

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

January 24, 2020

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

HAWAII

Denial of Petition for Contested Case Hearing filed by Oceanfront 121, Inc. on December 23, 2019, Regarding December 13, 2019 Agenda Item D-2, *Authorize the Issuance of a Request for Qualifications / Request for Proposals for Lease of Improved Public Lands; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.*

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 24, 2020

BACKGROUND

At its meeting on December 23, 2019 under agenda item D-2, the Board approved the issuance of a Request for Qualifications / Request for Proposals for the issuance of a new lease of the former Country Club Condominium site in Hilo, Hawaii. A copy of the prior Board action is attached as Exhibit 1.

The current revocable permit holder for the property, Oceanfront 121, Inc. (“Oceanfront 121” or “Petitioner”), submitted written testimony before the meeting and also testified orally at the meeting through its attorney, John Rickel. A copy of Oceanfront 121’s written testimony is attached as Exhibit 2. Oceanfront 121 wanted the Board of Land and Natural Resources (“Board”) to authorize a larger reimbursement of its expenses at the property in the event it is not selected as the lessee through the RFQ/RFP process. The Board agreed with the staff recommendation to limit the potential reimbursement to \$158,622.16 for necessary improvements to the property. Mr. Rickel orally requested a contested case during the meeting on behalf of Oceanfront 121. On December 23, 2019, the Department received a written petition for contested case from Oceanfront 121, filed through Mr. Rickel. A copy of the contested case petition is attached as Exhibit 3.

DISCUSSION

An administrative agency must hold a contested-case hearing when it is required by law, which means that the contested-case hearing is required by (1) statute, (2) administrative rule, or (3) constitutional due process. *Bush v. Hawaiian Homes Com’n*, 76 Hawai’i 128, 134, 870 P.2d 1272, 1278 (1994). When a contested-case hearing is required by statute or administrative rule, the analysis is simple. Whether a contested-case hearing is required by constitutional due process is usually a much more complicated analysis. In the present case, the petition does not identify any statute or administrative rule that requires that a contested-case hearing be held and Land Division is not aware of any such

requirement. Accordingly, only constitutional due process remains as a possible basis for the petition.

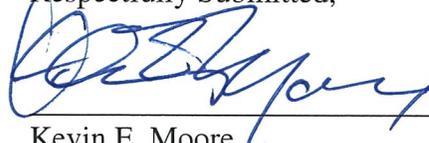
The petition identifies Oceanfront 121's interest as "financial obligations [of] \$835,908.67." Petitioner alleges that it does not have "time to recover [this] investment in the property and repay loans" and that the State is unjustly enriched. What is clear from these allegations and others in the petition is that the Board's action of December 13, 2019, under agenda Item D-2, did not take property from Petitioner or threaten to do so. Rather, Petitioner had already expended money on the repair and maintenance of the property and is now complaining of not being reimbursed for these expenses in the amount it wants. To the extent the Petitioner has a claim to the money it expended, the Board's action of December 13, 2019 did nothing to impair that claim or deprive Petitioner of it – Petitioner can still pursue its claim in court if it desires to do so. Under the allegations of the petition, there is no due process requirement for a contested case.

In summary, the action taken by the Board does not impair or impede any property interest of Petitioner. There are no statutes or rules granting Petitioner the right to a contested case under these circumstances, and Petitioner is not entitled to a contested case hearing as a matter of law under Section 13-1-29.1, Hawaii Administrative Rules ("HAR").¹

RECOMMENDATION:

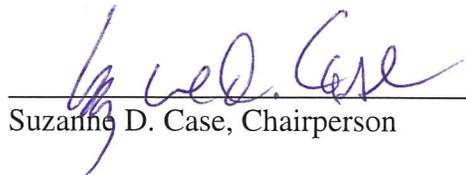
That the Board deny the petition for a contested case hearing filed by Oceanfront 121, Inc. on December 23, 2019 pursuant to Section 13-1-29.1, HAR.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

¹ HAR Section 13-1-29.1 provides as follows:

Determination of entitlement to a contested case hearing. The board without a hearing may deny a request or petition or both for a contested case when it is clear as a matter of law that the request concerns a subject that is not within the adjudicatory jurisdiction of the board or when it is clear as a matter of law that the petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding.

**BOARD ACTION OF DECEMBER 13,
2019, ITEM D-2**

EXHIBIT 1

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

December 13, 2019

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

PSF No.: 19HD-078

Hawaii

Authorize the Issuance of a Request for Qualifications / Request for Proposals for Lease of Improved Public Lands; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

REQUEST:

Authorize the issuance of a Request for Qualifications / Request for Proposals (RFQ/RFP) to select a potential lessee of improved public lands at Waiakea, South Hilo, Hawaii.

APPLICANT:

Department of Land and Natural Resources (Department or DLNR), Land Division.

LEGAL REFERENCE:

Sections 171-16, 18, 17, 19, 35, 36, 41, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:020, as shown on the attached maps labeled Exhibits A-1 and A-2.

AREA:

1.166 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Hotel and Resort (V-.75) / Open

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 13, 2019 (10)

The parcel is also located within the Special Management Area and tsunami inundation zone.

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:

Under Revocable Permit No. S-7914 to Oceanfront 121, Inc. for apartment and hotel purposes.

PROPERTY CHARACTERISTICS:

Utilities – Electricity, water and sewer

Elevation – Two to eleven feet above sea level

Legal access to property – Staff has verified that there is legal access to the property from Banyan Drive.

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

Encumbrances – Staff has verified that the following encumbrances exist on the property:
Revocable Permit No. S-7914 to Oceanfront 121, Inc. for apartment and hotel purposes.

STATUTORY AUTHORITY:

HRS §171-59(a) provides that a lease of public land may be disposed of through negotiation upon a finding by the Board of Land and Natural Resources (Board) that the public interest demands it and provides a process under which the Board may select the lessee.

The process requires that public notice of the disposition be given, that applications be solicited from prospective lessees, and that the Board evaluate the applications according to criteria established by the Board and determine which applicants meet the criteria. If only one applicant meets the criteria, the Board may dispose of the lease by negotiation. If two or more applicants meet the criteria, the Board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the Board. Relevant excerpts of HRS §171-59(a) are attached as Exhibit B.

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 approved by the Environmental Council and dated June 5, 2015, 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 Item 47 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." See Exhibit C attached.

BACKGROUND:

The subject property has been under lease and revocable permit for many years dating back to 1949. General Lease No. 3269 (GL 3269) dated June 1, 1949 was sold at public auction to Mr. A.M.M. Osorio for a term of 21 years. On December 18, 1953, the Board approved the assignment of lease from A.M.M. Osorio to Constantine Roumanis. As a result of damage caused by the tsunami on May 23, 1960, the lease qualified for an extension under §87 of Act 32, Session Laws of Hawaii 1962. At its meeting of April 4, 1962 under agenda item F-16, the Board approved the extension of lease term through March 14, 2015.

At its meeting of November 22, 1967 (supplemental), the Board approved the assignment of lease from Constantine Roumanis, assignor, to M. & Associates, Inc., assignee. The assignee submitted plans for the construction of a hotel on the property. This brought about a change in the use of the premises and resulted in the Board action of April 26, 1968, agenda item F-25, modifying the lease extension agreement by establishing a new annual rental rate and approving the gratis conveyance of a 10,890 square foot parcel of private property (Former Parcel 23) fronting the lease land from M. & Associates, Inc. to the State, subject to an estate of years up to and including March 14, 2015. This parcel is indicated as dropped parcel 23 on Exhibit A-2 attached. The deed recorded with the Bureau of Conveyances on July 2, 1968, states in part that it is the intent of the grantor "to continue to maintain complete control over the use and possession of the premises until March 14, 2015." Former Parcel 23 is now State land and part of Tax Map Key: (3) 2-1-005:020.

Then, at its meeting of April 24, 1970 under agenda item F-1-b, the Board consented to the sublease of GL 3269 from M. & Associates, Inc., sublessor, to Travelodge International, Inc., sublessee.

At its meeting of February 10, 1984 under agenda item F-1-f, the Board consented to the assignment of lease from M. & Associates, Inc., assignor, to Richard M. Jitchaku, assignee. Then at its meeting of February 13, 1987 under agenda item F-2, the Board consented to the assignment of lease from Richard M. Jitchaku, assignor, to Country Club-Hawaii, Inc. (Country Club), assignee. The submittal also included a provision for

the creation of a horizontal property regime (now known as a condominium property regime (CPR)) allowing the individual units on the property to be converted into leasehold condominium apartments and created the Association of Apartment Owners of Country Club Hawaii, Inc. (AOAO). The CPR expired when the lease expired.

