

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

FORD N. FUCHIGAMI
INTERIM DIRECTOR

Deputy Directors
RANDY GRUNE
AUDREY HIDANO
ROSS M. HIGASHI
JADINE URASAKI

IN REPLY REFER TO:

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

AMENDMENT TO ACTION TAKEN UNDER ITEM M-1 OF THE
LAND BOARD AGENDA OF APRIL 11, 2014, REGARDING CONCESSION
AGREEMENT NO. DOT-A-07-0001 IN-BOND (DUTY FREE) CONCESSION
TO REVISE THE CONCESSION FEE, PROVIDE FOR FURTHER EXTENSION
OF TERM IN THE EVENT THAT IMPROVEMENTS CONSTRUCTED ON
BEHALF OF THE DOT BY CONCESSIONAIRE EXCEED COST ESTIMATES,
AND ALLOW FOR CONVERSION OF DUTY FREE MERCHANDISE
TO DUTY PAID MERCHANDISE UNDER CERTAIN CIRCUMSTANCES
DFS GROUP, L.P., HONOLULU INTERNATIONAL AIRPORT
TAX MAP KEY: (1) 1-1-03:PORTION OF 1

OAHU

At the April 11, 2014 meeting, the Land Board approved Item M-1 (attached) which allowed the Department of Transportation (DOT) to amend the existing In-Bond (Duty Free) Concession Agreement No. DOT-A-07-0001, at Honolulu International Airport (HNL) under the provisions of Act 46, Session Laws of Hawaii 2012. Subsequent discussions between the DOT and the Concessionaire, DFS Group, L.P., resulted in agreement on terms that are somewhat different from those provided in the Item M-1 submittal. The DOT requests the Board amend its action of April 11, 2014, to accommodate the new terms under the authority of Act 126, Session Laws of Hawaii 2014, which extended Act 46 through July 1, 2015. The following contains a brief description and summary of the major terms and conditions that have been changed.

PURPOSE:

To amend the existing In-Bond (Duty Free) Concession Agreement at Honolulu International Airport to extend the term of the concession, require the concessionaire to make improvements, allow for conversion of In-Bond (Duty Free) merchandise sold at off-airport locations to be converted to retail merchandise in certain circumstances, provide for additional extension of term in the event of cost overruns in construction of improvements that would normally be the responsibility of the State, and establish the concession fee for the extension period.

ITEM M-5

BLNR – AMENDMENT TO ACTION TAKEN UNDER ITEM M-1 OF THE
LAND BOARD AGENDA OF APRIL 11, 2014 RE CONCESSION
AGREEMENT DOT-A-07-0001

DFS GROUP, L.P.

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IMPROVEMENTS:

Applicant will construct, install and pay for approximately \$20 million in new concession improvements in the Central Waiting Lobby Building, including approximately \$7 million that would normally be the responsibility of the DOT, and has agreed to make additional concession improvements as part of the DOT's projects to reconfigure and revitalize the concessions areas within the footprint of the Diamond Head and Ewa concourses at Honolulu International Airport.

The applicant also seeks to amend the Concession Agreement to provide, in the event construction costs for the improvements that would normally be constructed by the DOT exceed its projections, for an extension of term on the following formula: one additional year for each 10% (ten percent) the actual construction costs exceeds the projected cost of the improvements.

CONCESSION FEE:

At its April 11, 2014 meeting, the Board approved a concession fee with a Minimum Annual Guaranteed (MAG) as follows, Years 1 and 2: \$45 million, Years 3-5, \$50 million. For the balance of the term, the MAG would be adjusted each year to 85% of what was paid and payable in the prior concession year.

The DOT and the Concessionaire, in light of more recent concession activity, ask that the MAG be changed to the following: Years 1 and 2: \$40 million, Year 3: \$47.5 million. In subsequent years, the MAG will be: (1) Year 4: 85% of what was paid and payable in Year 3, (2) Year 5: MAG will be the same as Year 4, (3) Year 6: the MAG will be 85% of what was paid and payable in Year 5, and (4) for the remaining four years (Year 7 thru 10), the MAG would remain the same as in Year 6.

