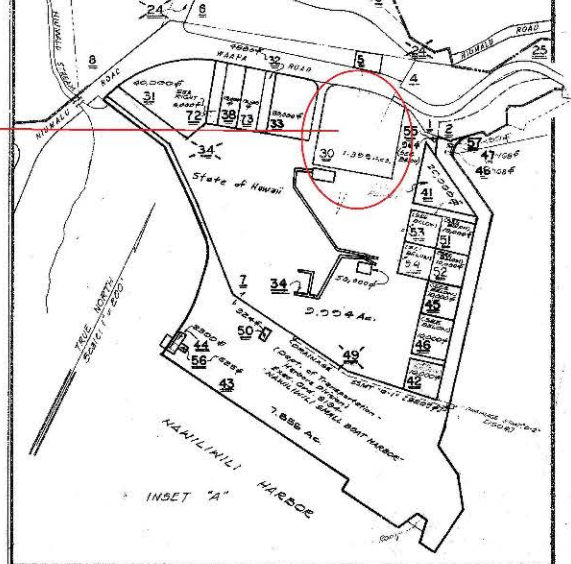
1951

Div. No. 2881
Source: Tax Maps Bureau
By: H.N. & S.L.C. August, 1956

SEC. 3

- 15 Peter Contreras - 1/28
- Joseph Contreras Jr - 1/28
- Frank Contreras - 1/28
- Philip Contreras - 1/28
- Edna M. Kakuwani - 1/28
- Bernie Contreras - 1/28
- Elizabeth Contreras - 1/28
- Robt. C. Easton - 1/28
- Sandra Kakuwani - 1/28
- Rose C. Opeha - 1/28
- Juanita K. Contreras - 1/28
- Adeline S. Contreras - 1/28
- John P. Contreras Jr - 1/28
- Yura C. Tibayan - 1/28
- Ernest K. Contreras - 1/28
- Barbara Contreras - 1/28
- Walter Joseph, John, Antonio & Abraham Contreras - 1/28
- Urtatione Kakuwani & Helen Bonarobough - 1/28

