

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

February 12, 2016

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

PSF No.: 14HD-187

Hawai'i

Consent to Assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc. to Savio HBH Development Company LLC with the Issuance of a Month-to-Month Revocable Permit upon the Expiration of Leases, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033, 034, 035 and 045.

APPLICANT AND REQUEST:

Hilo Bay Hotel, Inc., a Hawaii For-Profit Corporation.
Savio HBH Development Company LLC, a Hawaii Limited Liability Company.

LEGAL REFERENCE:

Sections 171-13 and -36, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033, 034, 035 & 045, as shown on the attached map labeled Exhibit A.

AREA:

Parcel 033 = 25,526 square feet, more or less;
Parcel 034 = 23,130 square feet, more or less;
Parcel 035 = 21,562 square feet, more or less;
Parcel 045 = 9,365 square feet, more or less;
Total area = 79,583 square feet or 1.83 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Hotel and Resort

TRUST LAND STATUS:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the issuance of a revocable permit upon expiration of the lease is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. Refer to attached Exhibit B.

DCCA VERIFICATION:

Assignor: **Hilo Bay Hotel, Inc.**

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>__</u>	NO <u>**</u>

**DCCA reports their annual filing is pending.

Assignee: **Savio HBH Development Company LLC**

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

CURRENT USE STATUS:

Each parcel is encumbered by a general lease to Hilo Bay Hotel, Inc. for resort-hotel purposes. All four leases expire on March 14, 2016.

LEASE CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

TERM OF LEASES:

For General Lease Nos. 3265, 3266 & 3267, the original term was 21 years, commencing

in June and August of 1949. All three of the leases were extended to March 14, 2015.

General Lease No. S-4252 commenced on August 14, 1969 with an expiration date of March 14, 2015.

The Board authorized a one-year holdover of all four leases and the issuance of a month-to-month revocable permit upon expiration.

LEASE ANNUAL RENTAL:

General Lease No. 3265	\$ 11,460.00
General Lease No. 3266	10,380.00
General Lease No. 3267	9,660.00
General Lease No. S-4252	<u>4,300.00</u>
Total Annual Lease Rent	\$ 35,800.00

RENTAL REOPENINGS:

Reopenings established by the agreement for extension of General Lease Nos. 3265, 3266 & 3267, were at the end of the 20th and 40th years of the extension.

General Lease No. S-4252 provided for rental reopenings in January 1985 and 2005 to run concurrently with the three other leases.

The last rental reopenings occurred in January and April of 2005. The four leased properties are currently the subject of an appraisal assignment that will determine market rent value for the properties.

CONSIDERATION:

\$150,000.00

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016. All four of the leased properties will be consolidated under one permit.

REVOCABLE PERMIT CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas. Subletting of portions of the property for resort-hotel related purposes is to be allowed.

REVOCABLE PERMIT RENT:

Initially, \$2,984.00 per month, which represents the current combined annual land lease rent amount divided by 12. After one year, the rent payable under the revocable permit may be revisited and adjusted by the Board. The performance bond will be twice the monthly rental under the permit.

BACKGROUND:

General Lease Nos. 3265 & 3266 (GL3265 & GL3266) were initially sold at public auction on June 15, 1948 to Bernard K. Chock for residential purposes. The initial terms were for twenty-one (21) years; commencing in 1949 and terminating in 1970.

General Lease No. 3267 (GL3267) was sold at public auction on June 15, 1948 to Frank M. Carr and Alice Carr for residential purposes. The initial term was for twenty-one (21) years; commencing in 1949 and terminating in 1970.

In 1962, the lessees qualified as disaster victims under Section 87 of Act 32, Session Laws of Hawaii 1962, by the Board of Land and Natural Resources and the leases were subsequently extended for a period of fifty-three (53) years, terminating on March 14, 2015. The extension agreement for GL3267 included an assignment of lease from Frank M. Carr and Alice Carr, as Assignors, to Mark Norman Olds and Norma B. Olds, as Assignees.

At its meeting of January 8, 1965, the Board consented to the assignment of GL3265 & GL3266 from Rose Haena Chock, widow of Bernard K. Chock (by Probate No. 2246 in Third Circuit Court), as Assignor, to William J. Kimi, Jr., as Assignee.

At its meeting of April 23, 1965, the Board consented to the assignment of GL3267 from Mark Norman Olds and Norma B. Olds, as Assignors, to William J. Kimi, Jr., as Assignee.

Under the terms of the extension agreements, when a use other than the original intended residential use is contemplated, an immediate renegotiation of the rent for the ensuing 20-year period is required. Since Mr. Kimi intended to construct a hotel on the parcels, an appraisal was conducted and the rent was established at \$8,949.00 per annum.

The hotel was operated as a sole proprietorship until October 1967 when Mr. Kimi incorporated the business as Hilo Bay Hotel, Inc. As a result of this action, the Board, at its meeting of June 27, 1969 (supplemental agenda), consented to the assignment of lease from William J. Kimi, Jr., as Assignor, to Hilo Bay Hotel, Inc., as Assignee.

