

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

October 11, 2024

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

PSF No.: 24HD-086

Hawaii

Issuance of Direct Lease to Mauna Kea Stewardship and Oversight Authority for Agency Headquarters Purposes with Issuance of an Immediate Right-Of-Entry Permit for Construction and Management Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:022.

APPLICANT:

Mauna Kea Stewardship and Oversight Authority (MKSOA); a State Agency attached to the Department of Land and Natural Resources.

LEGAL REFERENCE:

Sections 171-6, -55, and -95, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Government Lot 7, Block 47 of the Waiakea Business Lots, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:022, as shown on the attached map labeled Exhibit A.

AREA:

29,914 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: CN-10 (Neighborhood Commercial, min. 10,000sf)

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:

Vacant and unencumbered.

CHARACTER OF USE:

Mauna Kea Stewardship and Oversight Authority headquarters purposes.

LEASE TERM:

Thirty (30) years. Lease to contain a provision allowing lessee to cancel the lease within the first two (2) years of the term.

COMMENCEMENT DATE:

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

ANNUAL RENT:

The annual rent was determined by independent appraisal as per the following:
\$95,634.00 per annum for the first 10-year period;
\$114,760.80 per annum for years 11-20;
with a rental reopening in the 20th year to determine annual rent for years 21-30.

Subject to applicable statutory caps, staff is recommending that the Board approve a rent credit equal to the first seven (7) years rent commencing upon execution of the lease. The rent credit is to assist in offsetting the exterior and interior improvements applicant needs to make to the property to suit its intended operations, and demolition and infrastructure costs including connecting to the county sewer system and closing the existing cesspool on the property in accordance with Federal and State law. See discussion in Remarks section below.

METHOD OF PAYMENT:

Semi-annual payments, in advance, beginning in the 8th year with the first seven years of rent waived (i.e., at gratis).

RENTAL REOPENINGS:

At the 20th year of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the prevailing annual fair market rental amount determined by appraisal and HRS Section 171-17. Performance bond to be posted at execution of lease.

PROPERTY CHARACTERISTICS:

Available Utilities – Water, electricity, high speed internet and telephone. A sewer line exists in East Kawili Street adjacent to the property, however the plumbing on the property is not connected to the sewer.

Existing improvements – A full-service bank building comprising an area of 5,313 square feet along with a paved parking lot with lockable gates.

Legal access to property – Staff has verified that there is legal access to the property from East Kawili Street.

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

Encumbrances – Staff has verified that the property is currently unencumbered.

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," General Exemption Type 3 that states in part, "Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities," and Part 1, Item 14 that states, "Construction or placement of utilities (telecommunications, electrical, solar panels, drainage, waterlines, sewers) and related equipment (such as transformers, poles, cables, wires, pipes) accessory to existing facilities," and General Exemption Type 4 that states, "Minor

alterations in the conditions of land, water, or vegetation,” and Part 1, Item 12 that states, “Removal or filling of unused or unusable cesspools pursuant to federal and state regulations.” The proposed new lease of land with existing improvements, the proposed interior and exterior renovation of the improvements, and the closure of the existing cesspool and connection to County sewer system together constitute a de minimis action 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.

DCCA VERIFICATION:

The Mauna Kea Stewardship and Oversight Authority (MKSOA) is a governmental agency and as such is not required to register with the Department of Commerce and Consumer Affairs – Business Registration Division.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

To close the existing cesspool on the property according to all Federal, State and County guidelines and comply with County Department of Environmental Management prerequisites to connect to the public sewer line in accordance with Section 21-5 of the Hawaii County Code. The connection to the sewer line shall be completed prior to the lessee occupying the property.

BACKGROUND:

The subject property was previously encumbered under General Lease S-3698 which was sold at public auction to Bank of Hawaii with a commencement date of January 26, 1962. The term of the lease was for 55 years, expiring January 25, 2017 and the use was business purposes.

