

**REQUEST FOR QUALIFICATIONS /
REQUEST FOR PROPOSALS
FOR THE REPAIR, RENOVATION AND OPERATION OF
THE FORMER COUNTRY CLUB CONDOMINIUM HOTEL
HILO, ISLAND OF HAWAII, HAWAII**



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
August 23, 2020**

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Attachment 1: Land Board Approval dated December 13, 2019 (Agenda Item D-2)

NOTICE TO INTERESTED PARTIES

REQUEST FOR QUALIFICATIONS ("RFQ") /
REQUEST FOR PROPOSALS ("RFP")
FOR THE REPAIR, RENOVATION AND OPERATION OF THE
FORMER COUNTRY CLUB CONDOMINIUM HOTEL

The State of Hawaii ("State") Department of Land and Natural Resources ("DLNR"), is issuing a Request for Qualifications ("RFQ") / Request for Proposals ("RFP") inviting qualified applicants to submit qualifications and proposals for the repair, renovation and operation of an existing hotel/apartment building on a parcel of State land in Waiakea, South Hilo, Island of Hawaii, Hawaii, designated as Tax Map Key: (3) 2-1-005:020 (Parcel 20).

Parcel 20 is located on Banyan Drive on Waiakea Peninsula in Hilo with a street address of 121 Banyan Drive, Hilo, Hawaii 96720. This RFQ/RFP is intended to facilitate the repair, renovation and operation of the improvements on Parcel 20 through the issuance of a new lease for hotel/apartment purposes to a qualified applicant who submits the best proposal to the State.

DLNR intends to select the applicant and repair, renovation and operation proposal that best satisfies DLNR's objectives and selection criteria. The selected applicant will enter into exclusive negotiations with DLNR for a development agreement that will allow the selected applicant to lease Parcel 20 and repair, renovate and operate the improvements thereon upon satisfaction of the terms and conditions of the development agreement. The lease term will be up to sixty-five (65) years. The selected applicant will be responsible for obtaining all required land use entitlements and government approvals/permits under the development agreement, as well as approval of the Board of Land and Natural Resources before a lease may be issued.

DLNR will hold a briefing for interested parties at **2:00 p.m. on September 1, 2020**, to explain the RFQ/RFP process and objectives, and answer questions. The briefing will be held virtually by Zoom or other virtual meeting platform. Interested parties can obtain the link to the briefing by emailing dlnr.land@hawaii.gov at least twenty-four (24) hours in advance of the briefing time. Attendance by potential applicants is encouraged, but not required.

To be eligible for consideration in the RFQ/RFP process, interested parties must first complete and submit a Notice of Intent form to any of the DLNR Land Division offices listed below **by no later than 4:00 p.m., September 11, 2020**. Any interested party who fails to complete and submit a Notice of Intent form by this deadline will not be eligible to submit its qualifications and proposal and therefore will not be considered for this project. The Notice of Intent form is included in this RFQ/RFP.

The next step of the RFQ/RFP process is the submission of statements of

qualifications by applicants, which must be submitted **by no later than 4:00 p.m., September 30, 2020**, to any of the DLNR Land Division offices listed below. DLNR will determine which applicants meet the qualification criteria (and may form a short list of the most qualified applicants), and those applicants will be invited to participate in the next phase of the RFQ/RFP process. This portion of the process will invite applicants who are deemed to be qualified to submit a detailed repair, renovation and operation proposal for the improvements on Parcel 20. DLNR will evaluate the submitted proposals and select the applicant whose proposal best satisfies DLNR's repair, renovation and operation objectives and selection criteria as provided in this RFQ/RFP. Upon the Board of Land and Natural Resources' approval of the selected applicant and repair, renovation and operation proposal, the selected applicant and DLNR will commence negotiations of the development agreement and lease.

Additional deadlines and significant dates are set forth in this RFQ/RFP.

Copies of this RFQ/RFP may be obtained at the following DLNR Land Division offices or downloaded from the DLNR website at: <https://dlnr.hawaii.gov/ld/RFQ-RFP-countryclub>.

Land Division Administration
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Telephone: (808) 587-0419

Maui District Land Office
130 Mahalani Street
Wailuku, Hawaii 96793
Telephone: (808) 984-8103

Hawaii District Land Office
75 Aupuni Street, Room 204
Hilo, Hawaii 96720
Telephone: (808) 961-9590

Kauai District Land Office
3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
Telephone: (808) 274-3491

DLNR reserves the right to cancel this RFQ/RFP and reject any and all submissions when it is in the best interest of DLNR or the State of Hawaii. If there are any inquiries regarding this RFQ/RFP, or if any person requires a special accommodation (e.g., large print materials, sign language interpreters), please contact Land Division Assistant Administrator Kevin Moore at (808) 587-0426.

/s/Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Honolulu Star-Advertiser;
Hilo Tribune Herald; and
West Hawaii Today
August 23, 2020

**NOTICE OF INTENT
REQUEST FOR QUALIFICATIONS ("RFQ") /
REQUEST FOR PROPOSALS ("RFP")
FOR THE REPAIR, RENOVATION AND OPERATION OF
THE FORMER COUNTRY CLUB CONDOMINIUM HOTEL**

Parties interested in submitting qualifications and proposals in response to the RFQ/RFP for the repair, renovation and operation of the former Country Club Condominium Hotel in Hilo, Island of Hawaii, Hawaii, must first complete and submit this Notice of Intent form to any of the DLNR Land Division offices (see page ii of the RFQ/RFP for addresses), **by no later than 4:00 p.m., September 11, 2020**. An interested party that fails to submit a completed Notice of Intent form by this deadline will not be eligible to participate in the ensuing RFQ/RFP process and will not be considered for this project.

Name of Applicant: _____

Mailing Address: _____

Contact Person and Title: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Type of Organization: _____

State or Country of Formation; and Date of Formation: _____

Registered to do business in Hawaii? If Yes, as of what date? _____

List the names, addresses and ownership interests of individuals or organizations with at least a 10% ownership interest in the Applicant: (attach separate page if necessary)

Name	Address	% Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

List all State of Hawaii leases, permits, licenses, easements, sales, etc. which the Applicant is or has been a party to, including as a partner, director, officer, shareholder, or LLC member: (attach separate page if necessary)

Doc. No.	Type of Agreement	Term of Agreement
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature of Authorized Representative

Name/Title: _____

Date: _____

I. INTRODUCTION

BACKGROUND

The State of Hawaii Department of Land and Natural Resources (“DLNR”), through its Board of Land and Natural Resources (“Board”) is the owner of the land and improvements located at Waiakea, South Hilo, Island of Hawaii, Hawaii, and designated as Tax Map Key: (3) 2-1-005:020 (Parcel 20). The improvements on Parcel 20 include a six-story, 152-room hotel built in 1969. Parcel 20 and all the improvements thereon are hereinafter referred to collectively as the “Subject Property.”

