

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

December 13, 2013

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

PSF No.: 13KD-164

Kauai

After-the-Fact Issuance of Right-of-Entry Permit and Issuance of Revocable Permit to G&K Kalaheo Shell Repair Shop, LLC for Automotive Repair Shop Purposes, Portion of Hanapepe Town Lots, Waimea, Kauai. Identified as TMK (4) 1-9-005:007

APPLICANT:

G&K Kalaheo Shell Repair Shop, LLC.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Hanapepe Town Lots, Waimea, Kauai. Identified as TMK (4) 1-9-005:007, as shown on the attached map labeled Exhibit A.

AREA:

6,873 sf of land together with a 3,500 sf steel and masonry building, more or less.

ZONING:

State Land Use District: Urban
County of Kauai: Commercial

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:

Unencumbered

CHARACTER OF USE:

Automotive Repair Shop

TERM OF RIGHT-OF-ENTRY:

Three Months

CONSIDERATION:

Right-of-Entry Permit \$2,842.50 with a \$2,842.50 deposit.

Revocable Permit \$947.50 per month. See remarks.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See exhibit "B"

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant G&K Kalaheo Shell Repair Shop, LLC shall conduct a Phase I Environmental Site Assessment of the subject property prior to the issuance of a Revocable Permit to Applicant.

REMARKS:

At its meeting of July 26, 2013, under agenda item D-2, the Board of Land and

Natural Resources (Board) approved, as amended, staff's recommendation to cancel the lease of P.I.K.A. Inc. (P.I.K.A.). In a letter dated September 13, 2013 P.I.K.A. was notified that it had not complied with the Board's requests and that the lease was forfeited. P.I.K.A. was given 60 days (until November 13, 2013) to vacate the premises and remove its personal property.

G&K Kalaheo Shell Repair Shop, LLC (G&K) was an unpermitted subtenant of P.I.K.A. Mr. Glen Kato is the manager and main contact person for G&K. Mr. Kato has stated that he was not aware that there was a requirement for P.I.K.A. to apply for Board approval of G&K's sublease and was also not aware that P.I.K.A. was not in compliance with the lease rent and bond provisions. G&K runs an auto repair shop and has auto lifts and other business fixtures installed on the property. G&K has requested a right-of-entry permit and revocable permit so that it may continue its business until the property is auctioned for a general lease.

Issuance of an after-the-fact Right-of-Entry:

In accordance with the Board action of June 14, 2013 item D-11, recommendation A, 5: The Chairperson is authorized to issue right-of-entry permits at his discretion without prior Board approval in cases where the request for a right-of-entry (ROE) is routine and the Board has approved similar events at the same location within the twelve months preceding the date of the event, providing that Land Division staff shall request after-the-fact approval of the right-of-entry permit at the next available Board meeting.

The G&K is operating an auto repair shop in a location that has been under lease for a similar use since May 26, 1966 under GL S-3977. Staff believes that this fulfills the requirements of the June 14, 2013 Board action. A three-month ROE will allow the business to stay in operation until the Board decides if it will issue a revocable permit to G&K. Staff recommends that the Board approve the issuance of an after-the-fact right-of-entry permit for the continued operation of an automotive repair shop.

Issuance of Revocable Permit

The proposed use of the property by G&K would continue the County's permitted use 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.

According to the Applicant, Mr. Kato has been working as an automotive mechanic for over 20 years and has been the business manager and mechanic for G&K for 9 years. G&K employs a certified mechanic and has a State license as a vehicle safety inspector.

Comments from other agencies were not solicited because the proposed use is a

continuing use of the subject property.

Staff's recommendation for rent is based on the February 22, 2006 appraisal and subsequent arbitration of value for the rental reopening of GL S-3977 for the rental period of May 26, 2006 to May 25, 2016. In a letter dated January 26, 2007 the arbitrators' recommended value was agreed to be eleven thousand three hundred and seventy dollars (\$11,370) per annum or \$947.50 per month. The proposed use continues the use of the property that was being conducted at the time of the appraisal. Staff does not feel that there is a higher or better use for the property at this time.

At this time staff believes that there may be additional parties interested in leasing the property from the State. Staff intends to return to the Board in the near future for approval to conduct a public auction of the property so that all interested and qualified parties may have an opportunity to bid. Month-to-month tenancy is appropriate at this time to allow G&K to continue its business operations uninterrupted until such time that the property can be auctioned.

The Applicant is requesting continued use of a property under circumstances where the State has not had the opportunity to investigate the environmental condition of the premise since the termination of the last lessee. Staff is therefore recommending that the Applicant be required to conduct a Phase 1 Environmental Site Assessment of the property prior to the issuance of the revocable permit so that all parties are aware of the current status of the property.

Staff's recommendations for the Right-of-Entry and for the Revocable Permit are based on the continued use of the property by a subtenant who was not responsible for the default of the State's prior tenant. The continued use of the property allows the State to continue to generate revenue, alleviates the cost of dealing with potential cleanup/repairs and allows the property to be secured and maintained pending auction.

The proposed use has continued since 1966 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.