On August 14, 1969, General Lease No. S-4252 was sold at public auction to Hilo Bay Hotel, Inc. for parking and landscaping purposes. The lease was devised to run concurrently with the other three leases; all sharing the expiration date of March 14,

2015.

At its meeting of February 27, 2015, item D-3, the Board authorized a one-year holdover of the 4 leases to be immediately followed by the issuance of a month-to-month revocable permit.

REQUEST:

For the past forty-five years the lessee, Hilo Bay Hotel, Inc. (Uncle Billy's), has operated a hotel business, known locally as "Uncle Billy's Hilo Bay Hotel", on the properties. There are five buildings connected by covered hallways. Three of the buildings are four stories in height and house the 145 available hotel rooms. These three buildings are connected by an open-air lobby building with an abutting restaurant building. The layout includes a small swimming pool located between two of the structures at the ocean end of the properties, retail shop space and a large meeting/banquet room.

An engineering report completed in June 2014 determined the remaining useful life of the buildings to be 5-10 years at the current usage. The report noted termite damage, concrete spalling, an outdated electrical system and fire escape stairways in need of maintenance and repair; all of which indicates the buildings are approaching their maximum useful life.

On January 4, 2016, Uncle Billy's announced it would be closing its doors on January 31, 2016, which would allow time to shut down operations, liquidate assets and vacate the premises by the end of the lease on March 14, 2016.

Savio HBH Development Company LLC (Savio) approached Uncle Billy's with a proposal to step into the lease effective February 1, 2016, assume all the assets, keep the hotel operating, and retain all the current employees. Savio will enter into the revocable permit to continue operations into the future. The agreement forged between Uncle Billy's and Savio is the subject of this submittal.

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until a redevelopment plan can be implemented for the Banyan Drive area.

The leases stipulate that at the end of the lease term, all improvements shall become the property of the Lessor. As a result, the improvements become property of the State on March 15, 2016, and the Board has authority to charge rent based on land and improvements from that date forward. However, staff is recommending that rent payable under the revocable permit for the first year remain at the current annual rent, which is based on land value only ($\$35,800/12 = 2,984$). After the first year, the Board may review and adjust the rent.

In general, subleasing is not allowed under the terms of a month-to-month revocable

permit. However, the nature of hotel-resort operations requires accessory/incidental subletting of portions of the property for transient accommodations, souvenir, sundry, food, and entertainment uses. Therefore, staff is recommending that subletting of portions of the property for resort-hotel related purposes are to be allowed.

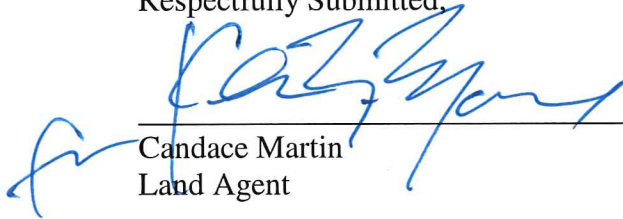
The proposed use has continued since the late 1960's and will continue until the property is vacated or redeveloped. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that 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 dispositions as provided by Chapter 343, HRS, and Chapter 11-200, 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. Consent to Assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc. to Savio HBH Development Company LLC, 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 consent to assignment 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.
3. Authorize the issuance of a revocable permit effective March 15, 2016 to Savio HBH Development Company LLC covering the subject area of the four previous leases for resort and hotel 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, except that;
 - i. Savio HBH Development Company LLC may enter into subletting or subleasing agreements on portions of the property for resort-hotel related purposes, such as transient accommodations, souvenir, sundry, food, and entertainment uses. No subletting or subleasing agreement term may exceed a month-to-month tenancy.

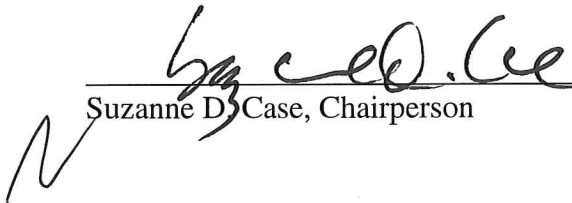
- b. The initial monthly rental amount for the first year will be \$2,984.00. After the first year, the Board may review and adjust the rent based on any other factors available to it at that time. The performance bond shall be equal to twice the monthly rent;
- c. Review and approval by the Department 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,