The Subject Property is currently under month-to-month Revocable Permit No. S-7914 to Oceanfront 121, Inc. for apartment and hotel purposes. DLNR’s Land Division manages the permit and is responsible for planning the future use of the Subject Property.

DLNR has determined that the improvements on Parcel 20 are in need of major repairs and renovations and desires to issue a new 65-year lease of the Subject Property for hotel/apartment purposes to encourage a lessee to make a substantial investment in repairs and renovations in the Subject Property and help improve the overall aesthetics of the Banyan Drive area of Hilo. DLNR, however, does not have the funding, expertise, or staffing to repair, renovate or operate the Subject Property on its own. Accordingly, DLNR is seeking a private entity with the necessary renovation expertise and financial capacity to repair, renovate and operate the Subject Property under a long-term lease.

PURPOSE

The purpose of this Request for Qualifications (“RFQ”) / Request for Proposals (“RFP”) is to solicit and select a qualified private entity to lease, repair, renovate and operate the Subject Property under a new 65-year lease to facilitate its fullest utilization consistent with applicable zoning and environmental assessment laws, to increase the lease rent revenues to the State and improve the aesthetics of Banyan Drive. The lease revenues generated from the lease will be paid in part (20%) to the Office of Hawaiian Affairs and in part (80%) to DLNR’s Special Land and Development Fund that supports DLNR’s operations and programs statewide.

Qualified applicants will be invited to submit proposals that may provide for any repairs and renovations that are permitted under applicable laws, ordinances, rules and regulations. The selected applicant shall be responsible for obtaining all required land use entitlements and government approvals/permits. Construction of new buildings is not permitted as part of this RFQ/RFP.

DLNR will select the applicant whose proposal best meets DLNR’s repair, renovation and operation objectives and RFQ/RFP selection criteria (see RFQ/RFP Sections II and IV).

SUBJECT PROPERTY

The Subject Property includes Parcel 20 with an area of 1.22 acres¹ located at Waiakea, South Hilo, Island of Hawaii, Hawaii, and all improvements located thereon. The improvements include a six-story, 152-room hotel constructed in 1969, swimming pool and paved parking area. The hotel is occupied under Revocable Permit No. S-7914 to Oceanfront 121, Inc.

REQUIRED REPAIRS AND RENOVATIONS

A Remaining Useful Life Determination prepared in June 2014 by SSFM International, Inc. (“SSFM Report”) concluded that the improvements on the Subject Property at that time had a remaining useful life of 5-8 years. An Assessment Report dated June 29, 2016 prepared by Erskine Architects, Inc. (“Erskine Report”) identified a number of health, safety and welfare issues at the Subject Property that required attention. The County of Hawaii (“County”) Department of Public Works, Building Division issued a Notice of Violation (“NOV”) dated August 14, 2017 regarding the Subject Property citing a number of Hawaii County Code violations. The County Fire Department issued a Fire Inspection Record in August 2017 with a result of “Fail” citing violations of Fire Code and other applicable codes. The repair and renovation of the Subject Property **must** address all health, safety and welfare issues identified in the SSFM Report, Erskine Report, NOV and Fire Inspection Record to the extent such issues have not already been addressed by DLNR’s permittees under revocable permits issued for the Subject Property.

PERMITTED USES

Once repaired and renovated, the Subject Property must be used for hotel and/or apartment purposes.

SPECIAL MANAGEMENT AREA (“SMA”)

The Subject Property is located within the Special Management Area (“SMA”). The selected applicant shall be responsible for obtaining any required SMA reviews and approvals.

FLOOD ZONES

The Subject Property is located largely in the Federal Emergency Management Agency’s Flood Zone AE (areas subject to inundation by the 1-percent-annual-chance flood event), with portions in Flood Zone VE (areas subject to inundation by the 1-percent-annual-chance flood event with additional hazards due to storm-induced velocity wave action). The selected applicant shall be responsible for complying with

¹ County of Hawaii tax maps and the Board submittal dated December 13, 2019, Item D-2 (Attachment 1) show a slightly smaller area and different configuration for Parcel 20 that excludes a driveway connection from Banyan Drive to the parcel. DLNR has verified with the Department of Accounting and General Services, Survey Division, that the driveway is part of Parcel 20 as a result of a 1970 consolidation and re-subdivision.

any statutes, rules or regulations applicable to improvements located in these flood zones.

HILO OPPORTUNITY ZONE

The Federal Tax Cuts and Jobs Act of 2017 authorized a community economic development program called the Opportunity Zones Program. This initiative provides incentives for investors to re-invest realized capital gains into Opportunity Funds in exchange for temporary tax deferral and other benefits. The Opportunity Funds are then used to provide investment capital in certain low-income communities, i.e., Opportunity Zones. The Subject Property is located in the Hilo Opportunity Zone. For more information, visit: <https://dbedt.hawaii.gov/>.

CONDITION OF SUBJECT PROPERTY

The Subject Property will be leased in an “as is” condition with all faults and defects whether latent or patent, and DLNR makes no representations regarding the condition of the Subject Property or the suitability of the site for any proposed use by any applicant. Applicants shall, at their sole expense, be responsible for conducting their own investigations and due diligence regarding the Subject Property.

DLNR has procured and compiled various studies and documents regarding the Subject Property, which are available for review on-line at: <https://dlnr.hawaii.gov/ld/RFQ-RFP-countryclub>, or in hard copy at the Land Division Administration Office in Honolulu. Interested parties wishing to review the documents and information should contact the Land Division office in advance at (808) 587-0426. By request, interested parties may make arrangements to view the hard copy studies and documents at the neighbor island Land Division District Offices by contacting the Land Division Administration Office. DLNR makes no representations or warranties regarding the accuracy of any information contained in such studies and documents.

The selected applicant shall be responsible for any and all site work, repairs, improvements, and required remediation of hazardous materials necessary for the repair, renovation and operation of the improvements on the Subject Property.

