

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

July 10, 2026

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

GLS-4333  
Hawai'i

Approval of a Development Agreement for a 25-Year Extension of Lease Term, General Lease No. S-4333, Kawika Ohana, LLC, Lessee; and

Authorize the Chairperson to Approve and Execute a Lease Extension for General Lease No. S-4333, Kawika Ohana, LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-037:056.

APPLICANT:

Kawika Ohana, LLC, a Hawaii limited liability company. (Lessee)

LEGAL REFERENCE:

Sections 171-36, -191 and -192, Hawaii Revised Statutes (HRS), as amended, and Act 149, Session Laws of Hawaii 2018 (Act 149).

LOCATION:

Portion of Government (Crown) Land of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-037:056, as shown on the attached map labeled Exhibit A.

LEASE AREA:

19,500 square feet, more or less.

ZONING:

State Land Use District: Urban  
County of Hawaii CZO: MG-1a General Industrial-1 acre minimum<sup>1</sup>

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<sup>1</sup> Note parcel square footage is 19,500 square feet while current zoning requires minimum one acre. Boundaries of the subject parcel were determined prior to the current county zoning and are accepted as a non-conforming size by the County.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Light industrial purposes.

TERM OF LEASE:

Original term of 40 years, commencing on July 15, 1971, and expiring on July 14, 2011.

One extension of 15 years from July 15, 2011, through July 14, 2026.

Lessee requests an extension of 25 years, commencing on July 15, 2026, to July 14, 2051, for an aggregate term (initial term plus all extensions) of 80 years.

LEASE ANNUAL RENTAL:

Current rent is \$24,600.00, due in semi-annual installments of \$12,300.00 on January 15<sup>th</sup> and July 15<sup>th</sup> of each year.

RENTAL REOPENINGS:

Staff is in the process of ordering an appraisal to determine the fair market rent of the requested 25-year extension in three increments, with a determination for the first 10 years from July 15, 2026 to July 14, 2036, a second determination for years 11-18 from July 15, 2036 to July 14, 2044 and the third determination for years 19-25 from July 15, 2044 to July 14, 2051. Upon receipt, the lessee will be informed by letter to either accept or reject the proposed rental amount. The lease extension and development agreement will not be executed until the rental amount is settled and accepted.

DCCA VERIFICATION:

Kawika Ohana, LLC is registered and in good standing with the Business Registration Division of the DCCA.

APPLICANT REQUIREMENTS:

Lessee shall be required to:

1. Comply with the applicable requirements of Sections 171-36(a) and 171-192, HRS to negotiate a development agreement with department staff, and execute the

development agreement and lease extension using the Department of Attorney General current lease terms and conditions necessary to implement and conform to the requirements of Act 149, Session Laws of Hawaii 2018 (“Act 149”) and current law, including but not limited to substantive provisions relating to Lease Assignments, Sublease Rents, Ownership of Improvements and Removal Bond, as discussed and recommended below; and

2. Reimburse the Department for the cost of procuring an appraiser to review Lessee’s appraiser’s report regarding the value of the existing improvements on the property.<sup>2</sup>

#### 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, Staff proposes that proposed action be exempt from the preparation of an environmental assessment pursuant to:

General Exemption Type 1: 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.

Part 1, Item 40: Leases of state land involving negligible or no expansion or change of use beyond that previously existing.

The property is located within the existing and established Kanoelehua Industrial area which is zoned urban and industrial and is currently used for those purposes. Given that the property and surrounding areas are already disturbed and heavily developed, the area is not considered to be located within a sensitive environment.

Further, no new uses that are inconsistent with current and past uses will occur as a result of the development and lease extension. Therefore, staff believes that any impact from this action can be considered de minimis and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR.

Staff has consulted with the following agencies regarding applicability of exemption to the proposed action: Hawaii State Department of Health and Hawaii County Planning Department.

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<sup>2</sup> Pursuant to Section 171-192, HRS, “The applicant for a lease extension shall pay all costs and expenses incurred by the department in connection with processing, analyzing, or negotiating any lease extension request and document and of the development agreement under subsections (a) and (b).”

PUBLIC TRUST ANALYSIS:

The subject property is zoned Urban and Industrial and has been fully developed with existing improvements. Additionally, the surrounding properties are all developed and being used for commercial and industrial purposes. An unoccupied improved lot in the middle of other lots developed for industrial purposes is not a suitable site for public use and recreation. Therefore, it is not appropriate for this property to become vacant and unencumbered in order to facilitate the public to access, use and recreate on the property.