At its meeting of February 27, 2015, under agenda Item D-8, the Board approved a one-year holdover of GL 3269 and subsequent issuance of a month-to-month permit to Country Club. Country Club intended to assign the lease to the AOAO during the holdover period, but the parties could not reach agreement on the terms of the assignment. At its meeting of June 26, 2015, under agenda Item D-4, the Board therefore rescinded its action of February 27, 2015, Item D-8, approved a three-and-one-half month holdover of the lease to Country Club, and a subsequent month-to-month revocable permit to the AOAO for apartment and hotel purposes.

At its meeting of December 14, 2018, under agenda Item D-3, the Board approved the cancellation of Revocable Permit No. S-7867 and the issuance of a new revocable permit to a replacement entity formed by the principals of the AOAO with the name Oceanfront 121, Inc. (Oceanfront 121). Revocable Permit No. S-7914 was thereafter issued to Oceanfront 121 effective April 1, 2019 for apartment and hotel purposes, and that disposition remains in effect at the present time. Inspection photographs of the property from November 5, 2018 are attached as Exhibit D.

REMARKS:

Redevelopment of the subject property has proven to be a challenge. The land is improved with a 152-room hotel constructed in 1969. A remaining useful life study completed in April 2014 indicated that the improvements at that time had a remaining useful life of 5-8 years. An architectural study completed in June 2016 by Erskine Architects, Inc. (Erskine Report) determined that hotel should be demolished. A copy of the Erskine Report recommendations as they relate to the subject property is attached as Exhibit E.

However, the Department has no money to demolish the existing hotel. The Department procured R.M. Towill Corporation (RM Towill) as a consultant to estimate the cost of demolition. RM Towill's report issued in February 2018 determined the demolition cost would be \$6,244,717. During the 2019 legislative session, the Department sought capital improvement project (CIP) funds to demolish the nearby shuttered Uncle Billy's Hilo Bay Hotel (Uncle Billy's), but the legislature declined to appropriate funds. Staff believes there is little prospect of securing a CIP appropriation from the legislature for the demolition of the Country Club anytime in the near future. Meanwhile, use of the subject property for apartment/hotel purposes continues in its aged condition.

The County of Hawaii established the Banyan Drive Hawaii Redevelopment Agency (BDHRA) in 2016 to master plan the Waiakea Peninsula, but it has no money to pay for an environmental assessment (EA) /environmental impact statement (EIS) to facilitate a

master plan. To compound matters, under the Department of the Attorney General's interpretation of the EA/EIS laws, the Board cannot authorize the issuance of a lease to a party for demolition of an obsolete building and construction of a new one without an EA/EIS first being conducted. That puts the Department in a "Catch-22" situation because a developer will typically not be interested in paying for the EA/EIS unless the developer has the certainty of a land lease for the site.

Accordingly, in an effort to break the stalemate preventing much needed redevelopment at Banyan Drive, staff has been exploring alternatives for the Country Club property that would not trigger an EA or EIS. The Erskine Report did contain an alternative recommendation for repair of the hotel:

ALTERNATIVE RECOMMENDATION: If the buildings are not demolished, the obvious alternative would be to REPAIR them. The way in which repairs are handled could be extremely challenging, the associated costs could be prohibitive, and the construction schedules could be time consuming. As such, the types of repairs and the order in which the repairs are phased should be highly scrutinized. Repairs should be done proportionately over several years so that the repair cost does not exceed 50% of the taxable value of the property. Prior to starting any repair or improvement project, the architect and/or engineers who will design the repairs should work closely with the [authorities having jurisdiction] to ensure that grandfathering in of non-conformities can remain in place. Repairs to address the health, safety and welfare of the public, as well as repair and maintenance projects to prolong the remaining useful life of the building should be performed first.

The Erskine Report goes on to list recommended repairs. See Exhibit E.

When the Erskine Report was finalized, the Department provided copies to the County Planning Department and alerted the County of possible fire safety violations at the property. The County Building Division and Fire Department both conducted inspections of the property and found a number of violations contained in reports issued in 2017. Oceanfront 121 and its predecessor-in-interest worked with the County to address the violations to an extent that would allow the property to remain habitable.

At least two parties have expressed interest in a long-term lease of the property: Oceanfront 121¹ and Tower Development, Inc. (Tower), the latter of whom currently holds the revocable permit for the former Uncle Billy's property. The Erskine Report was made available to both Oceanfront 121 and Tower who nevertheless believe that rehabilitation of the property is feasible under the alternative recommendation from the

¹ Oceanfront 121 reports that Pagoda Hilo Bay LLC (PHB) will manage the hotel effective November 1, 2019 as the Pagoda Hilo Hotel. PHB, an affiliate or a potential new entity owned by Oceanfront 121 and PHB may also be interested in a long-term lease of the property.

report. Based on the interest expressed by Oceanfront 121 and Tower, staff is proposing that the property be put out to lease for renovation and continued hotel and/or apartment use. Staff believes the proposed RFQ/RFP process is in accordance with the requirements of HRS §171-59(a) and is preferable to the public auction process for selecting a lessee for the subject property. A lease for hotel/apartment purposes is the highest and best use under County zoning.

- Request for Qualifications/Request for Proposals (RFQ/RFP):

HRS §171-59(a) provides that a lease of public land may be disposed of through negotiation (rather than by public auction) upon a finding by the Board that the public interest demands it. HRS §171-59(a) also provides a process under which the Board may select the lessee, which entails the public solicitation of applications/proposals from prospective lessees and allows the Board to select the lessee based on its evaluation of the applications/proposals.

Renovation of the existing hotel improvements originally constructed in 1969 will entail significant effort (e.g., obtaining Special Management Area approval or at least review, building permit approval, etc.) and a substantial investment. The improvements contain hazardous materials that will require remediation as outlined in the Erskine Report and RM Towill report. The hotel is occupied by both short-term apartment renters and hotel room renters. Careful planning will be required to protect the health and safety of current residents and occupants. Additionally, the property currently has 65 parking spaces on site. County of Hawaii Zoning Code requires a total of 286 spaces for this property. The property currently has two parking stalls accessible to persons with disabilities when the law requires seven, and it has no loading zones when the law requires three, including one loading zone accessible to persons with disabilities. Further, the property is located on the shoreline and a long-term lessee of the property will need to develop plans and contingencies for sea level rise.² There are also unpaid sewer and water fees relating to the property, and unpaid real property taxes on some of the former CPR units that previously existed there (discussed in more detail below). Staff believes the renovation efforts, safeguarding of residents and occupants, resolution of the parking stall and loading zone shortage, sea level rise planning, and resolution of unpaid sewer, water and real property tax issues are best undertaken by a private lessee with the necessary expertise and financial capacity.

Due to the expertise and substantial investment required to renovate the hotel, safeguard residents and occupants, and address the parking and loading zone situation to the County's satisfaction, staff believes a lease for the property should be issued by direct negotiation with a lessee selected via a public RFQ/RFP rather than via the public auction process. The RFQ/RFP process will allow the Board to evaluate prospective lessees

² In 2014, a consultant procured by the Department issued a report evaluating the impact of sea level rise on this and other State properties at Waiakea Peninsula. The study found that the subject land is not predicted to experience a substantial property loss due to a three-foot sea level rise.

based on a variety of factors, such as the applicant's qualifications (e.g., experience, expertise, and financial capacity), and proposed renovation plans for the property (e.g., the feasibility of the renovation plans and the proposed benefits to the State), whereas the public auction process would award the lease based solely on the highest lease rent bid at the auction.

The proposed RFQ/RFP process is in accordance with HRS §171-59. The RFQ phase of the RFQ/RFP process provides for the Chairperson to establish criteria for selection of the lessee and determine which applicants meet the criteria as required under HRS §171-59. If there is more than one applicant that meets the RFQ criteria, the RFP phase provides for the qualified applicants to submit proposals, and the Board will select the highest offer (i.e., the best proposal).

Staff is requesting the Board authorize the Chairperson to issue the RFQ/RFP, establish the evaluation criteria, evaluate the qualifications of the applicants, solicit proposals from the qualified applicants (if there is more than one qualified applicant), evaluate the proposals, select the best proposal, and present the proposal to the Board for approval at a meeting open to the public. Upon the Board's approval of the selected applicant, the DLNR will enter negotiations with the selected applicant of a development agreement and proposed lease. The development agreement and lease will be submitted to the Board for approval at a meeting open to the public. An outline of the proposed process is provided as Exhibit F.

The following is a brief summary of proposed evaluation criteria for both the RFQ and RFP stages:

Request for Qualifications (RFQ). Staff anticipates the applicants will be evaluated based on criteria that include, at a minimum, the following:

- Experience and Expertise. The applicant shall possess the appropriate experience and expertise in successfully planning, designing, permitting, developing, financing, constructing, managing and operating projects comparable (in size, complexity, scope and services) to the renovation and operation of the building on the subject property.
- Financial Capacity. The applicant shall possess the financial resources and the proven ability to arrange debt and equity financing for projects comparable to the renovation and operation of the subject property.