The Subject Property is currently used for short-term residential rentals and transient accommodations and will likely remain occupied under Revocable Permit No. S-7914 to 121 Oceanfront, Inc. during the RFQ/RFP process and the negotiation of the development agreement. It is also possible that the Subject Property will continue to be occupied upon the termination of Revocable Permit No. S-7914 and commencement of the new lease to the selected applicant. It will be the selected applicant’s prerogative whether to allow all or some occupants to remain on the Subject Property under existing or new rental agreements during repairs and renovations, or to require all or some residents and guests to vacate the premises. If the selected applicant determines that the Subject Property should be vacated in full or in part (in phases) to facilitate repairs and renovations, then the selected applicant will need to comply with all applicable laws and provide all residents and guests with proper notice of the termination of their tenancies.

The County Department of Environmental Management (“DEM”) reported 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 Subject Property. DEM also advised that the active sewer account for the Subject Property had 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 Subject Property in the amount of \$96,655.56, including unpaid taxes, penalties and accrued interest. **It is the responsibility of each applicant to conduct appropriate due diligence to determine whether the applicant would have any responsibility for these or any other outstanding obligations pertaining to the Subject Property if the applicant were to be selected through the RFQ/RFP process and be issued a lease for the Subject Property.**

Additionally, at its meeting of December 13, 2019, Item D-2, the Board found that the permittee under Revocable Permit No. S-7914, Oceanfront 121, Inc., made physical improvements to the Subject Property in the amount of \$158,622.16 in recent years to cure County building, plumbing, electrical, and fire code violations. **The Board directed that if Oceanfront 121, Inc. is not selected as the lessee under this RFQ/RFP, then the selected applicant will be required to reimburse 121 Oceanfront, Inc. \$158,622.16 for these improvements.** For more information, see the Board’s action of December 13, 2019, Item D-2, a copy of which is provided as **Attachment 1** hereto.

AUTHORITY

Section 171-59, Hawaii Revised Statutes, authorizes the leasing of public lands by direct negotiation where the Board finds that the public interest demands it. At its meeting on December 13, 2019, the Board approved agenda Item D-2 authorizing the issuance of this RFQ/RFP pursuant to HRS Section 171-59, as amended. A copy of the Board’s approval is provided as **Attachment 1**, and applicants are responsible for reading and understanding the information and conditions contained therein.

NOTICE OF INTENT

To participate in this RFQ/RFP, interested parties **must** first submit a completed Notice of Intent form by or before the stated deadline (**September 11, 2020, 4:00 p.m.**). Any interested party who fails to submit a completed Notice of Intent form by this deadline will not be eligible to submit its qualifications and proposal and, therefore, will not be considered for this RFQ/RFP.

RFQ/RFP SOLICITATION AND SELECTION PROCESS

After submission of a Notice of Intent, applicants in the RFQ/RFP process will next be requested to submit a statement of qualifications for this renovation project. Detailed explanations of the RFQ/RFP process are provided in Sections III (Request for Qualifications) and IV (Request for Proposals). All submissions must be signed by a person with the authority to represent and make legally binding commitments for the applicant.

Step 1: Submission of Statement of Qualifications. The RFQ requires the submission of Statements of Qualifications (“SOQs”) by applicants detailing their relevant hotel or apartment building repair, renovation and operation experience, financial capabilities, and management expertise. DLNR will review the SOQs and determine which applicants meet DLNR’s qualification criteria. DLNR may, at its sole discretion, form a short list of the most qualified applicants. The qualified applicants (or short list of the most qualified applicants, if applicable, as determined by DLNR in its sole discretion) will then be invited to participate in the proposal process.

Step 2: Submission of Proposals. The RFP solicits detailed repair, renovation and operation proposals for the Subject Property from the invited qualified applicants. DLNR will review the proposals and will recommend to the Board the applicant whose proposal best satisfies DLNR’s repair, renovation, and operation objectives and selection criteria. The Board at a meeting open to the public must approve the recommended applicant and its repair, renovation and operation proposal. If approved by the Board, the selected applicant and DLNR will commence exclusive negotiations of a development agreement and lease. Any amendments or extensions to the development agreement terms or pre-construction approvals (e.g., rights-of-entry for site testing or site preparation) not previously anticipated, may require further Board approval.

DEVELOPMENT AGREEMENT

The development agreement will set forth the terms and conditions under which the selected applicant shall secure, all at its sole expense, all permitting approvals required to complete its proposed repair, renovation and operation of the Subject Property. The development agreement will also set forth specific terms and conditions that must be satisfied by the selected applicant prior to DLNR issuing a lease for the Subject Property and the selected applicant commencing any repair, renovation and operation of the Subject Property.

SIGNIFICANT DATES AND TIMES*

Item / Event / Deadline	Date	Time
Advertisement of RFQ/RFP	August 23, 2020	
Virtual Applicant Briefing	September 1, 2020	2:00 p.m.
Deadline to Submit Notice of Intent	September 11, 2020	4:00 p.m.
Deadline to Submit Statement of Qualifications	September 30, 2020	4:00 p.m.
Notify Qualified Applicants of RFP*	October 15, 2020	
Deadline to Submit Proposals*	November 30, 2020	4:00 p.m.
Evaluation Committee's Selection of Developer*	December 15, 2020	
Land Board Approval of Selected Developer* and Negotiation of Development Agreement	January 2021	

*These dates are estimated dates and are subject to change by DLNR in its

sole discretion.

ISSUING OFFICE AND CONTACT PERSON

This RFQ/RFP is issued by DLNR Land Division. All communications with Land Division pertaining to this RFQ/RFP shall be directed to the Land Division Contact Person named below. Any information provided to, or received from, anyone other than the Contact Person shall not be relied upon in connection with this RFQ/RFP.

Assistant Administrator Kevin Moore
Land Division
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Phone: (808) 587-0426
Facsimile: (808) 312-6357
Email: dlnr.land@hawaii.gov

REQUEST FOR CLARIFICATION

A prospective applicant may submit a written request for clarification of any aspect of this RFQ/RFP by mail or facsimile transmission to the Land Division Contact Person above prior to the date of the Applicant Briefing (see Significant Dates and Times above). Land Division's written response to written requests for clarification will be made available for review at the Land Division offices and posted on Land Division's website at: <https://dlnr.hawaii.gov/ld/RFQ-RFP-countryclub>.

Requests for clarification may be verbally requested and verbal answers provided at the discretion of Land Division. However, any such verbal answers shall only be intended as general directions and will not represent the official position of Land Division. To generate an official answer, questions must be submitted in writing pursuant to the directions provided in the prior paragraph.