As the property is ceded land, the current use of the property provides for the betterment of Native Hawaiians, one of the public trust purposes under Section 5(f) of the Admissions Act.

Also, having a tenant occupying the property and paying lease rent not only generates revenue to support Department programs, but also alleviates the cost to manage a vacant property. This allows the Department to use its revenues and resources to manage public lands and provide lands for public use, which is another public trust purpose under Section 5 of the Admissions Act.

To properly perform its fiduciary duties, the Legislature and the Board determined that the Department should use a portion of the lands it manages to generate revenues to support the Department's operations and management of public lands/programs. Annual lease revenues currently support the Special Land and Development Fund (SLDF), with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects. The SLDF revenues collected by the Department's Land Division cover the entire annual operating budget for the Land Division, the Department's Office of Conservation and Coastal Lands, and the Dam Safety and Mineral Resources Programs of the Department. The revenues fund over 80 Department staff positions, including 5 positions within the Commission on Water Resource Management, and provide funding support to the Division of State Parks and various resource protection programs administered by the Division of Forestry and Wildlife such as the protection of threatened and endangered species, removal of invasive species, wildland firefighting and lifeguard services.

Aside from the rent revenue generation and the unsuitability for public use, the issuance of lease extensions is consistent with public trust obligations as it provides the lessee, as a locally owned small business, with the opportunity to continue contributing to the economic wellbeing of the Hilo area and the State.

Finally, staff notes that the lease extensions are authorized pursuant to Act 149. Act 149 notes that the Legislature found that these extensions were consistent with the State's fiduciary interest in managing state lands "in the best interests of the public by enhancing state revenues and promoting social, environmental, and economic well-being of Hawaii's people."

PROPOSED IMPROVEMENTS:

Lessee's current improvement proposal consists of the following:

1. Engineering and installation of a septic system. Installation of two new ADA compliant bathrooms. Proposed costs = \$105,000.00.
2. Remove existing gutter system, repair/replace damaged fascia, install new 8" seamless gutters and downspouts, waterproofing and painting as needed. Proposed costs = \$58,000.00.

The total cost of the proposed improvements is \$163,000.00 and the estimates detailing them are included as **Exhibit B**.

BACKGROUND:

General Lease No. S-4333 (GLS-4333), a 40-year lease for light industrial purposes was issued to Hawaiian Fruit Flavors, Inc. (HFFI), as the highest bidder through public auction held on April 16, 1971.

At its meeting of June 13, 2008, under agenda item D-2, the Board approved a consent to mortgage and a 15-year extension of lease commencing on July 15, 2011 and expiring on July 14, 2026.

On September 25, 2009, the Board, under agenda item D-3, consented to the assignment of GLS-4333 from HFFI to Kawika Ohana, LLC (Kawika Ohana), the current lessee.

On December 30, 2025, Lessee requested an extension of GLS-4333 for an additional 25 years, commencing on July 15, 2026, and expiring on July 14, 2056. This will result in a total aggregate term of 80 years for the initial lease term and all extensions.

The subject property is currently subleased Steve Royston dba Steve's Honda Sales & Service. This use is consistent with the current county zoning of general industrial use. The improvements on the property include two storage warehouses, one of 4,270 sf and one of 4,960 sf., and a 2,030 sf. service garage. All buildings have roll-up doors facing onto Leilani Street with an asphalt paved parking area between the buildings and the street (refer to Exhibit A).

It is to be noted that there are no permanent bathroom facilities and no cesspool on the property. The lessee provides portable toilets onsite for use of the sublessee and its customers.

### LEASE EXTENSION:

The lease is currently set to expire on July 14, 2026, the Lessee is requesting an additional 25-year extension pursuant to Act 149, Session Laws of Hawaii 2018 (Act 149) in order to amortize the cost of additional improvements to the property. Act 149 allows up to a 40-year extension of leases located in the Hilo Community Economic District (HCED) based on “substantial improvements” to the lease premises:

“Substantial improvement” means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds thirty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

The subject lease is located within the HCED as defined in Act 149. Lessee’s proposed general improvements include: 1. Design and installation of a septic system and addition of two ADA compliant bathrooms (\$105,000.00); 2. Gutter and Fascia replacement/repair (\$58,000.00) for a total estimated cost of \$163,000.00.<sup>3</sup>

An appraisal evaluation performed by a certified appraiser retained by the Lessee has determined that the economic life of the proposed improvements will exceed the twenty-five-year period necessary to amortize the improvements. The appraiser, contracted by the Lessee, determined the market value of the current improvements to be \$455,000. Lessee’s proposed expenditure of \$163,000.00 represents approximately 35.8% of the value of the existing improvements (\$400,000.00), and Lessee is only seeking a 25-year extension of the lease<sup>4</sup>. Accordingly, Lessee’s proposed expenditure appears to justify the requested 25-year extension under Act 149.