Request for Proposals (RFP). Staff anticipates the proposals of the qualified applicants will be evaluated based on criteria that include, at a minimum, the following:

- Renovation and Business Plan. The soundness and feasibility of the applicant's renovation proposal including applicant's plan for protecting the health and safety of current residents and occupants during renovation,

applicant’s plan for addressing the parking and loading zone shortage on the property, as well as management, marketing, and financial plans for the subject property, and the extent to which the applicant’s proposal meets the Department’s development goals and objectives for the property.

- Community Benefits. Any additional benefits arising from and unique to applicant’s proposal that will benefit the community of Banyan Drive, Hilo, and Hawaii Island.
- Financial Plan. The applicant’s ability to fund/finance the applicant’s proposed renovations and proposed operations.
- Proposed Development Agreement and Lease:

DLNR will negotiate a development agreement with the selected applicant. Staff anticipates the development agreement will include various obligations that must be satisfied by the selected applicant (obtaining all necessary permits, etc.), and that upon satisfaction of all such terms and conditions, the Board will issue a 65-year ground lease to the selected applicant to allow the renovation of the hotel.

The development agreement may also address issues such as the selected applicant’s obligations to construct or bond improvements and provisions that address the determination of the lease rent to be paid under the lease.

- RFQs/RFPs for Two Banyan Drive Projects to Issue Simultaneously:

Also before the Board at today’s meeting is a request to issue an RFQ/RFP for another project at Banyan Drive – the former Uncle Billy’s Hilo Bay Hotel designated as Tax Map Keys: (3) 2-1-005: 033, 034, 035 and 045. Staff intends to issue the RFQs/RFPs for both projects separately but simultaneously, use the same response deadline for submissions for both projects and use the same review committees to evaluate the submissions and select the best proposals for each project. Although the RFQs/RFPs for the two projects will be moving forward on parallel tracks, submissions for each project will be evaluated independently from the other. In other words, the evaluation committee will recommend the highest offer/best proposal for each site to the Board for selection.

Staff circulated a draft of this submittal to the federal, state, and County of Hawaii (COH) agencies listed in the table below with the results indicated:

Agency	Comment
DLNR-Engineering	No comments
DLNR-Historic Preservation	No response by suspense date
DLNR-Office of Conservation and	No objections

Agency	Comment
Coastal Lands	
Office of Hawaiian Affairs	No response by suspense date
COH-Planning Department	No response by suspense date
COH-Banyan Drive Hawaii Redevelopment Agency	No response by suspense date
COH-Department of Public Works	No response by suspense date
COH-Department of Water Supply	No objections
COH-Fire Department	No response by suspense date
COH-Department of Environmental Management	See comments attached as Exhibit G and discussion below

COH Department of Environmental Management (DEM) stated that as of July 18, 2019, there was a balance of \$174,608.83 owed on a stipulated judgment regarding delinquent sewer fees for the property. DEM also advised that the active sewer account for the property has a balance of \$10,360.00, of which \$5,280.00 was past due as of July 23, 2019. DEM further reported that there is a real property tax delinquency associated with the property in the amount of \$96,655.56, including unpaid taxes, penalties and accrued interest. See Exhibit G attached.

Regarding the real property taxes, penalties and interest, staff researched the delinquency and determined that it relates to unpaid taxes on the individual condominium units when the property was a leasehold condominium. When the lease expired, so did the condominium property regime. In staff's view, it would not be equitable for COH to hold Oceanfront 121 or any other potential lessee accountable for that delinquency. Instead, COH would likely have to pursue the former condominium unit owners individually for payment of their respective obligations (a real property tax lien cannot attach to the State's fee simple interest in the land). It is less clear what effect the outstanding balance on the stipulated judgment for sewer fees would be on a new lease of the property. As noted above, staff plans to disclose these issues to potential RFQ/RFP applicants and ask them how they plan to address them.

Staff also sent a draft of this submittal to Oceanfront 121 who expressed concern that it has expended substantial amounts of money on improvements to the property in recent years to cure County building, plumbing, electrical, and fire code violations. Oceanfront 121 reports these expenditures include:

Table 1

Date	Item	Cost
5/17- 12/18	Elevator repairs and improvements for two elevators at property.	\$108,123.70
12/20/17	Emerald Isle Pipe Supply, Inc. – Replace water supply line between main water meter and fire hose boxes.	12,843.67

Date	Item	Cost
01/04/18	Emerald Isle Pipe Supply, Inc. – Installation of backflow preventer.	25,200.00
03/15/18	Emerald Isle Pipe Supply, Inc. – Disassemble 4” dry standpipe fire connection on roof and re-pipe away from edge of roof to corner of elevator shaft.	2,246.43
09/27/18	All the Way Plumbing LLP – Seal plumbing and address building infrastructure issues to cure fire code violations (ceiling openings in underground parking garage).	10,208.36
	Total:	\$158,622.16

Oceanfront 121 also reports that it paid the following debts, delinquencies and attorneys’ fees relating to the property:

Table 2

Item	Cost
Hawaii Electric Light Company, Inc. charges for electrical service	\$400,000.00
County wastewater delinquency	100,000.00
Attorneys’ fees and costs primarily for eviction of delinquent tenants	279,908.67
HR Works – Old debt at end of lease paid off at 03/01/15	9,000.00
Insurance costs	47,000.00
	Total:
	\$835,908.67

In staff’s view, the expenditures listed in Table 1 above were for necessary improvements to the property that would need to be incurred by any permittee or lessee for continued use of the premises as a hotel or apartment building. It therefore seems reasonable to provide for the reimbursement of these costs to Oceanfront 121 if it is not selected as the lessee under the RFQ/RFP. Accordingly, staff is including a recommendation below that the RFQ/RFP documents provide for the reimbursement to Oceanfront 121 by the selected lessee under the RFQ/RFP (if Oceanfront 121 is not the selected lessee) in an amount up to \$158,622.16.

Although staff recognizes that Oceanfront 121 additionally spent significant sums paying down delinquent utility service accounts and incurred substantial legal fees and costs in removing delinquent tenants from the property, staff believes the case for requiring a potential lessee to reimburse Oceanfront 121 for these expenses is less compelling because they relate to operating expenses rather than outlays for physical improvements to the premises. Furthermore, with respect to attorneys’ fees and costs, staff understands that in civil litigation when a court awards such fees and costs to a party, the court reviews the fees and costs for reasonableness. Staff does not have the expertise or wherewithal to conduct a such a review of Oceanfront 121’s fees and costs here.

The proposed use has continued since 1969 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:

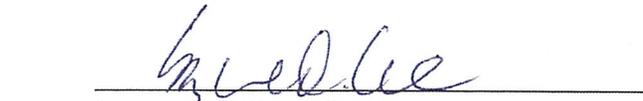
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Find that the public interest demands that a lease of the subject property be disposed of through negotiation pursuant to §171-59(a), HRS, as amended.
3. Delegate the authority to the Chairperson to (i) issue a request for qualifications / request for proposals consistent with HRS §171-59(a) for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) make a preliminary determination and recommendation to the Board of the best applicant; provided, however, that the RFQ/RFP documents shall notify all prospective applicants that if Ocean front 121, Inc. is not selected as the lessee under the RFQ/RFP, the successful applicant will be required to reimburse 121 Oceanfront, Inc. \$158,622.16 for improvements made to the property.
4. Authorize the Chairperson to modify the RFQ/RFP process or requirements if in the best interest of the State and consistent with HRS §171-59.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