CONFIDENTIAL INFORMATION

If an applicant believes that any portion of a submission or proposal contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of designated trade secrets or other proprietary data to be held as confidential business information. Such data shall accompany the applicant's submission or proposal, be clearly marked, and shall be readily separable from the submission or proposal in order to facilitate eventual public inspection of the nonconfidential portion of the submission or proposal. The amount of any proposed fees or lease rents to be paid by the applicant to DLNR shall not be considered confidential and shall not be withheld.

DLNR will consult with the Department of the Attorney General and may also consult with the Office of Information Practices to make any necessary determinations of confidentiality in accordance with HRS Chapter 92F. If the applicant's request for

confidentiality is denied, such information shall be subject to disclosure as a public record unless the applicant appeals the denial.

LAND DIVISION OFFICES

Land Division's office addresses are as follows:

Land Division Administration
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Telephone: (808) 587-0419

Maui District Land Office
130 Mahalani Street
Wailuku, Hawaii 96793
Telephone: (808) 984-8103

Hawaii District Land Office
75 Aupuni Street, Room 204
Hilo, Hawaii 96720
Telephone: (808) 961-9590

Kauai District Land Office
3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
Telephone: (808) 274-3491

II. DEVELOPMENT OBJECTIVES

DLNR's objectives for the Subject Property call for the repair, renovation and operation of the existing improvements on Parcel 20 in a way that promotes and complements the hotel/resort area of Banyan Drive. The repair, renovation and operation will:

- Be undertaken by a qualified private sector lessee who will bear all of the costs of the repair, renovation and operation and will not be subsidized by the State or DLNR.
- Be performed under a leasehold arrangement between DLNR and the selected applicant.
- Restore the Subject Property to its highest and best use to the extent permitted under applicable laws, including but not limited to HRS Chapters 171 and 343.
- Provide a benefit to the community of Banyan Drive, Hilo, and Hawaii Island.
- Maximize the financial returns to the State from the Subject Property in a timely manner.
- Comply with all laws, ordinances, rules, regulations and restrictions applicable to the Subject Property.
- Be economically feasible to the developer/lessee.
- Take into consideration potential sea level rise.

III. REQUEST FOR QUALIFICATIONS (“RFQ”)

INTRODUCTION

The purpose of this section is to solicit Statements of Qualifications (“SOQs”) from potential developers/lessees interested in repairing, renovating and operating the Subject Property under a long-term lease. DLNR’s review and evaluation of the potential developers’ or lessees’ SOQs will help in ensuring that the selected applicant has the experience, expertise and financial capacity to successfully undertake its proposed repair, renovation and operation of the Subject Property.

Applicants assume all risks and will be responsible for the payment of all costs and expenses in connection with the preparation of their respective SOQs, as well as any and all pre-construction and planning costs incurred by the applicant. DLNR assumes no risks or costs associated with any applicant’s participation in this portion of the selection process.

APPLICANT BRIEFING

There will be a briefing at **2:00 p.m. on September 1, 2020**, to explain DLNR’s repair, renovation and operation objectives and the RFQ/RFP process, and answer questions from potential applicants. The briefing will be held virtually by Zoom or other virtual meeting platform. Interested parties can obtain the link to the briefing by emailing dlnr.land@hawaii.gov at least twenty-four (24) hours in advance of the briefing time. Attendance by any prospective applicant is encouraged, but is not required.

NOTICE OF INTENT

Any party interested in participating in this RFQ/RFP **must** submit a completed Notice of Intent form (see above page of this RFP) to any Land Division office listed in Section I (Introduction) above **by no later than 4:00 p.m. on September 11, 2020**. Any party who fails to submit a completed Notice of Intent by the required deadline will **not** be eligible to submit its qualifications and proposal as required, to participate in this RFP repair and renovation project.

SUBMISSION REQUIREMENTS

Each applicant shall submit a Statement of Qualifications (“SOQ”), which shall include the information and materials described below. The SOQ shall be organized in a manner that is consistent with the headings and sequence presented below. Applicants shall submit five (5) hard copies and one electronic copy on a CD of the SOQ.

1. Cover Letter. Submit a cover letter on the applicant’s letterhead addressed to Land Division and signed by an authorized representative of the applicant.

2. Proposed Use of Subject Property. Generally describe the applicant's proposed repair, renovation and operation plan and use of the Subject Property. For example, will the applicant operate the Subject Property as a hotel, an apartment building, or a mix of hotel and apartment use. If applicant proposes a mixed hotel/apartment use, how many units will be designated for transient accommodations and how many will be designated for apartment use? If the applicant intends to contract with a hotel operator to manage the hotel, identify the operator. If the applicant intends to contract with a management company to manage the rental of apartment units, identify the management company. Also discuss whether the applicant intends to issue subleases for any portions of the Subject Property (and if so, for what purposes or uses).

The purpose of this requirement is to allow DLNR to evaluate and determine whether the applicant possesses the necessary qualifications (experience, expertise, and financial capacity) to successfully repair, renovate and operate the Subject Property.

Applicants should also be aware that there are certain laws and restrictions governing the leasing of public lands that may apply to the Subject Property, including but not limited to HRS Chapter 171. This RFQ/RFP will therefore require the applicant to indicate that its proposed project complies with all relevant laws governing public lands.

3. Applicant – Type of Entity and Ownership Interests. Provide the following information about the applicant:
 - a. Name. The legal name of the applicant.
 - b. Type of Entity. Identify the type of entity (e.g., corporation, limited liability company, etc.), and the state or country of organization.
 - c. Owners. Identify all individuals or entities holding a 10% or more ownership interest in the applicant and their respective ownership interests. Provide any additional background information about any of the owners that may support the qualifications of the applicant with respect to this SOQ, including descriptions of any key roles that any of these individuals or entities will play in the applicant's repair, renovation or operation of the Subject Property. Any foreign corporation or business entity must obtain the appropriate certificate of authority to do business in the State of Hawaii.
 - d. Directors/Officers. Identify the directors and officers of the applicant, including names and titles. Provide any additional background information about any of the directors and officers that may support the qualifications of the applicant with respect to this SOQ, including descriptions of key roles that any of these individuals will play in the applicant's repair, renovation and

operation of the Subject Property.