At its meeting of December 9, 2016, agenda item D-5, the Board approved a 3-year extension of GLS-3698 pursuant to Act 207.¹ The annual rent for the extended term was determined by independent appraisal at that time. Hawaii District Land Office staff had several discussions with the lessee regarding its available options regarding extensions pursuant to Act 207 and Act 149.² After lengthy consideration, Bank of Hawaii decided not to pursue another extension of

¹ Act 207, Session Laws of Hawaii 2011 amended Section 171-36(b) of the Hawaii Revised Statutes (HRS) by allowing lessees to: apply to the Board to extend or modify the fixed rental period of the lease, provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years.

² Act 149, Session Laws of Hawaii 2018 adds Sections 171-191, -192 and -193 to Chapter 171, HRS, by creating the "Hilo Community Economic District" thus allowing lessees within this area to apply to the Board to extend leases up to 40 years beyond the initial term of the lease.

its lease.

At its meeting of November 8, 2019, agenda item D-6, Bank of Hawaii requested a 1-year holdover of GLS-3698 in which to shut down operations and vacate the premises. It would be relocating the branch to another site and needed the additional time to provide a smooth transition. This extended the expiration date of the lease to January 25, 2021.

Upon expiration of the one-year holdover, the lessee requested the issuance of a month-to-month revocable permit while construction of a new centralized branch was completed on Bank of Hawaii's private property. At its meeting of October 23, 2020, under agenda item D-4, the Board approved a month-to-month revocable permit to Bank of Hawaii for business purposes. Revocable Permit No. S-7931 (RPS-7931) was thereafter issued.

At its meeting of February 24, 2023, the Board authorized cancellation of RPS-7931 (item D-3) and the sale of a long-term lease of the subject property at public auction (item D-4).

REMARKS:

The County zoning for the subject parcel is "Neighborhood Commercial" and is consistent with the applicant's proposed use. The property consists of a 29,914 square foot lot with a 5,313 square foot commercial structure and asphalt paved parking and driveways. Driveways are limited to "right-turn only ingress and egress" as property is located on corner of busy intersection.

On July 25, 2023, staff obtained an appraisal to determine the upset price for public auction which was set at \$95,634 per annum for the first 10 years with a 20% increase for the second 10 years (\$114,760.80 for years 11-20) and a rental reopening for the remaining 10-year portion of the term.

Since the departure of the Bank of Hawaii from the premises, the Hawaii District Land Office (HDLO) has been expending funds for grounds maintenance and upkeep of the property. HDLO has received several inquiries of interest in leasing the property from agents seeking commercial sites for clients, both retail and food establishments.

The County of Hawaii requested a set-aside of the property for utilization as a homeless service center, but that request was recently rescinded.

On July 15, 2024, the HDLO received a request from the MKSOA to lease the property for its operations headquarters.

The Mauna Kea Stewardship and Oversight Authority (MKSOA) was created by

legislative Act 255 of the 2022 legislative session. Its purpose is to assume governance and management responsibilities for the “Mauna Kea lands” (see Exhibit B). Its mission is to bring about a more harmonious coexistence of uses atop Mauna Kea by fostering a mutual stewardship paradigm in which ecology, the environment, natural resources, cultural practices, education and science are in balance. The authority is governed by a board consisting of eleven (11) members; each representing a different aspect of land management responsibilities. The existing improvements are large enough to accommodate MKSOA board meetings, including attendance by the public. Once all authorized positions are filled, MKSOA anticipates having a staff of six to ten full-time positions working at the premises.

As noted above, the property will require a substantial investment in demolition of portions of the existing exterior and interior improvements and construction of new improvements to make the property suitable for MKSOA’s operations on the premises. In addition, MKSOA will be required to make infrastructure improvements to the wastewater system, including connection to the County sewer and closure of the existing cesspool. Staff believes the Board has authority to offset the cost of this work from the rent payable under Section 171-95(a)(2), HRS, since this is a government-to-government lease. This section provides that the Board may:

(2) 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;

The Board also has authority to grant rent credits to for-profit entities (as well as government agencies) under Section 171-6(7), HRS, where the lessee makes certain improvements to the property. This section provides that the Board may:

(7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or 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 two years for land to be used for any agricultural or pastoral use, or 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

Section 171-6(7) is more restrictive as to the types of costs that can be credited against rent. Accordingly, staff is recommending the application of the Board's broader authority to negotiate lease terms to a government agency pursuant to Section 171-95(a)(2).