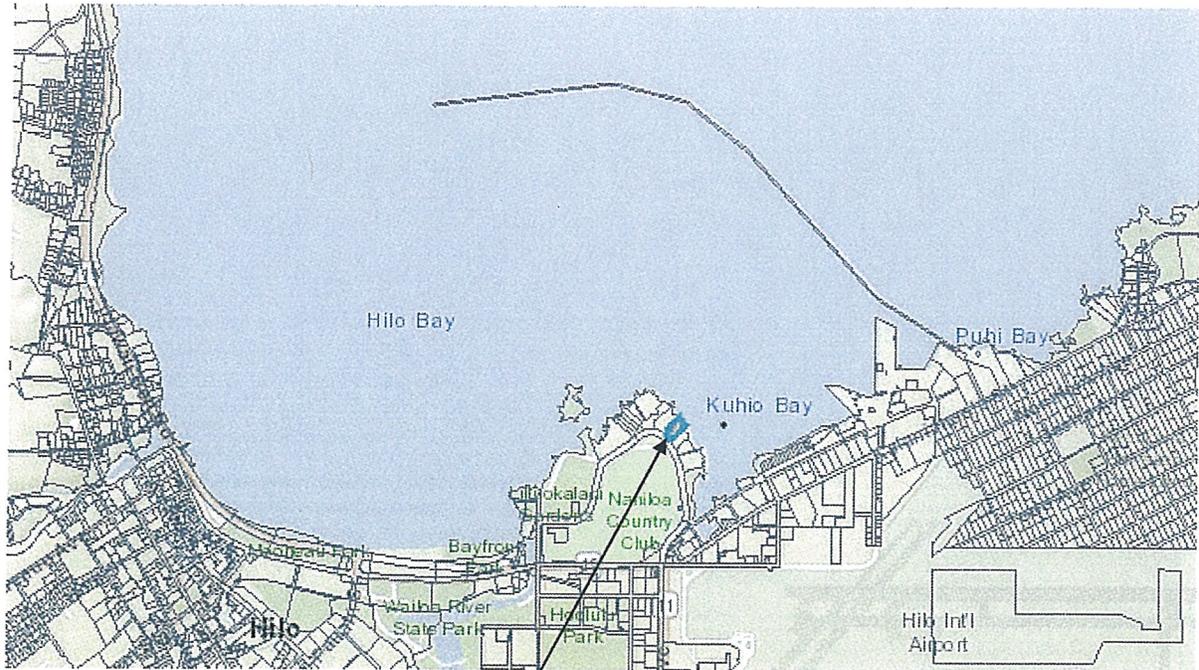
Suzanne D. Case, Chairperson

Land Board Meeting: December 13, 2019; D-2: Approved as submitted.

Approved as submitted. See attached page.

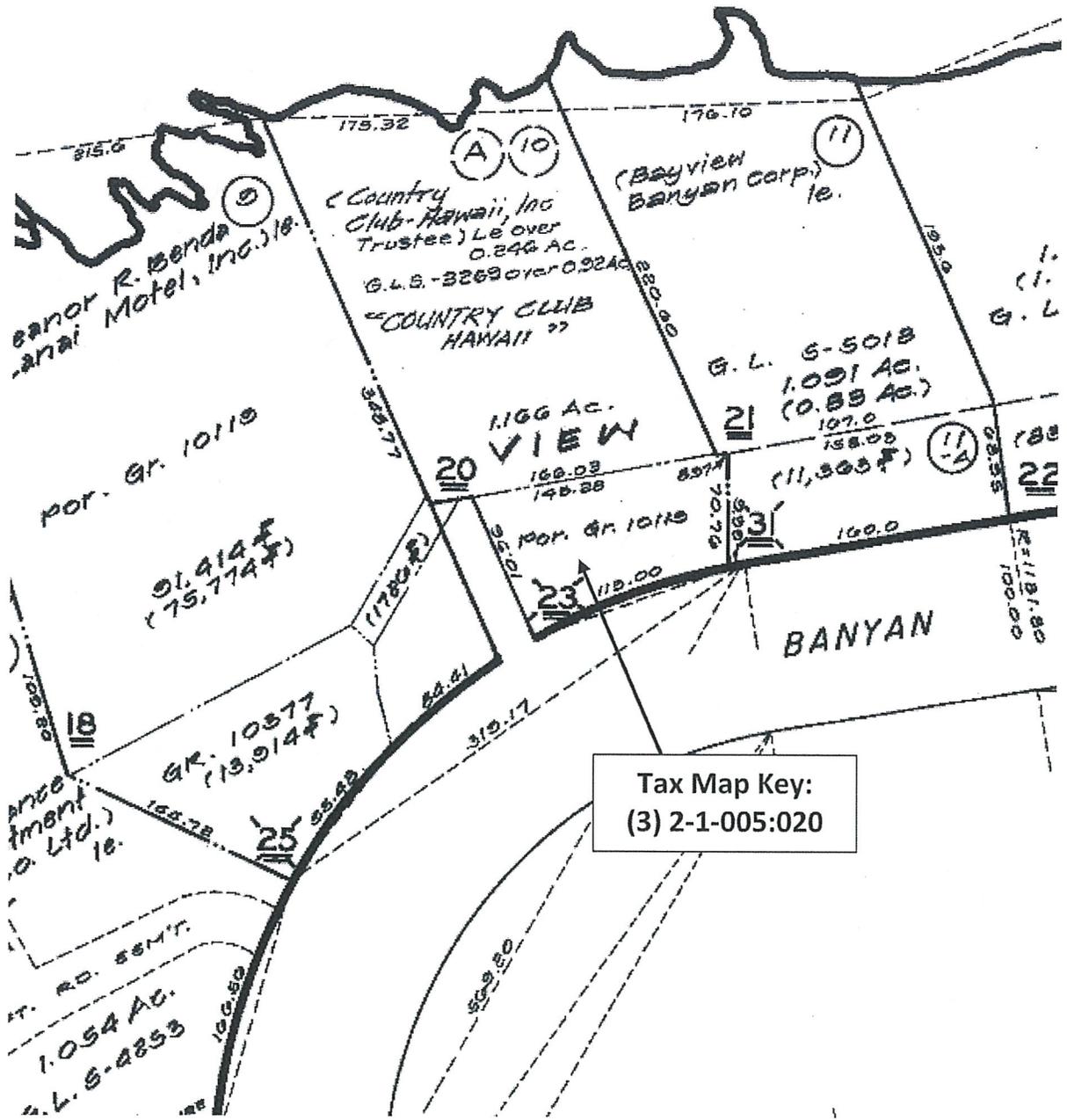
Land Board Meeting: December 13, 2019; D-2: Approved as submitted.

Approved as submitted. John Rickle, counsel for Oceanfront 121, Inc. made a verbal request for a contested case, and will follow-up; in writing for the same within ten (10) days.



**Former Country Club Hawaii
Condominium and Hotel
TMK: (3) 2-1-005:020**





EXCERPT OF SECTION 171-59, HAWAII REVISED STATUTES

§171-59 Disposition by negotiation. (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

(1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;

(2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;

(3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

December 13, 2019

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, Hawaii Administrative Rules (HAR).

Project Title: Authorize the Issuance of a Request for Qualifications / Request for Proposals for Lease of Improved Public Land.

Project / Reference No.: PSF No. 19HD-078.

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

Project Description: The subject property is currently improved with a 152-room hotel under month-to-month Revocable Permit No. S-7914 to Oceanfront 121, Inc. for apartment and hotel purposes. The Department of Land and Natural Resources intends to issue a Request for Qualifications / Request for Proposals (RFQ/RFP) for a new long-term lease of the property for apartment and hotel purposes and the sale of the existing improvements thereon by bill of sale. The lessee selected through the RFQ/RFP process would then be able to demolish or renovate the existing structure on the land consistently with the exemption classes and item numbers referenced below.

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

Exemption Class No. and Description: In accordance with HAR Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council and dated June 5, 2015, 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 Item 47 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing;" Exemption Class No. 7 that states, "Interior alterations involving things such as partitions, plumbing, and

EXHIBIT C

electrical conveyances,” Item 1 that states, “Interior alterations and renovations to offices, buildings or structures that do not increase the floor area or change the maximum occupancy to include:

a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems;

b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations;

c. renovations that will result in energy or other operational/cost savings; or

d. other similar interior alterations;” and

Exemption Class No. 8 that states, “Demolition of structures, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes,” Item No. 2 that states, “Demolition and removal of existing structures, facilities, utilities, and other improvements on state lands, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C. §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.”

Cumulative Impact of Planned Successive Actions in Same Place Significant?:

No. The use of the land for apartment and hotel purposes is compliant with county zoning requirements, and such use has existed since 1969. Staff believes there are no cumulative impacts involved.

Action May Have Significant Impact on Particularly Sensitive Environment?:

No. There are no particularly sensitive environmental issues involved with the proposed use of the property. The property has been used for hotel and apartment purposes since 1969. The property is located on the shoreline, but a sea level rise study commissioned in 2014 showed that a three-foot sea level rise would not have a significant impact on the use of the property.

Analysis:

The subject land has been improved with a 152-room hotel and used for hotel and apartment purposes since 1969. A new lease for hotel and/or apartment purposes and the sale of the improvements on the property to the lessee under the new lease will involve negligible or no expansion or change of use beyond that previously existing.