Land Division procured the services of an independent appraiser to review the appraisal report submitted by the Lessee/applicant relating to the value of the existing improvements expressly referenced in Act 149 to assure the Lessee’s appraisal report and valuation is consistent with the Uniform Standards of Professional Practice (USPAP) or otherwise in line with industry standards. The aforesaid Land Division appraisal review report concluded that the Lessee’s

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3 Once the requested lease extension is granted, staff understands the Lessee may seek a consent to mortgage from the Board or Chairperson, as appropriate, in order to finance improvements to the property for this extension request.

4 Twenty-five (25) years is the maximum extension available to the Lessee under Act 149 because the previously received a 15-year extension. Act 149 provides that any extension under that act cannot extend the original term of the lease by more than 40 years. In Lessee’s case, the original lease was already extended 15 years leaving a remaining 25 years available for the Act 149 extension.

appraisal was compliant with USPAP and that the report's conclusions appear to be generally supported and credible.

Act 149 stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount. The Lessee has submitted plans and specifications for the total development and staff is proposing the use of a draft development agreement outlining the terms and conditions required in compliance with Act 149 and Section 171-192(a), HRS, as amended, similar to what has been used in prior lease extensions.

As part of its due diligence and review process, staff notes that the Internal Revenue Service (IRS) has provided criteria to determine what would qualify as a capital improvement, which is an improvement that adds to the value of a property, extends its useful life, or adjusts it to new uses. The property is improved whenever it experiences a betterment, adaption or restoration. An expenditure is for betterment if it facilitates a material condition or defect in the property that existed before it was acquired or when it was produced - it makes no difference whether or not you were cognizant of the defect when you received the unit of property; results in a material addition to the property - for instance, physically broadens, grows, or extends it, or results in a material increase in the property's capacity, productivity, power, or quality.

An expenditure is for a restoration if it returns a property that has plunged into disrepair to its ordinarily efficient operating condition; rebuilds the property to a like-new condition after the end of its useful economic life; replaces a significant part or important structural component of the property; replaces a piece of a property for which the owner has taken a loss, or repairs damage to a property for which the owner has taken a basis adjustment for a casualty loss.<sup>5</sup> Generally, repairs are one-time expenditures to keep the property as currently existing in a usable and operating condition.<sup>6</sup>

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5 Information can be found at this link: <https://www.irs.gov/businesses/small-businesses-self-employed/tangible-property-final-regulations#Whatisthefactsandcircumstancesanalysis>.

6 The United States Supreme Court has recognized the highly factual nature of determining whether expenditures are for capital improvements or for ordinary repairs. See *Welch v. Helvering*, 290 U.S. 111, 114 (1933) (“[T]he decisive distinctions [between capital and ordinary expenditures] are those of degree and not of kind”); *Deputy v. du Pont*, 308 U.S. 488, 496 (1940) (observing that each case “turns on its special facts”). Because of the factual nature of the issue, the courts have articulated a number of ways to distinguish between deductible repairs and non-deductible capital improvements. For example:

Staff has confirmed with the Department of Health that there **is not** a cesspool located on the leased parcel. There are no bathroom facilities on the property. The current lessee provides onsite portable toilets for the use of the sublessee. While this practice is in compliance with Federal guidelines and rules, State Department of Health states portable toilets are a temporary solution only. Therefore, the installation of a properly engineered and approved septic system will be a major improvement to the property that will outlive the 25-year extension of the lease and bring the property into compliance with State Department of Health guidelines. The design and installation of a new septic system is included in the Lessee's proposed improvements.

Likewise for the proposed replacement of the gutter system with large 8-inch gutters and repair/replacement of the building fascias. Hilo experiences an annual rainfall average in excess of 100 inches. Inadequate and/or leaking gutters can cause major damage to metal buildings and result in failure of structural elements. Addressing this issue will restore its operating efficiency and prevent any further deterioration.

Based on the foregoing and upon review of Lessee's improvement plan, staff believes that the proposed expenditures exceed simple repairs and qualify as substantial improvements under Act 149.