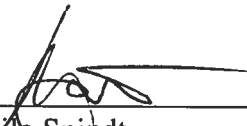
RECOMMENDATION: That the Board

- 1) Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, 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) Authorize the after-the-fact issuance of a right-of-entry permit to G&K Kalaheo Shell

Repair Shop, 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:

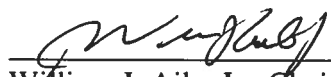
- a) The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - b) Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 3) Subject to the Applicant fulfilling the Applicant Requirement above, authorize the issuance of a revocable permit to G&K Kalaheo Shell Repair Shop, LLC covering the subject area for automotive repair shop 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;
 - 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,



Milo Spindt
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Day No. 2315
Source: DEPARTMENT OF LAND AND NATURAL RESOURCES
By: H.M. & G.V.C. 3rd 1984

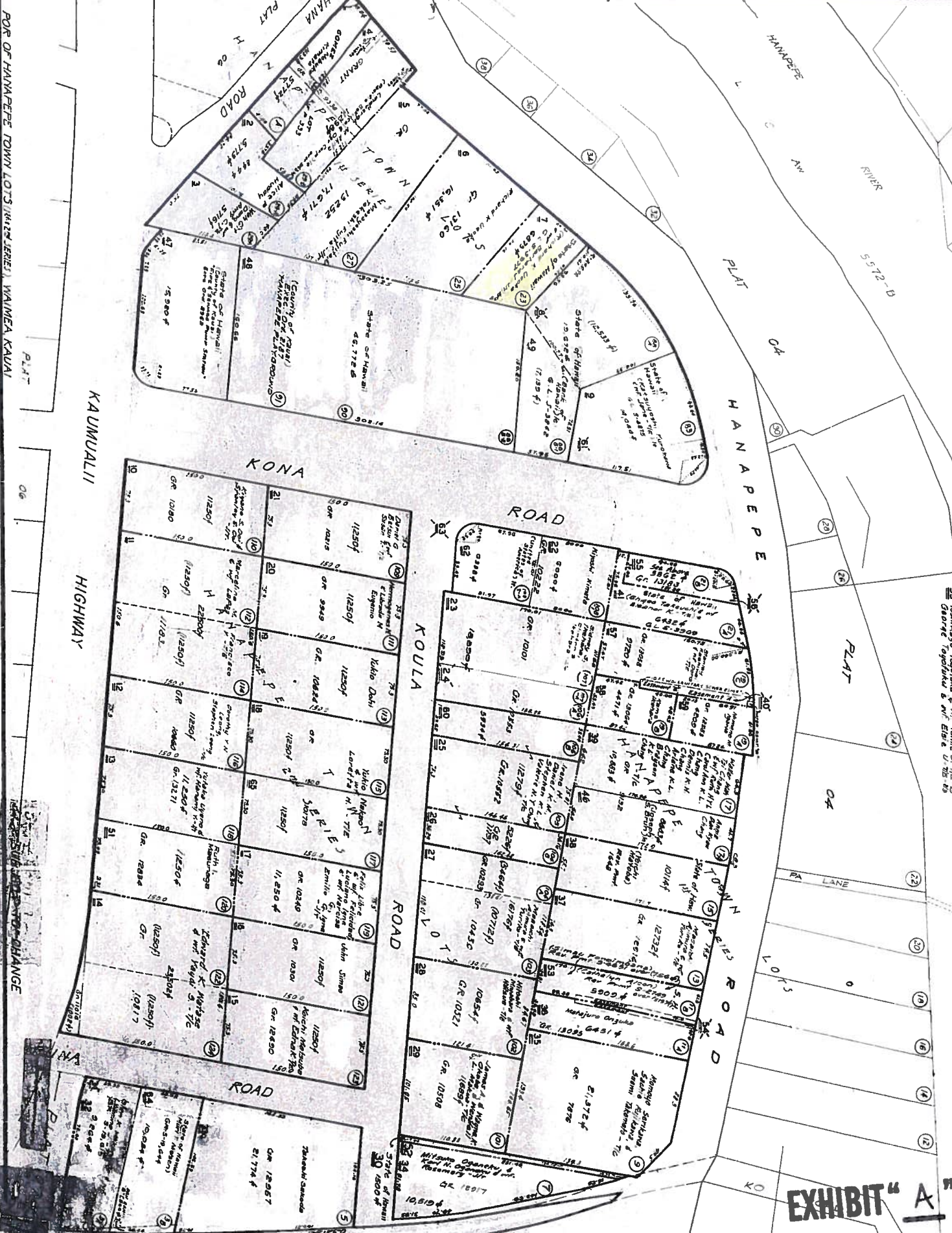


EXHIBIT "A"

25. To be used together with the Town & Sub-division Ordinance & the State of Hawaii.

FOR OF HANAPEPE TOWN LOTS (PARTS SERIES) WAIMEA KAUAI

CHANGE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 13, 2013

EXEMPTION NOTIFICATION

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

Project Title: After-the-Fact Issuance of Right-of-Entry Permit and Issuance of Revocable Permit to G&K Kalaheo Shell Repair Shop, LLC for Automotive Repair Shop Purposes, Portion of Hanapepe Town Lots, Waimea, Kauai. Identified as TMK (4) 1-9-005:007

Project / Reference No.: PSF No. 13KD-164

Project Location: Portion of Hanapepe Town Lots, Waimea, Kauai. Identified as TMK (4) 1-9-005:007

Project Description: After-the-Fact Issuance of Right-of-Entry Permit and Issuance of Revocable Permit to G&K Kalaheo Shell Repair Shop, LLC for Automotive Repair Shop Purposes

Consulted Parties: NA

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

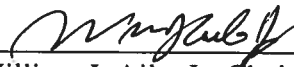
Exemption Item Description: The proposed exemption is appropriate because the Applicant

Exhibit B

is requesting an after-the-fact right-of-entry permit and a revocable permit to continue the operation of an existing automotive repair shop. According to the Applicant, the proposed project maintains the existing topography and is a minor alteration of the condition of the land and vegetation and should result in no material change or significant impact to the environment. If further actions are taken that result in a material change, Applicant will be required to be in compliance with Chapter 343

Recommendation:

It is recommended that the Board find that the issuance of an access easement to Applicant will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr. Chairperson




Date