Consulted Parties:

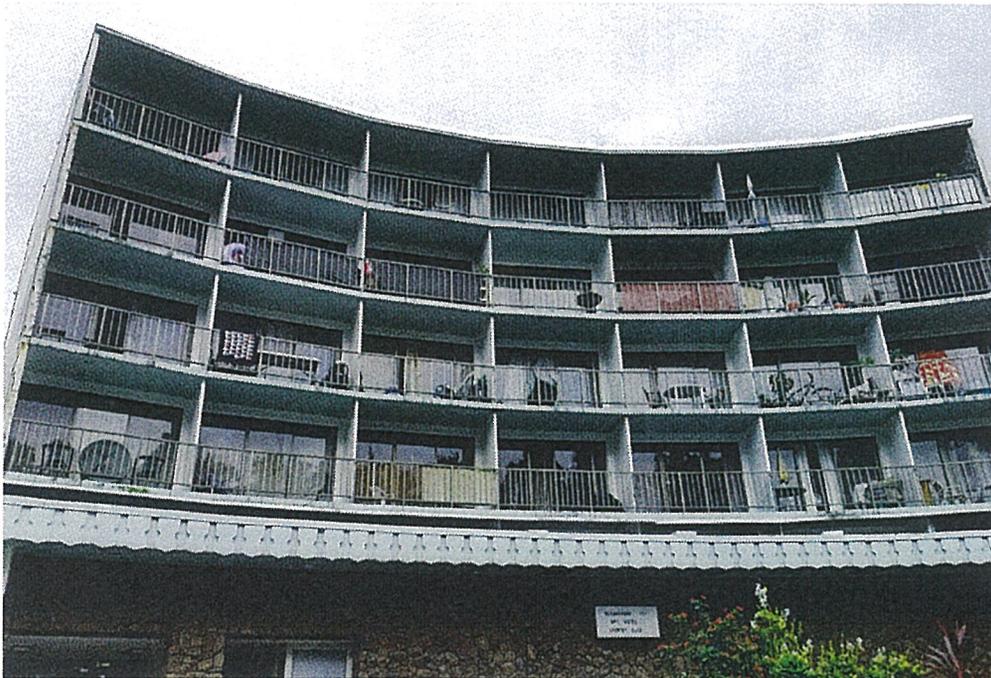
Agencies listed in the attached submittal.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT D

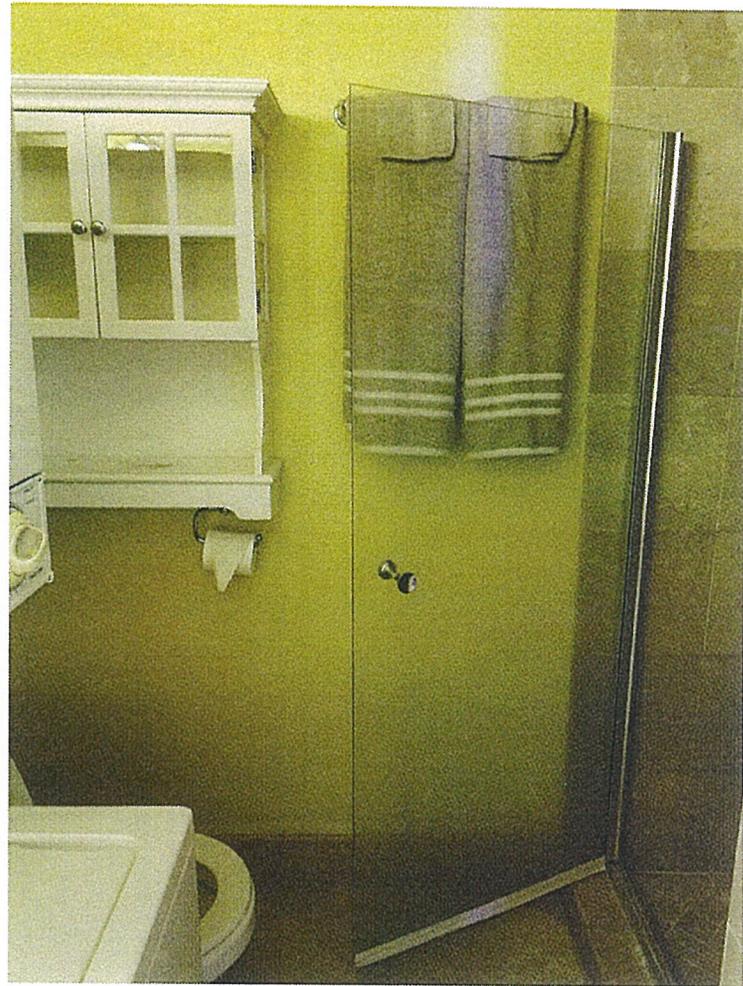
Inspection Photos of RP S-7867 on 11/05/2018:



Streetside View

New Backflow Prevention Device





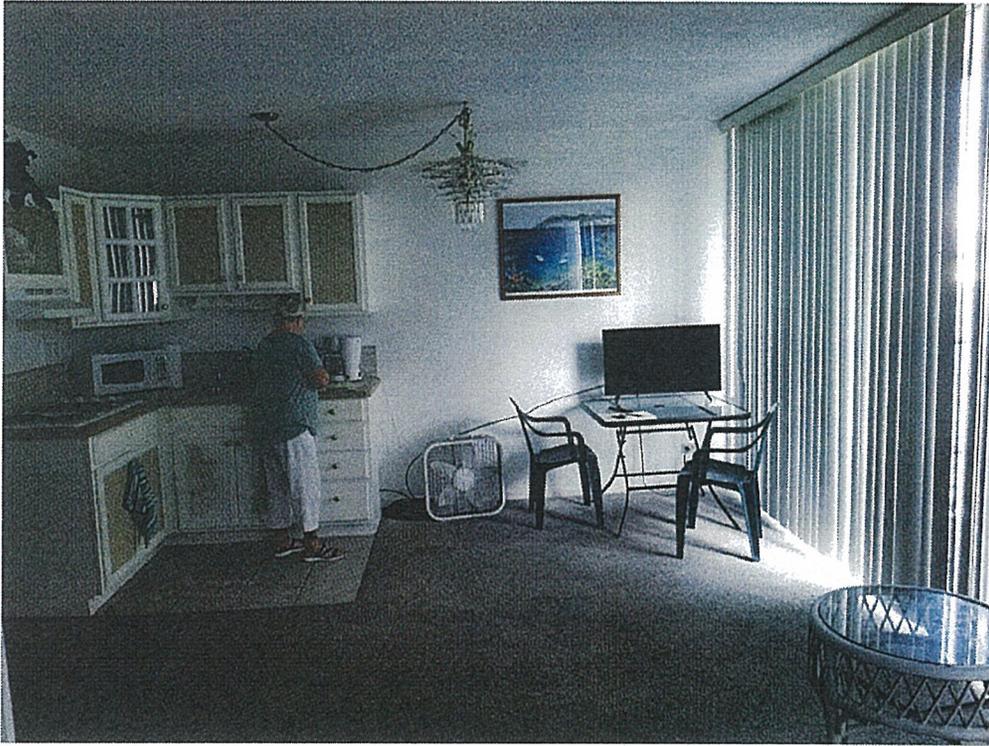
Kitchenette and Bathroom in renovated room



Sleeping area and entry with bathroom and kitchenette to the left and right at back of photo



Bathroom and kitchenette from previous photo



Kitchenette and bedroom of a double room





Bathroom of a double room



Kitchenette and sleeping area of a nicely renovated room





Another nicely renovated room with kitchenette, sleeping area and bathroom.

EXCERPT OF JUNE 2016 REPORT OF ERSKINE ARCHITECTS, INC.

3.2.2 Country Club Condominium/Hotel

PRIMARY RECOMMENDATION is DEMOLISH: Although not in a state of complete disrepair yet, it appears that Country Club is headed in that direction. The overall building and property is in poor condition. The remaining useful life was estimated to be at 5-8 years, and that was back in 2014. It does not appear that significant improvements to the building have occurred that would extend the remaining useful life. The parking areas and driveway are in poor condition. The parking lot is undersized and does not meet the required parking count. The mauka and makai wings are dated in appearance, unkept and contain an unpleasant odor. Both wings have many areas of non-compliance when compared against the current building code, including a few areas that need to be improved to address potential life safety concerns. The building and property do not meet accessibility standards. Of the areas tested for hazardous materials, a significant amount of asbestos containing materials was identified. Removal of the hazardous materials would be expansive and costly. The opinion of probable cost to address the areas of distress is significant and exceeds the taxable value of the property.

There are considerable areas of concern with this property. Of particular concern is the overall lack of maintenance leading to the poor condition of the building. The restaurant is also closed, probably as a result of the lack of maintenance and unkept overall appearance. Another concern is that the building is six stories tall and not fire sprinklered. Granted, the building did not need to be fire sprinklered when it was originally constructed. But, due to other fire safety concerns described herein, the lack of fire sprinklers becomes more problematic. Both stair wells are not fire rated, or maintained properly so that fire rating can be achieved. The stair tower in the makai wing is enclosed but does not meet 1-hour construction as the doors are damaged and do not close properly. The stair also discharges at the ground floor near an unprotected laundry area. Access into the stair tower is via two doors in succession, both of which don't meet accessibility maneuvering clearance or latch properly. The stair adjacent to the mauka wing is entirely unenclosed and bordered by a glass curtain wall on one side. The mauka wing open air walkway that provides access to the rooms on each floor terminates in a dead end condition. The partitions at the dead ends are constructed out of stacked decorative masonry blocks that are non-structural. The stacked masonry blocks also contain large openings, thereby not meeting the definition of guardrail. The openings are also large enough for an infant or toddler to crawl through. These masonry partitions occur at each floor level described above, near the unenclosed stairway and borders several of the balconies. The masonry partitions bordering the balconies appear to be failing in several areas.