As applied to the facts of this disposition, MKSOA is a governmental agency and intends to use the premises for business purposes. Accordingly, MKSOA intends to make substantial improvements to the property, including but not limited to, closure of existing cesspool, connection to County of Hawaii sewer system, repair/replacement of the air conditioning system, mold/fungus remediation, roof renovation/replacement, bathroom and kitchen upgrades, landscaping, exterior building maintenance and interior reconfiguration of the space to accommodate its office space. These improvements are estimated to cost approximately 1-2 million dollars. Staff is including a recommendation below that the Board approve a rent waiver to MKSOA for the first seven years of the lease term, subject to submission of invoices and receipts evidencing the amount and type of the expenditures.

Even though the public auction of a new lease may bring a higher annual rental rate, it might not be enough to offset public auction costs and maintenance costs in the interim. Further, a vacant building attracts vandalism and trash accumulation. For these reasons, staff is recommending this disposition as highest and best use for the subject property.

Staff is recommending issuance of an immediate construction and management right-of-entry to allow applicant to begin necessary improvements/renovations of the property.

Applicant 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.

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 as a de minimis activity.

2. Authorize the issuance of an immediate construction and management right-of-entry permit to the Mauna Kea Stewardship and Oversight Authority covering the subject area, which is by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Until such time as the property is connected to the County sewer system and the cesspool is closed in accordance with applicable law, Applicant shall require its contractors to supply portable toilets during any demolition, construction or other work on the property and shall not cause or allow the cesspool to be used in a way that would classify it as a large capacity cesspool;
 - C. The right-of-entry permit shall remain in force for one year after written acceptance by the Applicant or until the lease is executed, whichever shall first occur. The Chairperson is authorized to renew the right-of-entry for additional one-year periods for good cause shown; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Subject to the Applicant fulfilling all the Applicant requirements listed above, authorize the issuance of a direct lease to Mauna Kea Stewardship and Oversight Authority 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 business use general lease to a governmental agency document form, as may be amended from time to time;
 - B. A rent waiver is authorized for the first seven (7) years of the lease term subject to MKSOA performing the work described below and submitting copies of invoices and receipts evidencing the amount and type of expenditures made on improvements to the property:

Mandatory closure of existing cesspool and connection to County of Hawaii sewer system, and Applicant/lessee's proposed improvements that include, without limitation the repair/replacement of the air conditioning system, mold/fungus remediation, roof renovation/replacement, bathroom and kitchen upgrades,

landscaping, exterior building maintenance and interior reconfiguration to accommodate its office space;

- C. Until such time as the property is connected to the County sewer system and the cesspool is closed in accordance with applicable law, Applicant shall require its contractors to supply portable toilets during any demolition, construction or other work on the property and shall not cause or allow the cesspool to be used in a way that would classify it as a large capacity cesspool;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

CM

Candace Martin

CM

Candace Martin
Land Agent

GH

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

EXHIBIT A



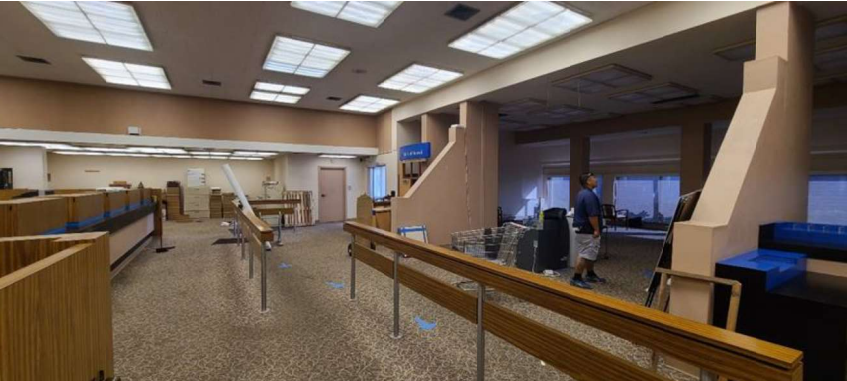
EXHIBIT A



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EXHIBIT A



Mauna Kea Stewardship and Oversight Authority

MANAGEMENT AREAS

Maunakea Science Reserve
Hale Pōhaku
Roadway Corridor