CONVERSION OF IN-BOND (DUTY FREE MERCHANDISE) TO RETAIL:

In certain limited circumstances, the Concessionaire has requested the ability to convert In-Bond (Duty Free) merchandise to Retail (Duty Paid) merchandise at its off-airport locations (currently limited to its Waikiki store). The Concessionaire would limit such changes to sales to customers who have tickets showing they are leaving the United States, but only after traveling to another destination inside the United States. The concession fee for such sales will be one and one-half percent (1.5%).

BLNR – AMENDMENT TO ACTION TAKEN UNDER ITEM M-1 OF THE
LAND BOARD AGENDA OF APRIL 11, 2014 RE CONCESSION
AGREEMENT DOT-A-07-0001

DFS GROUP, L.P.

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REMARKS:

Under the Act 46, Session Laws of Hawaii 2012, and as extended by Act 126, Session Laws of Hawaii 2014, "...the department of transportation is allowed to upon mutual agreement with a concession and in exchange for revenue-enhancing improvements that are made or paid for by the concession deemed acceptable by the department of transportation, may extend, modify, alter, or amend the terms of concession contracts, leases and permits."

The DOT has determined that 1) not only will the proposed concession improvements within the airport terminal allow the applicant and the DOT to better serve the traveling public, 2) the proposed minimum annual guaranteed concession fee is reasonable in light of current travel activity, and 3) the ability to convert merchandise from In-Bond (Duty Free) to Retail (Duty Paid) will allow the Concessionaire to capture sales that it might otherwise not be able to make.


RECOMMENDATION:

That the Board authorizes the Department of Transportation to amend the existing Concession Agreement No. DOT-A-07-0001 subject to: 1) terms and conditions herein outlined, which are by reference incorporated herein; 2) such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interest of the State; and 3) review and approval by the Department of the Attorney General.

Respectfully submitted,


FORD N. FUCHIGAMI
Interim Director of Transportation

APPROVED FOR SUBMITTAL:


WILLIAM J. AILA, JR.
Chairperson and Member

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

April 11, 2014

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

AMENDMENT NO. 5 TO CONCESSION AGREEMENT NO. DOT-A-07-0001
IN-BOND (DUTY FREE) CONCESSION
DFS GROUP, L.P.
HONOLULU INTERNATIONAL AIRPORT
TAX MAP KEY: (1) 1-1-03: PORTION OF 1

OAHU

The Department of Transportation (DOT) proposes to amend the existing In-Bond (Duty Free) Concession Agreement No. DOT-A-07-0001 at Honolulu International Airport under the provisions of Act 46, Session Laws of Hawaii 2012. The following contains a brief description and summary of some of the major terms and conditions that the DOT anticipates incorporating into the amendment.

PURPOSE:

To amend the existing In-Bond (Duty Free) Concession Agreement at Honolulu International Airport to extend the term of the concession, require the concessionaire to make improvements and establish the concession fee for the extension period.

APPLICANT:

DFS GROUP, L.P., whose post office address is P.O. Box 29500, Honolulu, Hawaii 96820.

LEGAL REFERENCE:

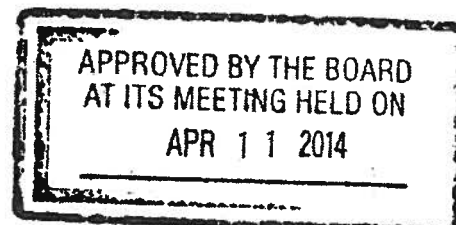
Chapter 102, Hawaii Revised Statutes, as amended.

LOCATION AND TAX MAP KEY:

Honolulu International Airport, Island of Oahu, 1st Division, 1-1-03: Portion of 1.