Therefore, staff recommends that the Board approve the proposed lease extension and development agreement and authorize the Chairperson to execute the development agreement as well as the lease extension document. The development agreement and the lease extension document will incorporate the following specific current lease terms and conditions for the 25-year extension in order to implement Act 149 and conform the terms of the extension period to current law. Below is a summary of the four substantive provisions staff will ensure

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Illinois Merchants Trust Co. v. Commissioner, 4 B.T.A. 103, 106 (1926), the court explained that repair and maintenance expenses are incurred for the purpose of keeping property in an ordinarily efficient operating condition over its probable useful life for the uses for which the property was acquired. Capital expenditures, in contrast, are for replacements, alterations, improvements, or additions that appreciably prolong the life of the property, materially increase its value, or make it adaptable to a different use.

Estate of Walling v. Commissioner, 373 F.2d 190, 192-193 (3rd Cir. 1967), the court explained that the relevant distinction between capital improvements and repairs is whether the expenditures are to "put" or "keep" property in efficient operating condition.

Plainfield-Union Water Co. v. Commissioner, 39 T.C. 333, 338 (1962), the court stated that if the expenditure merely restores the property to the state it was in before the situation prompting the expenditure arose and does not make the property more valuable, more useful, or longer-lived, then such an expenditure is usually considered a deductible repair. In contrast, a capital expenditure is generally considered to be a more permanent increment in the longevity, utility, or worth of the property.

are included in the extension of this lease originally issued on July 15, 1971, and amended by that Extension of General Lease No. S-4333, covering the term from July 15, 2011 through July 14, 2026:

- **Lease Assignments.** The current lease form includes an assignment of lease premium analysis that allows the State to share in the consideration paid for an assignment of a lease under some circumstances. This term is consistent with Section 171-36, HRS. The requested 25-year lease extension period should also include this standard assignment of lease premium term.
- **Sublease Rents.** The current lease form includes language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee, which is also consistent with Section 171-36, HRS. The lease extension document should also include the updated standard sublease rent participation language.
- **Ownership of Improvements.** GLS-4333 does not include a provision on ownership of improvements at lease expiration giving the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. GLS-4333 simply provides that at the expiration of the lease, lessee delivers possession of the demised premises to the lessor, together with all buildings and improvements in good order, reasonable wear and tear excepted, leaving open the question whether the State is responsible for removing improvements that have outlived their useful lives. The lease extension document and the development agreement should include the current standard terms clarifying the State's options relating to ownership of improvements.
- **Removal Bond.** Staff recommends that the Board reserve the right to impose a removal bond or other form of security during the term of the lease extension that is sufficient to ensure the removal of all improvements from the lease premises at lease expiration or earlier termination. The Board has added this requirement as part of its most recent approvals of lease extensions pursuant to Act 149.

At this time, staff is recommending that, in addition to the provisions referenced above, the Board also require that the most current updated standard lease terms and conditions be included in the 25-year extension document that the Board, at its discretion, may approve under Act 149 these updated lease terms and other current standard lease terms and conditions be limited to the 25-year extension period that the Board, at its discretion, may approve under Act 149. Incorporating these substantive terms for the extension period is consistent with the legislative intent of Chapter 171, HRS, which allows the State to be paid its fair share of ancillary income arising from the tenant's leasehold interest.

Staff is also recommending the Board allow a period of 24 months for Lessee to complete the improvements required under the development agreement. Staff is recommending such time for Lessee to complete the improvements required under the development agreement in order to provide Lessee the opportunity to address any labor or supply chain issues that may arise over the construction period without defaulting on the development agreement. Additionally, the 24-month period is consistent with the time period granted to other Lessee seeking extensions to complete their improvements.

Upon the Board's approval of the terms and conditions of the development agreement as set forth above, staff is recommending that the Chairperson be authorized to approve and execute the development agreement once it is finalized and thereafter to execute the lease extension document.

There are no outstanding rental reopening issues. The Lessee is current with rent, insurance and real property taxes. No agency comments were solicited on the request because it involves a lease extension and not a new disposition.