IMPORTANT: The applicant identified in the Notice of Intent must match the information provided above. Additionally, please note that if an applicant is selected through the RFQ/RFP process and the applicant is a partnership, joint venture, limited liability company, or corporation, the sale or transfer of 20% or more of ownership interest, distributional interest, or stocks by dissolution, merger or any other means prior to execution of the development agreement or lease shall be deemed an assignment. Such assignments are subject to the prior written approval of the Board.

4. Development Team. Describe the organization of the applicant and development team, and the role and responsibilities of each member of the development team, including major consultants (e.g., architects, engineers, etc.), joint venture or limited partners, and legal counsel. Include members that may be added to the development team in the future to fund, renovate or manage the project, and describe the arrangement or commitment, if any, between the applicant and the projected future development team members. Provide an organizational chart and the names, titles, and contact information of the principals of each member of the development team.

Describe any previous experiences of the development team and/or development team members working together on other/previous projects.

5. Experience. For each member of the development team (including the applicant), describe previous experience with projects similar in type, use, size, and scope to the applicant's proposed repair, renovation and operation of the Subject Property. For each such project, provide the following:
 - a. Project Description. Describe the project, including location, address, photographs, project size, land uses, facilities, commencement and completion dates, etc.
 - b. Roles/Responsibilities. Describe the role(s) of the development team member(s) with respect to the project. For example, describe any pre-construction roles (e.g., conducting due diligence, community outreach, planning, obtaining land use entitlements/approvals, etc.); development roles (financing, design, permitting, construction); and management/operational roles (e.g., leasing, project management/maintenance, etc.)
 - c. Cost/Financing. Provide total construction costs for the project, and describe the financing/funding, including the source, amount, and current status.

- d. Current Status. Describe the current status of the project, including (if applicable) the development team's involvement with the project; current ownership and management of the project; and current uses, occupancy rates, tenants, operating revenues, profits/losses, etc.
6. Other Applicable Experience. Describe any other experience that may be appropriate to establish the applicant's qualifications. Describe any past or current lease(s) of State lands awarded to the applicant's owners, directors and/or officers, including any delinquencies or prior defaults on any such lease(s). Applicants should register with Hawaii Compliance Express (HCE) and have updated state tax clearances. See also HRS Section 171-13.
7. Financial Capacity and Credit History. Provide satisfactory evidence to support the financial ability of the applicant to repair, renovate and operate the Subject Property. Such evidence should include evidence of applicant's past or current debt or equity financing (such as letters from past or current lenders or financing sources confirming the amounts financed, repayment terms, and repayment status), applicant's financial statements for the past three fiscal years, current credit report(s), and evidence of capital resources or financing commitments. Describe any loan or lease defaults, bankruptcies, judgments, or any litigation or other disputes that may potentially have an adverse effect on the applicant's current financial capability. A personal guarantee (or personal guarantees) will be required upon issuance of a lease.
8. Other Information. Provide any other information regarding the applicant, the development team, or its members that may be pertinent to establishing the applicant's qualifications.
9. References. Provide references (including name, title, address, email address phone number) whom DLNR may contact to confirm the applicant's and development team members' qualifications and any of the information provided in the SOQ.

SOQ SUBMISSION DEADLINE

Statements of Qualifications must be delivered to any of the Land Division offices listed in Section I (Introduction) above by no later than **4:00 p.m. on September 30, 2020**. Except for additional information requested by DLNR, any information submitted after this deadline, including any changes or modifications to the SOQ, will not be considered.

EVALUATION OF QUALIFICATIONS

1. Preliminary Review. DLNR staff will conduct a preliminary review of the SOQs for adequacy and completeness. If any SOQ is incomplete,

DLNR staff may, in its sole discretion, disqualify the applicant and its SOQ from further review and consideration. Notwithstanding the foregoing, DLNR reserves the right to waive any defects in any SOQ and may permit the timely correction of errors contained in it. DLNR may also ask an applicant for clarification of the information submitted or for additional information/materials to assist DLNR or the evaluation committee in its review/evaluation of the applicant's SOQ.

2. Substantive Review. The SOQs that are determined to be adequate and complete in the preliminary review shall thereafter undergo a substantive review by an evaluation committee selected by DLNR.

DLNR may ask any applicant for clarification of the information submitted or for additional information/materials to assist DLNR or the evaluation committee in its review/evaluation of the applicant's SOQ. DLNR or the evaluation committee may also conduct interviews of any of the applicants and/or members of the applicants' development teams.

DLNR will review the SOQs and determine which applicants meet the qualification criteria below. DLNR may, at its sole discretion, form a short list of the most qualified applicants. The qualified applicants (or short list of the most qualified applicants, if applicable), will then be invited to participate in the RFP process by submitting their repair, renovation and operation proposals in accordance with Section IV (Request for Proposals) of this RFQ/RFP.²

- a. Qualification Criteria. DLNR or the evaluation committee shall evaluate the applicants' qualifications based on the following criteria:
 - Successful real estate development or renovation experience relevant to the applicant's proposed repair, renovation and operation of the Subject Property, including experience in community outreach and in obtaining land use entitlements and government approvals/permits.
 - Real estate management experience (including hotel operation or apartment management, if applicable) relevant to the applicant's proposed use of the Subject Property.
 - Financial capacity to fund the renovation of the Subject Property and the applicant's proposed operations.
 - Creditworthiness and past experience in leasing private and public lands.

² If there is only one qualified applicant, DLNR may, in its sole discretion, waive certain RFP submission requirements.

- b. Notification of Qualification. All applicants will be notified of the qualification determination.
- c. Review and Appeal Rights. Pursuant to HRS Section 171-59(a)(3), within twenty (20) days of an applicant's receipt of notification of the determination, any applicant may notify the Board in writing requesting the applicant be allowed to examine the basis for the determination to ascertain whether or not the conditions and criteria established by the Board were followed. If written notice is not provided by the applicant within twenty (20) days of the receipt of notification of determination, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the Board to follow the conditions and criteria.

IV. REQUEST FOR PROPOSALS ("RFP")

INTRODUCTION

If DLNR determines that more than one applicant is qualified, DLNR will invite the qualified applicants (or the short list of the most qualified applicants), to submit their respective repair and renovation proposals in accordance with this Section IV (Request for Proposals).

DLNR, through its evaluation committee, will evaluate the repair, renovation and operation proposals and select the applicant whose proposal best satisfies DLNR's objectives and selection criteria. DLNR staff will then request the Board's approval of the selected applicant and the selected applicant's proposal. Upon the Board's approval, DLNR will commence exclusive negotiations with the selected applicant of the development agreement and potential lease (see Section V – Exclusive Negotiations/Development Agreement for additional details regarding the development agreement).