ZONING:

State Land Use District: Urban
City and County of Honolulu: I-2 (Industrial)



ITEM M-1

LAND TITLE STATUS:

Section 5 (a) and 5 (b) lands of the Hawaii Admission Act: Non-Ceded
DHHL 30% entitlement lands: Yes ___ No X

CONCESSION TERM:

The In-Bond (Duty Free) Concession Agreement No. DOT-A-07-0001 began on June 1, 2007 and continues through May 31, 2017. The proposed amendment would extend the concession term through May 31, 2027.

IMPROVEMENTS:

Applicant will construct, install and pay for approximately \$6 million in new concession improvements in the Central Waiting Lobby Building, and has agreed to make additional concession improvements as part of the DOT's projects to reconfigure and revitalize the concession areas within the footprint of the Diamond Head and Ewa concourses at Honolulu International Airport.

CONCESSION FEE:

The existing concession fee is the greater of minimum annual guaranteed fee of \$32.3 million or a percentage of gross receipts. The existing percentage of gross receipts has a tiered schedule in which the percentage fee increases when gross receipts exceed certain thresholds.

This schedule has an unintended consequence of making it less attractive to the concessionaire to make sales above the level that activates the tiered schedule, as the return to the concessionaire on each sale declines. It also makes planning for successive years difficult as the concessionaire is unable to reasonably predict its revenue for any given year.

The proposed amendment would simplify the concession fee calculation by changing the current base percentage schedule from the tiered concept to a fixed percentage of 18% of off-airport sales and 30% of on-airport sales. The current base percentage range is 18.5% of off-airport sales and 22.5% of on-airport sales.

Under the existing Concession Agreement the minimum annual guaranteed fee (MAG) is calculated every year as 85% of what was paid and payable in the prior concession year. As part of the extension, the Applicant has agreed to fix the MAG for the first five years of the 10 year extensions as follows, Years 1 and 2: \$45 million, Years 3-5: \$50 million. For years six thru 10 of the extension, the MAG would be adjusted each year to 85% of what was paid and payable in the prior concession year.

CHAPTER 343, HRS – ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 11-200-8(a), Environmental Impact Statement Rules of the Department of Health, State of Hawaii, this disposition is exempt from requirements regarding preparation of an environmental assessment, negative declaration, or environmental impact statement as required by Chapter 343, Hawaii Revised Statutes, as amended, relating to Environmental Impact Statements, because the proposed action falls within Exemption Class #1, Comprehensive Exemption List for the State of Hawaii, Department of Transportation dated November 14, 2000 as approved by the Environmental Quality Council. Exemption Class #1 covers 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.

REMARKS:

Under the Act 46, Session Laws of Hawaii 2012, "...the department of transportation is allowed to upon mutual agreement with a concession and in exchange for revenue-enhancing improvements that are made or paid for by the concession deemed acceptable by the department of transportation, may extend, modify, alter, or amend the terms of concession contracts, leases and permits."

The DOT has reviewed the request and determined that not only will the proposed concession improvements within the airport terminal allow the applicant to better serve the traveling public, the airports will benefit from the higher minimum annual guaranteed concession fee, as well as the increase in the percentage fee for on-airport sales.


RECOMMENDATION:

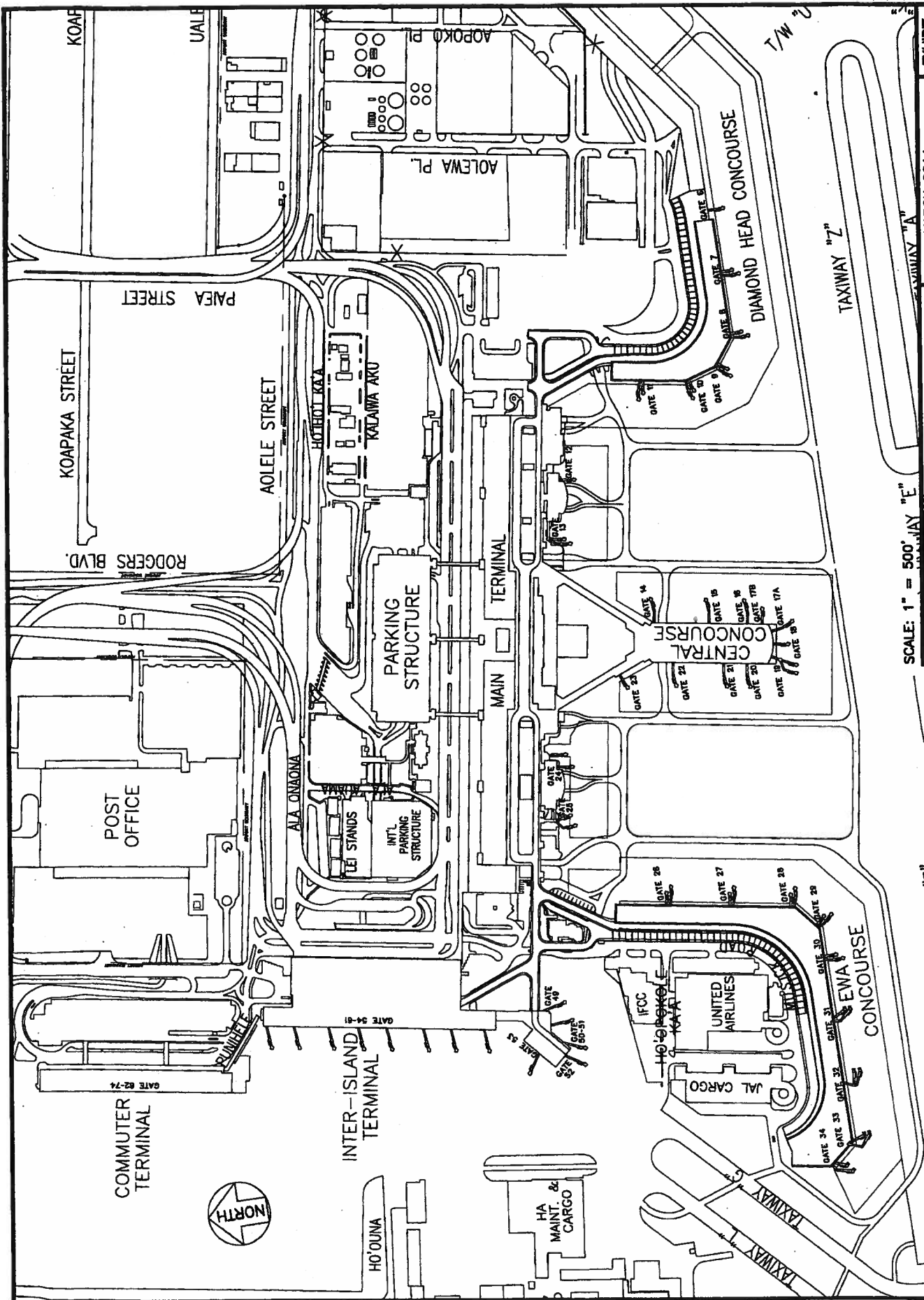
That the Board authorizes the Department of Transportation to amend the existing Concession Agreement No. DOT-A-07-0001 subject to: 1) terms and conditions herein outlined, which are by reference incorporated herein; 2) such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interest of the State; and 3) review and approval by the Department of the Attorney General.

Respectfully submitted,


GLENN M. OKIMOTO, Ph.D.
Director of Transportation

APPROVED FOR SUBMITTAL:


WILLIAM J. AILA, JR.
Chairperson and Member



SCALE: 1" = 500' MAY "E"
 HONOLULU INTERNATIONAL AIRPORT

EXHIBIT: **A**
 SHEET 1 OF 1

DATE: MARCH 2014
OVERSEAS TERMINAL



H:\AIRPORTS\HNL\CONCOURSE\A\A\TERMINALS.DWG