In the mauka tower, the corridor splits near the elevator and ends at the exterior walls of the building. A window occurs at both corridor ends. The windows are operable and usually in the open condition as they are relied upon for ventilation. The sill of the window is low enough creating a fall hazard. The window openings are required to be protected by a guardrail. The corridor in the mauka wing is dark, not properly illuminated, and the ceilings are too low. Both elevators do not open into an elevator lobby. Fire protection devices are not readily apparent. Numerous miscellaneous and outdated or non-functioning equipment remains in place on the roofs and ground floor. Old equipment can pose a fire risk if not properly maintained. The required fire separation between the parking lot and 2nd floor ceiling in the breezeway does not meet fire separation requirements.

The recommendation for this property is DEMOLISH. The opinion of probable cost to address the areas of distress is excessive, especially when compared to the taxable value of the property. The cost of the repairs will exceed 50% of the taxable value of the property, even if improvements were spread out over a number of years; unless coordination with County inspectors could occur and the State be cited for code violations, thereby exempting those costs from the 50% rule. In order to address the areas of distress, it is likely that portions of the building and/or site otherwise not intended to be repaired or improved would be required to conform to current land use regulations and/or building codes. This would result in a domino effect of planning and design challenges that would also possibly include numerous regulatory reviews and approvals, thereby resulting in excessive design fees and lengthy delays. The construction that would

be necessary to address the areas of distress would need to occur over a series of phases taking several years, requiring numerous intermittent shut downs of the building or portions of the building, and be extremely challenging from a marketing or logistical standpoint for management. The property is large enough that a new development could occur here without a significant loss of use of the property.

Regardless of new development or demolition of an aged and deteriorating structure, strong public opposition is sure to occur. Because of the preponderance of health, safety and welfare issues, numerous building, and accessibility code violations, large quantities of hazardous materials, is in poor condition and would be cost prohibitive to repair and retrofit into compliance with current building and accessibility codes; protection of the health, safety, and welfare of the public should take precedence.

The demolition of a six story structure along the shoreline is a difficult, timely, and expensive endeavor. The demolition phase will require several years to complete. A considerable amount of reports, studies, and surveys will need to be conducted, reviewed, and approved by the authorities having jurisdiction before a demolition permit can be applied for. Some of the reports, studies and surveys may include but is not limited to the following; botanical survey, avian and terrestrial mammal survey, air quality study, noise study, marine and water quality study, archaeological survey plan, inventory and monitoring plan, cultural impact assessment, engineering report(s), soils testing and solid waste management plan, and special management area permit. Additional environmental engineering for the survey, testing, and identification of hazardous materials is also warranted. The myriad of regulatory bodies that would be charged with reviewing the reports, studies and surveys may include but is not limited to the following; US Army Corps of Engineers, State DLNR, State DOH, County Department of Environmental Management, County Planning Department, County Building Division, County Engineering Division, County of Hawai'i Fire Department, County DWS, HELCO, and others.

ALTERNATIVE RECOMMENDATION: If the building is not demolished, the obvious alternative would be to REPAIR it. The way in which repairs are handled could be extremely challenging, the associated costs could be prohibitive, and the construction schedules could be time consuming. As such, the types of repairs and the order in which the repairs are phased should be highly scrutinized. Repairs should be done proportionately over several years so that the repair cost does not exceed 50% of the taxable value of the property. Prior to starting any repair or improvement project, the architect and/or engineers who will design the repairs should work closely with the authorities having jurisdiction to ensure that grandfathering in of non-conformities can remain in place. Repairs to address the health, safety and welfare of the public, as well as repair and maintenance projects to prolong the remaining useful life of the building should be performed first. The following minimum repairs include, but are not limited to the following:

- FIRE PROTECTION STRATEGY: Assess the existing overall fire protection strategy of the building.
- PHYSICAL TESTING OF FIRE PROTECTION DEVICES: Test all fire protection devices (fire alarm panel, pull boxes, emergency lighting, strobes, horns, smoke detectors, fire extinguishers, etc.) throughout the facility. Repair and/or improve the overall fire protection system and all fire protection devices so that the building is in compliance with current County Fire Code.
- HAZARDOUS MATERIALS ABATEMENT PLAN: Assess locations of hazardous materials to determine where the materials are located and how they may be impacted by the repairs being contemplated. Develop a hazardous materials abatement plan.
- IMPROVEMENT OF LIGHTING: Improve lighting in all common areas so that they are properly illuminated. Install emergency lighting in all common areas.
- EXIT SIGNS: Install properly illuminated exit signs with directional arrows.
- MAKAI WING STAIR TOWER: Repair the makai wing stair tower so that it is protected by not less than 1-hour rated construction. Replace all stair tower doors and door frames so that they are 45 minute rated minimum and properly labeled. All door hardware should be replaced. Doors should latch properly and meet clearance requirements after installation. Approach, entry and exit at doors should be assessed, and where structurally practicable, be improved to address accessibility maneuvering clearances. Proper signage, lighting and building emergency exit

diagrams should be installed inside the stair tower. Accessible signage should be installed at each floor level, both inside and outside of the stair tower. Any penetrations into the stair tower should be repaired or fire stopped so that the 1-hour rating is not compromised.

- MAUKA WING STAIR TOWER: Remove the glass curtain wall bordering the mauka wing stair. Patch the openings with construction materials and/or openings that meet the allowable construction type and building code. Demolish the stair assembly and replace with a new stair assembly that complies with accessibility requirements. Provide proper lighting and signage around the stair at each floor level. At the top and bottom landings at each stair run, ensure that proper accessible maneuvering clearances are met.
- MAUKA WING DEAD END CORRIDORS: Construct a new 1-hour rated enclosed stair tower at or near the end of the common area walkway so that the dead end corridor condition is brought into compliance. The stair tower will connect to each floor level of the building and exit at grade.
- DECORATIVE MASONRY BLOCKS: Replace all decorative masonry blocks throughout the building with guardrails or solid walls.
- MAUKA WING WINDOWS: Install guardrails at all common area windows.
- NON-FUNCTIONING EQUIPMENT: Remove all inoperable or unused electrical and mechanical equipment.
- LAUNDRY AREA: Construct a laundry room that is protected by the required fire rating.

It is important to note that by addressing the HSW issues noted above, other anticipated and unanticipated code compliance measures will be triggered. At the on-set of future repair projects, the owner and their designers should work closely with the Authorities Having Jurisdiction (AHJ) to ascertain to as much of an extent as possible, other code compliance measures that the AHJ's will require before design drawings are advanced too far. The types of code compliance measures and other requirements that might be imposed by the AHJ's could potentially be so onerous, that the repair project under contemplation would need to be halted due to structural impracticability, scheduling concerns, land-use compliance measures or simply be too expensive.

OUTLINE OF PROPOSED PROCESS

1. Board of Land and Natural Resources (the "Board") authorizes issuance of RFQ/RFP
2. DLNR publishes notice of, and issues, RFQ
3. DLNR (or an evaluation committee) reviews applicants' submitted qualifications and determines which applicants meet the evaluation criteria
4. If more than one qualified applicant, DLNR issues RFP to the qualified applicants (or to a "short list" of qualified applicants)
5. DLNR (or an evaluation committee) evaluates proposals and selects applicant with best proposal for recommendation to the Board
6. DLNR presents selected applicant to the Board for approval (at a public meeting)**
7. DLNR enters into exclusive negotiations with selected applicant of a development agreement and proposed lease
8. DLNR presents development agreement and proposed lease to the Board for approval (at a public meeting)**
9. DLNR and selected applicant execute development agreement
10. Selected applicant undertakes due diligence and seeks approvals and permits (e.g., SMA assessment, building permits)**
11. If selected applicant satisfies all terms/conditions of the development agreement, DLNR issues lease to selected applicant

**Public review/comment opportunities

Harry Kim
Mayor

Wilfred M. Okabe
Managing Director



William A. Kucharski
Director

Diane A. Noda
Deputy Director

County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720

Ph: (808) 961-8083 · Fax: (808) 961-8086

Email: cohdem@hawaiicounty.gov

July 23, 2019

Mr. Kevin E. Moore
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, HI 96809

RECEIVED
LAND DIVISION
2019 JUL 26 AM 10:45
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Subject: Request to Authorize the Issuance of an RFQ/RFP for Lease of Public Lands Together with Conveyance of Improvements Thereon by Bill of Sale
Location: Waiākea, South Hilo, Hawai'i
Tax Map Key: (3) 2-1-005:020
Applicant: Department of Land and Natural Resources, Land Division

Dear Mr. Moore:

The County of Hawai'i Department of Environmental Management has two comments on the above subject:

1. The County of Hawai'i has a Stipulated Judgment regarding delinquent sewer fees owed for this property. As of July 18, 2019, the balance owed on the judgment, with accrued interest, is \$174,608.63. In addition to the judgment, there is also a balance of \$10,360.00 owed on the active sewer account, of which \$5,180.00 is now past due. The Department of Finance is also showing a Real Property Tax delinquency in the amount of \$96,655.56 reflecting unpaid taxes, penalties, and interest accrued to date. **We request that the outstanding debts for this property be paid with any potential proceeds.** If you require the documents regarding these debts, let us know and copies will be provided.
2. It should be noted that if the hotel on the property gets demolished, as recommended in the June 2016 report by Erskine Architects, Inc., the

Mr. Kevin E. Moore
July 23, 2019
Page 2

construction and demolition debris will need to be privately trucked to the West
Hawai'i Sanitary Landfill.