Applicants assume all risks and are responsible for the payment of all costs and expenses in connection with the preparation of their respective submissions/responses to this RFP, as well as any and all pre-construction and planning costs incurred by the applicant. DLNR assumes no risks or costs associated with any applicant's participation in this RFP.

APPLICANT BRIEFING

DLNR may, but shall not be required to, hold a briefing to explain this portion of the RFP and to answer questions from the applicants. DLNR will notify all qualified applicants of any such briefing.

SOQ & RFP SUBMISSION REQUIREMENTS

Each qualified applicant shall submit a repair, renovation and operation proposal, which proposal shall include: (1) a repair, renovation and operation plan; (2)

an economic proposal; and (3) a business plan. The repair and renovation proposal shall include the information and materials requested below and shall be organized in a manner that is consistent with the headings and sequence presented below. Applicants shall each submit five (5) hard copies and one electronic copy on a CD of their repair and renovation proposals.

1. Cover Letter. Submit a cover letter on the applicant's letterhead addressed to DLNR Land Division and signed by an authorized representative of the applicant.
2. Executive Summary. Provide an executive summary of the critical aspects of the applicant's repair, renovation and operation proposal.
3. Repair, Renovation and Operation Plan. Provide the applicant's repair, renovation and operation plan for the Subject Property. The repair, renovation and operation plan **must** address all health, safety and welfare issues identified in the SSFM Report, Erskine Report, County Department of Public Works, Building Division NOV, and County Fire Inspection Record. The repair and renovation plan must also include the following plans, information, and details:
 - a. Site Plan. Provide a conceptual site plan showing the building elevations and floor plan of each as renovated, and the uses provided for (provide three full size copies, 1"= 20' scale; and 5 half-size copies).
 - b. Narrative Description. Provide a narrative description of the repair, renovation and operation proposal, including but not limited to the following:
 - i. Descriptions of the proposed project and proposed uses;
 - ii. An outline of the repair, renovation and operation program and phases;
 - iii. Statements indicating how the repair, renovation and operation plan satisfies DLNR's repair, renovation and operation objectives;
 - iv. Descriptions of the benefits to be realized by the State and the Banyan Drive community as a result of the proposed project;
 - v. Any other pertinent information regarding the repair, renovation and operation plan.
 - c. Special Management Area. Explain how the proposed project and uses are consistent with the County's requirements and restrictions for the Special Management Area.
 - d. Proposed Design Standards. Provide the proposed design standards for the project, describing the character of the project,

and other design features such as lighting, landscaping, signage, etc. If applicable, describe how the project will incorporate smart growth and green development principles.

- e. Phasing Plan. If the proposed project will be implemented in phases, provide renderings of the proposed development phases and estimated time periods for each phase.
- f. Protection of Shoreline Areas and Coastal Waters. Describe how the repair, renovation and operation proposal will preserve and protect the shoreline areas (including protecting public access to the shoreline) and coastal waters.
- g. Illustrations & Other Information. Provide any other information, plans, illustrations, and/or renderings that would assist DLNR in visualizing the proposed project.
- h. Community Benefits. Describe any additional benefits arising from and unique to applicant's proposed use of the Subject Property that will benefit the community of Banyan Drive, Hilo, and Hawaii Island.
- i. Changes/differences from SOQ Response. If the repair, renovation and operation plan provides for repairs, renovations or operations that differ from those described in response to the SOQ portion of this RFQ/RFP, the applicant must explain the reason for the differences. The applicant shall also provide additional information to evidence the applicant's qualifications (e.g., experience and expertise) regarding the revised repair, renovation and operation plan. The information to be provided shall be similar to the type and level of detail provided in the SOQ response.

If the evaluation committee, in its sole discretion and in the best interest of the State, determines that the applicant does not possess the necessary experience with respect to such revised repair, renovation and operation plan, DLNR may deem the applicant unqualified to participate in the RFP process or may take such factors into consideration in evaluating the applicant's proposal.

- 4. Economic Proposal. Provide applicant's economic proposal, which shall detail the fees and lease rents the applicant proposes to pay to DLNR, and shall include, at a minimum, the following:
 - a. Annual Minimum Lease Rent. Provide the annual minimum lease rent the applicant proposes to pay for the Subject Property for the first thirty (30) years of the lease (see step-up format below),

including any proposed percentage lease rents or other revenue sharing proposal. Lease rents for any selected proposal shall be no less than fair market value.

<u>Annual Minimum Rents</u>	<u>Period</u>
\$ ___per Annum	Years 1-10
\$ ___per Annum	Years 11-20
\$ ___per Annum	Years 21-30

The annual minimum lease rents will be reopened after the first 30 years and every ten (10) years thereafter.

DLNR will procure an independent appraiser to review the proposed annual minimum lease rent and other information submitted by applicants in response to the RFP to determine whether the applicants' proposed annual minimum lease rent qualifies as fair market rent. If any applicant's proposed annual minimum lease rent is determined to be lower than fair market rent, DLNR will ask the applicant to increase its proposed annual minimum lease rent to fair market rent in order to be further considered under the RFP review process. Any applicant who declines to include fair market rent as determined by DLNR's independent appraiser for applicant's proposal shall be disqualified from further consideration under the RFP.

- b. Lease Terms and Conditions. Describe the proposed commencement of the lease in relation to the applicant's proposed repair, renovation and operation schedule. Identify which events must occur prior to commencement of the lease and which events must be preceded by the execution of the lease. Describe any other critical lease terms and conditions, and the applicant's rationale for such terms and conditions.
 - c. Lease Rent Waiver. Describe any proposed lease rent waiver requested, bearing in mind that the statutory maximum allowed under Chapter 171, HRS, is one year's rent. See HRS Section 171-6(7).
 - d. Other. Provide any other proposed lease terms that the applicant believes are both feasible and appropriate for the applicant's proposal.
5. Business Plan. Provide the applicant's business plan for the proposed repair, renovation and operation of the Subject Property. The business plan must specify all of the major elements necessary to implement the applicant's repair, renovation and operation plan and should be described to a level of detail appropriate for preliminary funding commitments.