RECOMMENDATION:

That the Board, subject to the Lessee fulfilling the Applicant Requirements listed above:

1. Determine whether the proposed revocable permit is consistent with the public trust. If the Board determines that this action is consistent with the public trust, then the Board is recommended to approve the following:
2. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, the lease extension and the improvements to the lease premises are expected to have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment as a *de minimis* action.
3. Determine that: 1) the development proposed is of sufficient worth and value to justify the extension of the lease; 2) the estimated time to complete the improvements is approximately 24 months from the date the development agreement is signed; and 3) the minimum revised annual rent for the extension based on the fair market value of the lands to be developed.
4. Authorize the Chairperson to approve and execute a development agreement with Kawika Ohana, LLC, lessee, for a 25-year extension of General Lease No. S-4333, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-037:056 pursuant to Act 149, Session Laws of Hawaii

2018, under the terms and conditions cited above, which by this reference are incorporated herein, and further subject to the following terms and conditions:

- A. Incorporation of the current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands;
  - 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.
4. Approve a 25-year extension of lease term of General Lease No. S-4333, Kawika Ohana, LLC, covering the State-owned parcel identified by Tax Map Key: (3) 2-2-037:056, pursuant to Act 149, Session Laws of Hawaii 2018, under the terms and conditions cited above, which by this reference are incorporated herein, and further subject to the following terms and conditions:
- A. Incorporation of the current standard terms and conditions, regarding, and including but not limited to lease assignment, sublease rent participation, ownership of improvements and removal bond provisions used by the Department of the Attorney General with respect to leasing of public lands;
  - B. Expenditure of at least \$163,000.00, including costs associated with the design and installation of a septic system approved by the Department of Health, in substantial improvements to the property as cited above;
  - 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,

*Candace Martin*

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Candace Martin  
Hawaii District Land Agent

APPROVED FOR SUBMITTAL:



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Ryan K.P. Kanakaole, Chairperson

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## Substantial Improvements Estimates



**JT SMITH CONSTRUCTION, LLC**  
 JUSTIN T.H. SMITH, DC #30678

788 HINANO STREET  
 PHONE (808) 981-4407  
 EMAIL: [jtsmith@jtsmith.com](mailto:jtsmith@jtsmith.com)

HILO, HAWAII 96720  
 FAX (808) 981-4407

[www.jtsmithconstruction.com](http://www.jtsmithconstruction.com)

### PROPOSAL

<b>JOB DESCRIPTION:</b> Labor and materials for removal and replacement of gutter system	<b>JOB NAME:</b> Kawika Ohana
<b>ADDRESS:</b> 800 Leilani Street, Hilo, HI 96720	<b>CONTACT:</b> Jessie Smith Email: <a href="mailto:jtsmithjessie@hotmail.com">jtsmithjessie@hotmail.com</a> Cell: 808 938 7827
<b>DATE:</b> June 29, 2025	<b>PROPOSAL:</b> 020986
We hereby submit the following specifications and estimates for: labor and materials for removal and replacement of gutter system	

### DESCRIPTION OF WORK TO BE PERFORMED

<p><b>Labor &amp; Materials to Include:</b></p> <ul style="list-style-type: none"> <li>- Remove/demo as needed</li> <li>- Remove/replace fascia (rafters as needed)</li> <li>- Install new 8" seamless gutters and down spouts</li> <li>- Painting as needed</li> <li>- Waterproofing as needed</li> </ul>
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**PROPOSAL INCLUDES:** Removal of all construction lumber/trash from project site

Total Cost: \$58,000.00 (tax included)



**JT SMITH CONSTRUCTION, LLC**

JUSTIN T.H. SMITH, GC #30678

780 IIMAHO STREET HĀLO, HAWAII 96720  
PHONE (808) 961-0407 FAX (808) 961-0407  
EMAIL: alvin@jtsmith.com www.jtsmith.com 808-322-0999

**PROPOSAL**

<b>JOB DESCRIPTION:</b> Labor and materials for septic system and (2) ADA bathrooms	<b>JOB NAME:</b> Kawika Ohana
<b>ADDRESS:</b> 800 Leilani Street, Hālo, HI 96720	<b>CONTACT:</b> Jessie Smith Email: smithjessie@hotmail.com Cell: 808-938-7827
<b>DATE:</b> June 29, 2025	<b>PROPOSAL:</b> 070985
We hereby submit the following specifications and estimates for: Labor and materials for septic system and (2) ADA bathrooms	

**DESCRIPTION OF WORK TO BE PERFORMED**

**Labor & Materials to Include:**

- Engineering plans and septic design project coordination
- Septic system per plant, excavation, and hauling
- Two (2) new 8'x9' ADA compliant bathrooms

**PROPOSAL INCLUDES:** Removal of all construction lumber/trash from project site

**Total Cost: \$105,000.00 (tax included)**