Thank you for the opportunity to review and comment on this matter.

Sincerely,



William A. Kucharski
Director

WK:mef

Chee, Timothy

From: Miller, Kim E
Sent: Monday, January 6, 2020 9:33 AM
To: Chee, Timothy
Subject: RE: moving disbursements from HIC from paper check to ACH - Responses due October 17, 2019
Attachments: Re: Wiki Permit Transfer Request 01/03/2020; [EXTERNAL] Re: Wiki Permit Transfer Request 01/03/2020

Hi Timmy- Per your below email, do you now have enough information to get Russell to approve of the monthly calculation... or are you still waiting for something more?

I am fuzzy on the new procedure under the auto deposit of funds. This is the email message we have now received from attached :

All,

We have instructed Bank of Hawaii to transfer \$11,324.79 for 644 Wiki Permit payments purchased from 01-Dec-2019 through the end of 31-Dec-2019.

Transfer request:

Amount: \$11,324.79

Transfer from Bank of Hawaii account: [REDACTED]

Transfer to First Hawaiian Bank account: [REDACTED]

Routing#: [REDACTED]

Do you need to inform fiscal we approved of this deposit of \$11,324.79 by preparing the calculation form prepared in the past (see below email)?

For example, the above indicates the 12/2019 funds generated were \$13,017.00. The HIC fee is \$1,692.21. The excel file indicates the OHA 20 % is \$2,535.40. Thus, the remaining funds will be \$8,789.39. Do you still need to prepare this form so Russell may instruct fiscal to write OHA a check for \$2,535.40 ?

Thanks for clarifying the automatic deposit procedure. Kim

From: Miller, Kim E [REDACTED]
Sent: Monday, October 14, 2019 12:40 PM
To: Chee, Timothy [REDACTED]
Cc: Moore, Kevin E [REDACTED]; Tsuji, Russell Y [REDACTED]
Subject: RE: moving disbursements from HIC from paper check to ACH - Responses due October 17, 2019

Thank you Timmy. Kim

From: Chee, Timothy [REDACTED]
Sent: Monday, October 14, 2019 12:34 PM
To: Tsuji, Russell Y [REDACTED]; Miller, Kim E [REDACTED]
Cc: Moore, Kevin E [REDACTED]
Subject: RE: moving disbursements from HIC from paper check to ACH - Responses due October 17, 2019

**WRITTEN TESTIMONY OF
OCEANFRONT 121, INC.**

EXHIBIT 2

THE RICKEL LAW FIRM, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

313/886-0000

855/752-7156

A CENTENNIAL LAW FIRM, SINCE 1899

HARRY RICKEL (1876-1965)
EDWARD P. MARSCHNER (1881-1960)

JOHN MARSCHNER RICKEL*
586/415-8700; 808/427-9757

CHAD RIDDLER***
ABIGAIL OHL***

RICHARD T. FORRESTER**
OF COUNSEL, HAWAII
808/292-4324

* SHAREHOLDER ADMITTED IN HAWAII,
MICHIGAN, ILLINOIS AND MISSOURI
** OF COUNSEL ADMITTED IN HAWAII
*** ASSOCIATE ONLY ADMITTED IN MICHIGAN

MAILING ADDRESS

P.O. BOX 36200
GROSSE POINTE FARMS, MI 48236-0200
TELEPHONE: 586/415-6600

E-MAIL: jricket@rickellaw.com
criddle@rickellaw.com
aohl@rickellaw.com
WEBSITE: www.rickellaw.com

rforrester@forresterlegal.com
1099 ALAKEA ST., STE. 2110
HONOLULU, HI 96813

December 6, 2019

Suzanne D. Case, Chairperson, and
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Tentative December 13, 2019 Land Board Meeting
Re: Location: 121 Banyan Drive, Hilo, Hawaii

**Written testimony of John M. Rickel, attorney for 121 OceanFront, Inc. regarding
recovery of invested money/obligations.**

Dear Ms Case and Board:

The Board of Directors of 121 OceanFront, Inc. appreciates your attention to the 121 Banyan Drive, Hilo, location. This current 121 OceanFront, Inc. Board of Directors elected January 1, 2017 has expended large amounts of time, its own loving attention, as well as serious investment dollars, to carefully maintain and improve your State of Hawaii real property, and we hope to continue. As longer term renters of units, we are emotionally attached to the building and the Hilo geography. We have worked with and maintained a communication link with DLNR these past two plus years to improve what started as a very difficult economic and operational circumstance, and we have made great progress, eliminating most prior debt, improving building, plumbing, elevators, roofs, unit aesthetics, and operations, which cost well over One Million Dollars [detail previously provided to DLNR]. This investment was made by this Board and renters, with the reasonable expectation of at least 2 or 3 years to recover the investment. But only 3-1/2 months after the 96th and last final squatter was removed, OceanFront 121, Inc. received notice of this BLNR RFP/RFQ from DLNR.

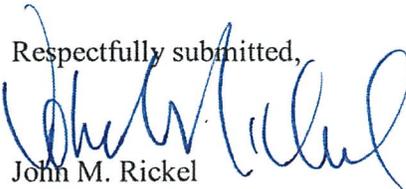
State of Hawaii legislation acknowledges **investment** in State of Hawaii-owned real property improvement is difficult because of time requirement, to pay back commercial or personal loans or receive a return on investment, is just not possible without a long term lease. This OceanFront 121, Inc. Board of Directors has had only Special Permit time durations, so you

understand the challenge this Board stepped up to for State of Hawaii real property improvement and operation, communicating with DLNR.

I attach the August 1, 2019 letter to DLNR (financial detail previously provided to DLNR) indicating **\$676,482.65** invested in 121 Banyan Drive, Hilo, **remains unpaid**, obligations of 121 OceanFront, Inc. Once we became aware that the time duration seriously shortened, we engaged a local Hotel Development Company (Pagoda Hotels) to speed our process of improving the 121 Banyan Drive Hotel property, creating more tourism revenue flow for Hilo, and more hotel occupancy availability / more Hilo hotel room count, an exemplary strategy. We believe it is just, reasonable, and should be a contract legal requirement that the full **\$676,482.65** should be a required payment to OceanFront 121, Inc. for a new BLNR State of Hawaii land Lessee to acquire 121 Banyan Drive possession.

Had DLNR simply taken over the 121 Banyan Drive building at March 15, 2015 end of State of Hawaii prior land lease, all of the building expenses, from 96 squatter evictions to water supply construction and utilization, to elevators, etc., could have been DLNR costs. Alternatively, shuttering the building and providing security for the 4 years, 9 months since (4.75 years x 24 hours per day x 365 days x \$20/hour security force – only 1 person) = \$832,200. OceanFront 121, Inc. has been a bargain! We hope to remain, but as a matter of equity and fairness, please require \$676,482.65 by contract be paid to OceanFront 121, Inc. as a condition for a new land lease Lessee, if a new Lease is issued.

I will be present December 13 for your meeting, to answer any questions.

Respectfully submitted,

John M. Rickel

cc: Russell Tsuji
Kevin Moore
Gordon Heit
Candace Martin

THE RICKEL LAW FIRM, P.C.

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

313/886-0000

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*** ASSOCIATE ONLY ADMITTED IN MICHIGAN

MAILING ADDRESS

P.O. BOX 36200
GROSSE POINTE FARMS, MI 48236-0200
TELEPHONE: 586/415-6600

E-MAIL: jricket@rickellaw.com
criddle@rickellaw.com
aohl@rickellaw.com
WEBSITE: www.rickellaw.com

rforrester@forresterlegal.com
1099 ALAKEA ST., STE. 2110
HONOLULU, HI 96813

August 1, 2019

Mr. Kevin E. Moore
Assistant Administrator
State of Hawaii
Department of Land and Natural Resources
Land Division
Honolulu, Hawaii 96813

Re: PSF No.: 19HD-078

Dear Kevin:

Thank you for including me in your Draft Request for Qualifications / Request for Proposals ("Requests"), and I appreciate your having discussed the document with me. I assume no requested extension of time was provided, so I respond now.