The business plan should include, at a minimum, the following:

- a. Repair, Renovation and Operation Schedule. Provide an outline of the proposed repair, renovation and operation schedule and project phasing (including a timeline with realistic start and completion dates), and highlight any events (including government land use entitlements/approvals/permits) that are critical to the timely completion of the project.

The project schedule should include a separate timetable for the pre-renovation / operation activities (i.e., the activities that must occur prior to issuance of the lease, such as due diligence, obtaining land use entitlements/permits/approvals, etc.), and a timetable for the project activities. If the project is to be completed in phases, provide estimated timetables for each phase.

- b. Land Use Entitlements and Approvals/Permits. Provide a comprehensive list of all land use entitlements and government approvals and permits required to complete the project and a projected timeline for obtaining all such entitlements/approvals/permits. Indicate which entitlements/approvals/permits must be obtained prior to the applicant commencing any repair and renovation work of the Subject Property.
- c. Project Cost Estimates. Provide cost estimates for the entire project and also broken down for each phase of the project. Construction cost estimates should include all hard and soft costs, and account for cost escalations. The cost estimates should be itemized by categories such as but not limited to, building repairs and renovations, consultant fees, design fees, entitlement and permitting fees, landscaping, financing costs, marketing and sales costs, operating costs, profits, insurance, bonds, etc.
- d. Financial Pro Forma. Provide pro forma financial projections for the entire project and also broken down for each phase of the project components, including cash flow and operating income/expense projections for the pre-construction stage and for the construction stage (until completion of all repairs and renovations). The pro forma projections should also clearly show gross revenues, operating expenses, vacancies, reserves, debt service, net operating income, profits, and total projected lease payments (base and percentage) to DLNR.

Where subleases are anticipated, provide estimates of subtenant rentals and master lessee operating expenses. The projections should also show projected lease rent payments to DLNR and

any proposed rental waivers.

- e. Market and Financial Feasibility Analysis. Provide a market and financial feasibility analysis for the proposed project. Analyses of market support for the repair, renovation and operation of the Subject Property, proposed handling of sublessee lease rents, absorption/occupancy timetable, and key assumptions used in financial projections and pro formas should be included.
- f. Financing Strategy and Preliminary Commitments. Describe the applicant's proposed financing plan for the project. Describe, to the extent possible, the applicant's estimates of equity requirements and construction and takeout financing, and the applicant's proposed source of funds.

Provide examples of financial approaches and lenders used for other projects renovated or developed by the applicant.

Provide letters from previous or current lenders and/or equity partners describing their prior or existing financing arrangements with the applicant.

If applicant is an entity, its principal(s) will be required to provide personal guarantee(s) for the project.

- g. Marketing and Leasing Plan. Provide a marketing and leasing plan that shows how the applicant intends to implement the proposed project. Provide evidence of other projects renovated or developed by the applicant that successfully utilized a similar marketing and leasing plan.
- h. Method of Operation. Describe the proposed method of operation for the project. Explain the applicant's role in management of the project.

RFP SUBMISSION DEADLINE

Proposals for the repair, renovation and operation of the Subject Property must be delivered to any of the DLNR offices listed in Section I (Introduction) above by no later than **4:00 p.m. on November 30, 2020**; provided, however that this deadline is subject to change in DLNR's sole discretion and in the best interest of the State. Except for information requested by DLNR, information submitted after the submission deadline, including modifications to the applicant's proposal, will not be considered.

Proposals from the applicants not selected by DLNR for exclusive negotiations shall automatically expire upon the execution of the development agreement (unless withdrawn in writing earlier by the applicant) and returned to the applicants or be made available for pickup by the applicants.

EVALUATION PROCEDURES

1. Preliminary Review. Upon receipt of a repair, renovation and operation proposal, DLNR staff will conduct a preliminary review of the submitted information for adequacy and completeness. If the submitted information is incomplete, DLNR staff may, in its sole discretion, disqualify the applicant from consideration. However, DLNR reserves the right to waive any defects, irregularities or informalities in any of the responses and may permit the timely correction of errors contained in them. DLNR may also ask an applicant for clarification of the information submitted or for additional information/materials to assist DLNR or the evaluation committee in its review/evaluation of the applicant's proposal.
2. Substantive Review. The repair, renovation and operation proposals that have been determined to be adequate and complete shall undergo a substantive review and evaluation by DLNR or an evaluation committee selected by DLNR. DLNR reserves the right to select an RFP evaluation committee that consists of members different from those of the evaluation committee for the SOQ portion of this RFQ/RFP.

DLNR or the evaluation committee may ask any applicant for clarification of the information submitted, or for additional information/materials to assist DLNR or the evaluation committee in its review/evaluation of the applicant's proposal. DLNR or the evaluation committee may also conduct interviews of any of the applicants and/or members of the applicant's development team.

The evaluation committee shall select the applicant whose repair, renovation and operation proposal best satisfies DLNR's repair, renovation and operation objectives and the selection criteria below.

3. Board Approval. DLNR staff will request the Board's approval of the evaluation committee's selection of the applicant.
4. Exclusive Negotiations. Upon the Board's approval of the selected applicant, DLNR shall commence exclusive negotiations of the development agreement with the selected applicant (see Section V). The development agreement shall be subject to approval by the Board.

RFP SELECTION CRITERIA

The evaluation committee shall evaluate the qualified applicants' repair, renovation and operation proposals submitted in response to this RFP and shall select the applicant whose proposal, in the sole judgment of the evaluation committee, best meets the following criteria:

Repair and Renovation Plan

- Degree to which the repair, renovation and operation plan meets DLNR's repair, renovation and operation objectives.

Economic Proposal

- Maximizes the financial returns to the State from the Subject Property in a timely manner. In evaluating applicants' proposed lease rents, preference will be given to the proposed annual minimum base rents over the proposed percentage rents.

Business Plan

- Organization of the business plan, reasonableness of the repair, renovation and operation schedule, and demonstrated understanding of the requirements necessary to complete the project in a timely manner.
- Demonstrated understanding of the required land use entitlements and government approvals and evidence of the ability to obtain the entitlements/approvals in a timely manner.
- Demonstrated market and financial feasibility of the repair, renovation and operation proposal.
- Demonstrated ability to finance the proposed repairs, renovations and operations.

V. EXCLUSIVE NEGOTIATIONS / DEVELOPMENT AGREEMENT

EXCLUSIVE NEGOTIATIONS

DLNR will enter into exclusive negotiations with the selected applicant. During exclusive negotiations, DLNR and the selected applicant will negotiate in good faith a development agreement setting forth the terms and conditions under which DLNR will lease the Subject Property to applicant.