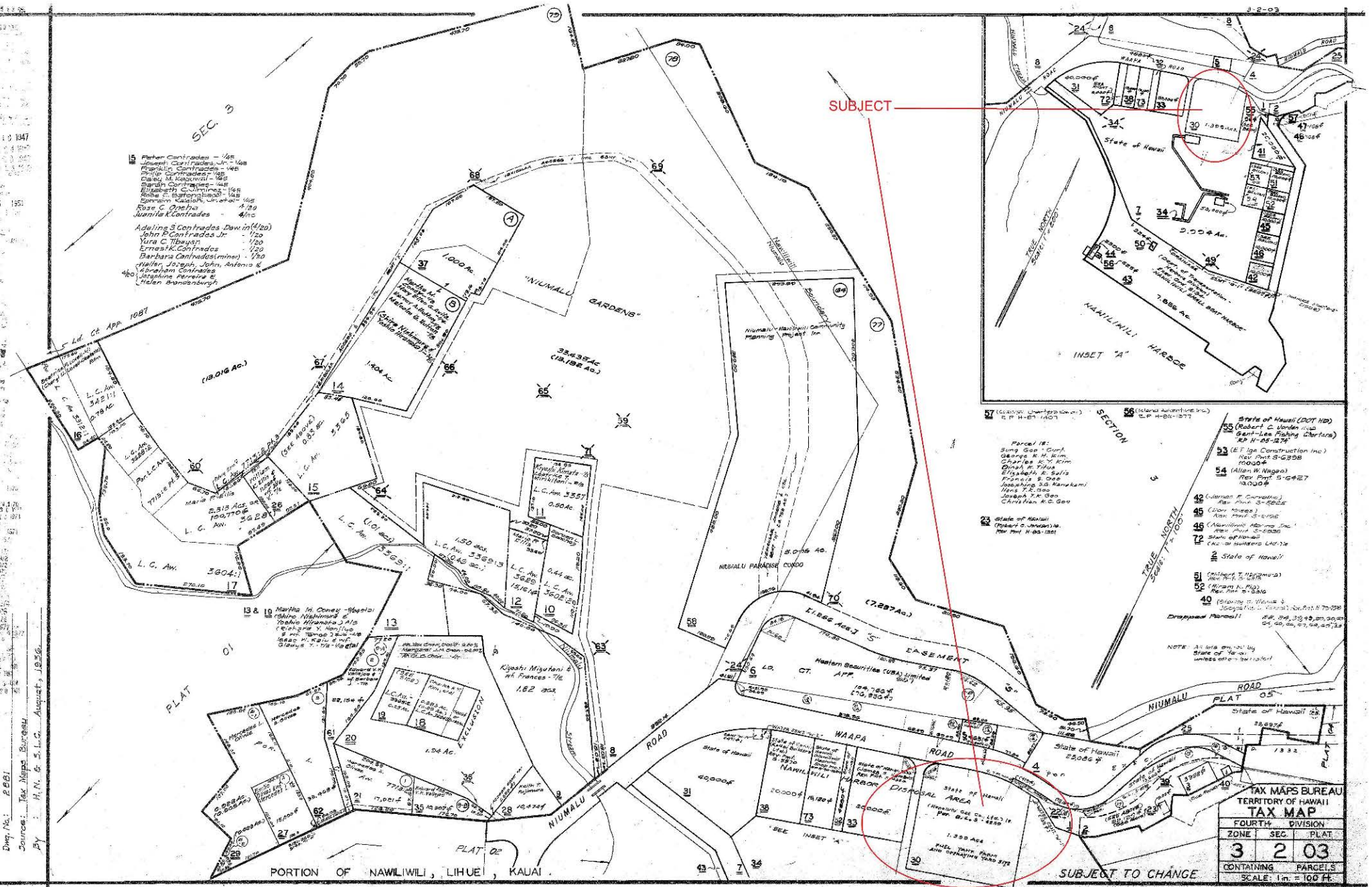
SUBJECT



- 57 (Lillian & John ...)
- 56 (Lillian & John ...)
- 55 (State of Hawaii DOT HD) (Robert C. Jordan ...)
- 53 (E. J. ...)
- 54 (Alan W. ...)
- 49 (Lillian ...)
- 45 (Alan ...)
- 48 (Lillian ...)
- 72 (State of Hawaii ...)
- 2 (State of Hawaii ...)
- 51 (Lillian ...)
- 52 (Lillian ...)
- 40 (Lillian ...)

TAX MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC.	PLAT
3	2	03
CONTAINING PARCELS		
SCALE 1 in = 100 ft.		

PRINTED EXHIBIT A

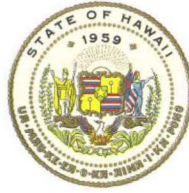


PORTION OF NAWILIWILI, LIHUE, KAUAI

SUBJECT TO CHANGE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

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

July 28, 2023

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Issuance of Direct Lease to The Gas Company, LLC for Storage Site and Tank Farm, Operating Yard, Related Activities and Appurtenant Pipelines to Said Tanks

Project / Reference No.: 23KD-054

Project Location: Nawiliwili, Lihue, Kauai Tax Map Key: (4) 3-2-003:030.

Project Description: Issuance of Direct Lease to The Gas Company, LLC for Storage Site and Tank Farm, Operating Yard, Related Activities and Appurtenant Pipelines to Said Tanks

Chap. 343 Trigger(s): Use of State Land

Exemption Class No. and Description: 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 minor expansion or minor 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."

EXHIBIT B

The subject parcels have been under continuous lease for telecommunication purposes since 1968. No change in use is authorized by this Board action.

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

No. Staff believes there are no cumulative impacts involved with the proposed storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks use of the land under a general lease. The requested locations have been used for same uses since the initial lease was granted in 1968.

Action May Have Significant Impact on Particularly Sensitive Environment?:

No. There are no sensitive environmental issues involved with the proposed storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks use of the land under a general lease.

Analysis:

The proposed action is an issuance of a general lease for storage site and tank farm, operating yard, related activities and appurtenant pipelines to said tanks use. Such dispositions have not resulted in known significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed disposition would involve negligible or no expansion or change in sue of the subject area beyond that previously existing.

Consulted Parties:

Division of Forestry and Wildlife, Division of Boating and Ocean Recreation, Office of Hawaiian Affairs, County of Kauai Planning Department, County of Kauai Public Works.

Recommendation:

That the Board find 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.

INSPECTION REPORT
Commercial/Industrial/Resort/Other Business

EXHIBIT 2

FINAL INSPECTION

General Information

Document Number: GLS 4250 Character of Use Commercial
 Inspection Date: 8/9/23 Inspection Time: 11:30 a.m. Land Agent: Reynold Lee

TENANT INFORMATION

Name: Gas Company Home Phone: _____
 Address: 3990 Rice Street, Lihue, HI. 96766 Business Phone: 808-245-3301
 _____ Fax: _____
 Contact Person: Russell Winkelman Contact Phone: 808-482-4822

SITE INFORMATION

TMK: (4) 3-2-03:30 Area: Nawiliwili, Lihue, Kauai
 Site Address: 3000 Waapa

FISCAL INFORMATION

ITEM	N/A	CURRENT= COMPLIANCE	DEFAULT = NON-COMPLIANCE	COMMENTS
Rent		X		75,860/yr
Liability Insurance		X		Current policy on record exceeds required amount
Fire Insurance		X		
Bond		X		

FIELD INSPECTION RESULTS (refer to Field Inspection Worksheet)

ITEM	N/A	COMPLIANCE	NONCOMPLIANCE	COMMENTS
Subleases	X			
Improvements		X		All well maintained
Premises		X		Kept clean and organized
Character of Use		X		Property adheres to character of Commercial/Industrial use

Phase 1 Environmental Site Assessment	X			
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ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
Other:				