My response as attorney is in representation of OceanFront 121, Inc., the current Special Permit holder, but I expect one or more of the Board of Directors and / or Residents may or may not provide separate written comment also, which information may also be appropriate for inclusion in the Requests submitted to BLNR.

Applicable Hawaii Legislation generally acknowledges that without sufficient "payback time duration", State of Hawaii leased or short possession buildings cannot attract much investment nor loan proceeds, resulting in the buildings' infrastructure becoming run down and deficient. State Leases including adequate "payback time duration" are very difficult and expensive to obtain. Very high building operational cost (e.g., elevators maintenance, electricity cost, plumbing leaks, roof leaks, old boilers, locks on hotel room doors inefficiency) are traded by State property Lessees / Permit Holders for economically efficient investment in new infrastructure upon new 65 or so year State Lease.

There has been comment that *verbal information relied upon regarding transition of the 121 Banyan Drive building from corporate non-profit status to for-profit status, and regarding investment in*

building infrastructure -- that at least several years of time duration would be permitted, has been withdrawn without notice, so you understand it is with shock and dismay that your Requests/RFP/RFQ have been received. The OceanFront 121, Inc. Board of Directors is evaluating.

OceanFront 121, Inc. suggests your Requests add topics identifying at least the following:

1. Residential Extended Stay Capacity / Excess Capacity in the Hilo, HI geographic area, and location for extended stay replacement for existing users of 121 Banyan Drive units, if needed.
2. Economic rental cost target or aiming point, market target identification, for the 141 units at 121 Banyan Drive as renovated (high end price point, medium – local price point?).
3. Bill of Sale Reimbursement to 121 OceanFront, Inc., for Improvements and Operations maintaining the 121 Banyan Drive building to present: Recognizing the reality of the need to address building circumstances dating to 1969, and particularly since 2012-15 when building residents realized no Lease extension would occur, 121 Banyan Operations thus avoiding State of Hawaii cash cost of maintaining the building, to include without limitation, at least the following (detail support available):
 - a. Water Supply Plumbing from Banyan Drive, ¾" copper pipe, trenching through concrete for fire code, **\$50,000.00**.
 - b. Outstanding Rickel Law Legal Invoice balance March 15, 2015 to July 16, 2019 unpaid – to clear the building of 96 delinquent resident units / squatters who were using building resources (electric, water, sewer, elevator, preventing paying occupancy), through 2017....**\$213,446.29** (detail support available). Of that amount, \$157,729.95 was paid to Charles Heakulani, Esq. for court appearances and legal work, balance legal work by The Rickel Law Firm, a Hawaii licensed firm.
 - c. Out of pocket legal fees for removal of Carl Oguss and others since 2018 **\$51,000.00**. 100% of squatters and questioned legal activities, all gone as of May 24, 2019, just over 2 months ago.
 - d. Two Elevators improvements and operations **\$106,000.00**.
 - e. Director Kubousek unreimbursed cash Boiler operations and improvements, and building condition and ambience costs, business operations costs including US Mail, *detail available*, **\$7,000.00**. Full time unpaid worker when in Hawaii.
 - f. Director Dyer unreimbursed cash for backflow preventer plumbing, computer, units microwaves, HELCO emergency payment, vacuum cleaners, check paid to bank to insure sufficient funds, *detail available*, **\$30,000.00**.
 - g. Improvement of Unit 629 to AirBnB standard **\$3,323.00**, resulting in regular hotel rental.
 - h. Director Bork redid the boiler room to pass inspection, including without limitation, plumbing re-do, gas, electrical and concrete re-do, full time unpaid worker when in Hawaii.
 - i. All of Directors Bork, Kubousek, Dyer, Jacobson, and Downs were basically full time **unpaid** employees while in Hawaii.
 - j. The Directors each paid \$30,000 cash for each of their units in the past few years, providing cash for building improvements and operations.
 - k. Home Depot improvements and building operations cost since October, 2017 -- **\$25,000.00**.
 - l. Nagao Electric **\$1,095.00**.
 - m. HR Works **\$9,000.00** old debt at end of lease 3.15.2015 paid off in December, 2018.
 - n. All The Way Plumbing – Sealing of plumbing and building infrastructure issues 2018; fire inspection violation issue ceiling openings in underground parking garage **\$10,208.36**.
 - o. Insurance cost **\$47,000.00**.

- p. Waste Water back payments **\$33,410.00.**
- q. Paul Prevatt elevator preventive maintenance to maintain and avoid service interruption **\$30,000.00.**
- r. Joseph Bork **\$60,000.00**, including without limitation \$30,000 elevator repair for inop condition, \$12,000 for roof, and currently \$10,000 for door card lock systems, cameras, and Carlos Valdez for Jonathan eviction.

Total Bill of Sale Reimbursement Requirement, for 121 OceanFront, Inc. Improvements and Operations**\$676,482.65.**

I look forward to discussing additions to the Requests with you Kevin. There has not been sufficient time to provide a complete detailed accounting of the individual investments made on behalf of OceanFront 121, Inc. as 121 Banyan Drive investment, but we include indicated approximate amounts for a successful bidder to pay for Bill of Sale of Improvements.

I'm available anytime Honolulu cell 808.427.9757 or mainland cell 586.415.8700 (same cell phone), am in Honolulu this coming week of August 4 and available to you.

Very truly yours,



John M. Rickel

**OCEANFRONT 121, INC.'S PETITION
FOR A CONTESTED CASE HEARING**

EXHIBIT 3



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR’s contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to “DLNR”) or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner’s financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name OceanFront 121, Inc.	2. Contact Person Attorney John Rickel	
3. Address 121 Banyan Drive	4. City Hilo	5. State and ZIP Hawaii 96720
6. Email jrickel@rickellaw.com	7. Phone 586.415.8700	8. Fax 586.415.0092

B. ATTORNEY (if represented)		
9. Attorney Name John Rickel	10. Firm Name Rickel Law Firm, PC	
11. Address P.O.Box 36200	12. City Grosse Pointe Farms	13. State and ZIP MI 48236-0200
14. Email jrickel@rickellaw.com	15. Phone 586.415.8700	16. Fax 586.415.0092

C. SUBJECT MATTER	
17. Board Action Being Contested Authorization of Issuance of Request.....Page 9 and 10, Reimbursement by New Land Lease Lessee to OceanFront 121, Inc. of Table 1, \$158,622.16, instead of Table 2, \$835,908.67 expended.	
18. Board Action Date December 13, 2019	19. Item No. D-2
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action Petitioner OceanFront121, Inc. has remaining financial obligations \$835,908.67 indicated on Page 10, Table 2 as adjusted, from maintaining 121 Banyan Drive, Hilo HI, without time to recover investment in the property and repay loans, an unjust enrichment of the State of Hawaii and / or New Land Lease Lessee, who receives an operating hotel of significant value, in contrast to neighbor "Uncle Billy's" hotel.	
21. Any Disagreement Petitioner May Have with an Application before the Board Petitioner disagrees with the Page 10 conclusion that DLNR Staff should not find \$835,908.67 as a reasonable cost adjusted, reduction of which to \$158,622.16 is both unreasonable and results in an Unjust Enrichment.	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to This Authorization of Issuance of Request...../RFQ/RFP should provide for \$835,908.67 reimbursement adjustment to OceanFront 121, Inc. for the Page 10 expenditures made, from any new Land Lease Lessee.	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest Unjust Enrichment is against Hawaii Public Policy. OceanFront 121, Inc. at DLNR request converted from non-profit status entity, to for profit status entity, maintained the 121 Banyan Drive, Hilo, HI building at the indicated \$835,908.67 cost [plus well over \$600,000 cost recovered plus paid off HELCO \$400,000+ debt and other debt, plus the 4-1/2 year volunteer time of its Directors (as workers, as operational and maintenance workers), and volunteer time of its Officers and Renters], but: -- with DLNR knowledge and encouragement invested in building operational deficiencies which would have closed the building, e.g., elevators stopped/maintenance issues, 96 squatters preventing revenue flow removed, plumbing/fire code compliance met, roof leaks stopped, electrical corrections compliance, and --DLNR operating cost of building shutdown and security for 4-1/2 years after Land Lease end was saved for State of Hawaii, and thus produced a valuable operating hotel. It is in the public interest that DLNR be able to encourage improvement in State of Hawaii owned buildings and land, and that unjust enrichment which is against public policy, not occur.	
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR OceanFront 121, Inc. is authorized to be in possession of the property.	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

OceanFront 121, Inc., by John Rickel,
Esq. Respectfully submitted,

Petitioner or Representative (Print Name)



Signature
Attorney for Petitioner

December 22, 2019

Date