The exclusive negotiation period will be six (6) months and will be based upon the repair, renovation and operation proposal submitted by the selected applicant. If the development agreement is not executed by the expiration of the exclusive negotiation period, the authority of the selected applicant to negotiate the development agreement shall terminate, provided, however, that the Chairperson of the Board may, in his/her sole discretion, extend the negotiation period by written notice to the selected applicant for up to an additional six (6) months.

Upon the expiration of the exclusive negotiation period (including any extension), this RFP process shall terminate and neither the selected applicant nor any other applicant shall thereafter have authority to negotiate a development agreement and shall have no right, title or interest in or to the Subject Property.

DLNR reserves the right to negotiate with the selected applicant any additional terms, conditions or modifications to the terms set forth in this RFP or to the selected applicant's proposal if it is in DLNR's and the State's best interest to do so and in the

DLNR's sole discretion.

DEVELOPMENT AGREEMENT

In general, the development agreement will require the selected applicant to perform, all at its sole expense, all pre-construction duties necessary and/or desirable to successfully implement its repair, renovation and operation proposal, including site investigations and other due diligence activities, planning and designing the repairs and renovations, and obtaining all necessary land use entitlements and government approvals/permits.

The terms and conditions of the development agreement shall be subject to negotiation between DLNR and the selected applicant and approval by the Board, but shall include, at a minimum, the following obligations:

Development Agreement Fee. The selected applicant shall pay the DLNR a development agreement fee in consideration for DLNR providing the selected applicant with the exclusive right to conduct its pre-construction activities for its proposed project during the term of the development agreement. The selected applicant's proposal shall include a proposed development agreement fee, but the actual fee and the payment terms may be subject to further negotiation.

Due Diligence. The Subject Property shall be leased in an "as is" condition with all faults and defects whether latent or patent, and DLNR makes no representations regarding the condition of the Subject Property or the suitability of the site for any project proposed by any applicant. Applicants shall, at their sole expense, be responsible for conducting their own investigations and due diligence regarding the Subject Property.

The selected applicant shall be responsible for any and all environmental studies, site work, repairs, improvements, and required remediation of hazardous materials necessary for the repair, renovation and operation of the Subject Property.

DLNR has compiled various documents and information regarding the Subject Property, which are available for review at the Land Division offices or online at <https://dlnr.hawaii.gov/ld/RFQ-RFP-countryclub>. Applicants wishing to review hard copies of the documents and information should contact the Land Division Administration office in advance at (808) 587-0426. By request, neighbor island and out-of-state applicants may make arrangements to view the documents and information by contacting the Land Division Administration Office. DLNR makes no representations or warranties regarding the accuracy of any information contained in such documents, nor for sufficiency and completeness.

Land Use Entitlements and Government Approvals/Permits. Prior to issuance of any lease for the Subject Property, the selected applicant shall, at its sole expense, obtain all land use entitlements and government permits/approvals necessary to construct its proposed project, including but not limited to, special area management (SMA) approval. DLNR makes no representations or warranties regarding any required entitlements/approvals or the likelihood of the selected applicant to

successfully obtain the required entitlements/approvals/permits. It shall be the selected applicant's sole responsibility to apply and pay for, process, and obtain all required entitlements/approvals/permits.

Access. DLNR's information is that public access to the Subject Property is provided from Banyan Drive, which is County road. It shall be the selected applicant's responsibility to confirm if legal access exists and if not, to obtain any required access.

Compliance with Applicable Laws. The Subject Property is "public land" as defined in HRS Chapter 171 and is therefore subject to the requirements, limitations, and restrictions set forth in HRS Chapters 171.

Without limiting the foregoing, the selected applicant shall comply with all applicable federal, State, and county laws, statutes, ordinances, rules and regulations.

Proposed Lease. This RFP contemplates that the negotiation of the development agreement will also include negotiations of a ground lease for the Subject Property with a term up to a maximum of sixty-five (65) years. The development agreement will provide for the lease to be issued only upon the selected applicant's satisfaction of all terms and conditions of the development agreement.

The selected applicant shall also be responsible for the operations and management of the project, including performing all management, leasing, and maintenance functions.

The lease rent payable under the lease, including any percentage rent provisions, fixed rent step-ups, and rent reopening periods, shall be in accordance with the selected applicant's proposal but may be subject to further negotiation.

A sample of DLNR's standard lease form is available for review on-line at <https://dlnr.hawaii.gov/ld/RFQ-RFP-countryclub> and at Land Division's Administration Office.

VI. OTHER TERMS AND CONDITIONS

FEES/COSTS

The selected applicant shall pay all charges required by law and all costs incurred by DLNR in connection with the preparation and processing of this RFP, including but not limited to document fees for preparation of the development agreement and lease, fee for preparation of the survey maps and descriptions, publication fees for this RFP, appraisal fees, conveyance taxes, and recordation fees.

DLNR'S NON-LIABILITY AND WAIVERS

The applicants, by submitting a response to this RFP, waive all rights to protest or seek any legal remedies whatsoever against DLNR or the State regarding any

aspect of this RFQ/RFP.

TITLE TO SUBJECT PROPERTY

The lands comprising the Subject Property are Section 5(b) lands under the Hawaii Admissions Act. DLNR makes no warranty or representation to any applicant with respect to the status of title to the Subject Property.

DLNR'S DISCRETION AND RESERVATION OF RIGHTS; CANCELLATION OF RFP

DLNR reserves the right to: (1) request from any applicant a clarification of any information submitted or additional information/materials to assist DLNR or its evaluation committee in the review/evaluation of the applicant's qualifications or proposal; (2) reject any and all submissions in whole or in part; (3) require amendments or modifications to the submissions; (4) waive any of the submission requirements; (5) cancel this RFP; and/or (6) re-advertise for new qualifications and/or proposals, all with no liability whatsoever, whether or not it is in the DLNR's best interest to do so. DLNR also reserves the right to amend this RFP, including but not limited to, the deadlines and submission requirements, at any time prior to the applicable submission deadline. The information contained in this RFP is believed to be reliable, but cannot be guaranteed.

Any and all information submitted in response to this RFP by applicants not selected for exclusive negotiations of the development agreement shall be returned to the respective applicants once the development agreement is executed, unless DLNR determines, in its sole discretion, that it is in DLNR's best interest to retain any or all such information, except for information marked confidential by applicants.