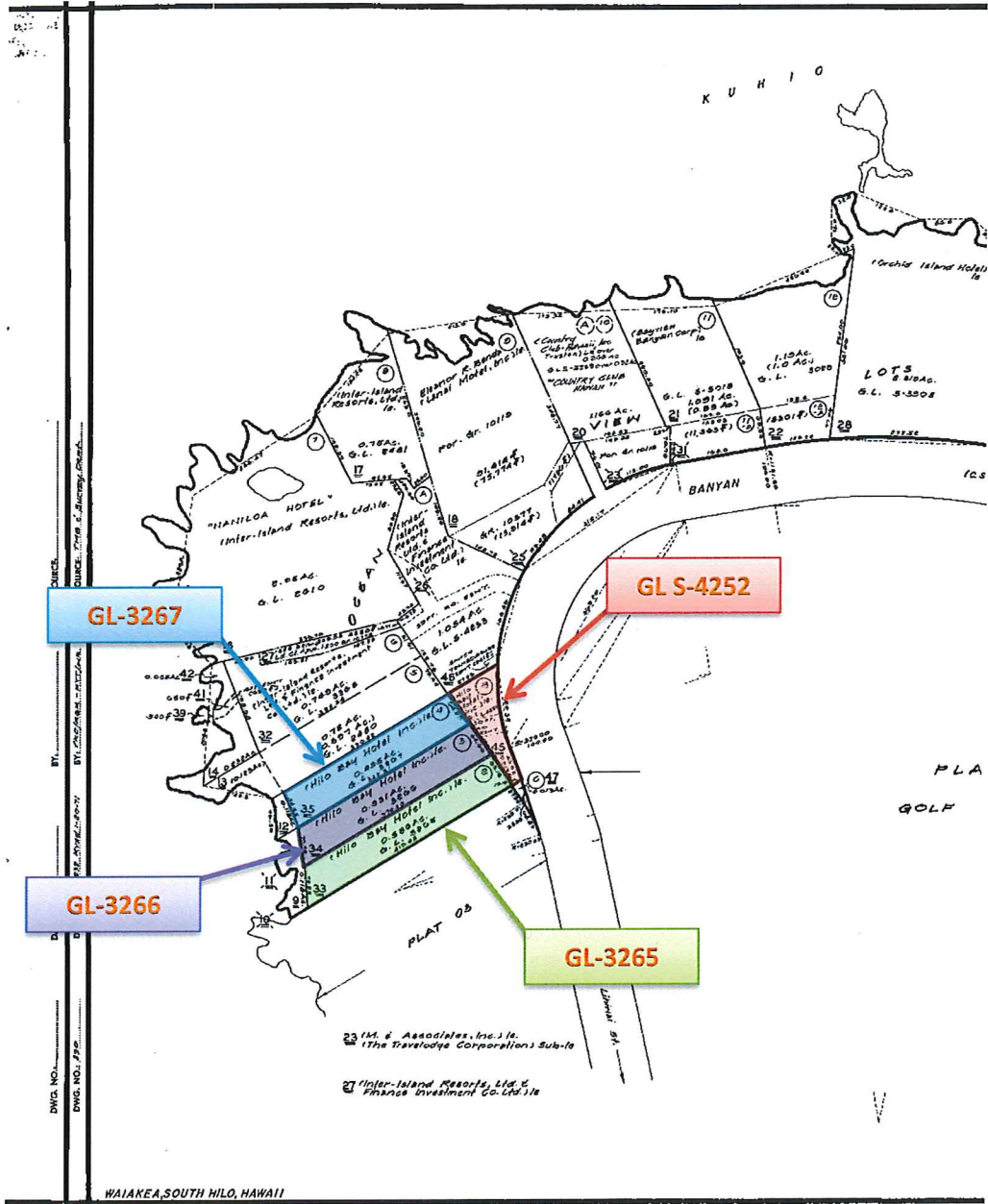


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



DAVID Y. IGE
GOVERNOR OF HAWAII



EXHIBIT B

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 27, 2016

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of a Revocable Permit to Savio HBH Development Company LLC, for Hotel/Resort Purposes

Project / Reference No.: PSF 14HD-187/ GL-3265, GL-3266, GL-3267 & GL S-4252

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033, 034, 035 & 045.

Project Description: On February 27, 2015, the Board of Land and Natural Resources approved a one-year holdover of four leases held by Hilo Bay Hotel, Inc. covering the above referenced properties, to be immediately followed by a month-to-month revocable permit. Hilo Bay Hotel, Inc. has assigned its interest in the leases to Savio HBH Development Company LLC.

Savio HBH Development Company LLC is requesting the issuance of a month-to-month revocable permit upon the expiration of the leases on March 14, 2016. The revocable permit will allow for continued use of the property for hotel operations until such time as a redevelopment plan for the Banyan Drive area is implemented.

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until a Banyan Drive redevelopment plan can be implemented or at least as long as practical.

The proposed use has continued since the late 1960's and will continue until the property is vacated or redeveloped. 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.

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


Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the issuance of a revocable permit upon expiration of the leases 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 beyond that previously existing", and Item No. 51, which further states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

Consulted Parties Not applicable

Recommendation: That the Board find the issuance of a revocable permit for the continued hotel/resort operations use of the property will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



Suzanne D. Case, Chairperson



Date 1/28/16