

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

January 14, 2022

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

PSF No.: 04MD-109

Maui

Resubmittal: Approve Evaluation Committee's Recommendation for Selection of Proposal Submitted by Ruby & Sons Hospitality, LLC in Response to Request for Qualifications / Request for Proposals for Lease of Public Lands; Kamaole, Wailuku, Maui, Tax Map Keys: (2) 3-9-004: 149.

BACKGROUND:

At its meeting of January 8, 2021, under agenda Item D-6, the Board of Land and Natural Resources (Board) approved the publication of a Request for Qualifications / Request for Proposals (RFQ/RFP) for interested parties to submit proposals for the lease of public lands under a new long-term lease.

Specifically, the Board delegated authority to the Chairperson to (i) issue an RFQ/RFP 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.

REMARKS:

In accordance with the Board's approval, Land Division prepared an RFQ/RFP for the project that was published in the *Star Advertiser* and *Maui News* on May 24, 2021 and posted on Land Division's website. A copy of the published RFQ/RFP is attached as Exhibit A.

A virtual applicant briefing was held on June 1, 2021, at which Land Division staff discussed the goals of the project and the significant dates set forth in the RFQ/RFP, including the deadlines for submitting notices of intent, statements of qualifications (SOQ), and proposals. Two parties timely submitted a notice of intent for the subject project by the June 10, 2021 deadline: Ruby & Sons Hospitality, LLC (Ruby & Sons) and the County of Maui. Ruby & Sons timely submitted its SOQ for the project on or before the deadline of June 30, 2021. The County of Maui, however, did not submit

qualifications for this project.

On May 18, 2021, the Chairperson appointed an evaluation committee to review the SOQ. On July 2, 2021, the evaluation committee found Ruby & Sons to be qualified to progress to the second phase of the process, which is the submission of proposals. The applicant submitted its proposal for the property by the deadline of July 30, 2021.

After careful review, on August 25, 2021 the evaluation committee made a preliminary selection of Ruby & Sons' proposal and is recommending that the Board approve the selection. Ruby & Sons holds General lease No. S-4212 (GL 4212) for the Days Inn by Wyndham Maui Oceanfront next to the subject property. Ruby & Sons has operated the parking lot on the subject parcel under Revocable Permit No. S-7780 (RP 7780) since 2012 when it purchased the adjacent hotel out of bankruptcy.

A table listing the main criteria considered by the evaluation committee in making its selection is attached as Exhibit B. A copy of Ruby & Sons' proposal with confidential information redacted is attached as Exhibit C.

Ruby & Sons proposes to continue operating the parking lot as a public/private facility, as it has since taking over operation of the hotel. The parking lot is subject to numerous terms and conditions stipulated in a November 25, 2005 settlement agreement between prior tenant, Western Apartment Supply and Maintenance, the County of Maui, Tri-Star Restaurant Group, LLC, Sarento's on the Beach, LLC, Dana Naone Hall and Leslie Kuloloio. The relevant terms and conditions are enumerated on pages 4-5 of Item D-6 as approved by the Board on January 8, 2021 (Exhibit A, Attachment 1). In the same Board action, staff discussed an amendment of the settlement agreement that had been signed by most of the parties to the original settlement agreement. To date, however, the County has not signed the amendment.¹

Ruby & Sons is already operating and maintaining the parking lot under RP 7780 and is prepared to commence a long-term lease immediately if the Board approves its proposal. Because Ruby & Sons operates the adjacent hotel on land leased under GL 4212, it requests that a potential lease term be coterminous with the hotel lease.

If the Board approves the evaluation committee's selection, the next step in the process is for Land Division to negotiate a development agreement covering the terms and conditions under which a new lease for the operation and maintenance of the public/private parking lot will be issued to Ruby & Sons. As part of the negotiations, Land Division will procure an appraisal of the fair market rent payable for the property.

¹ In an email sent on June 29, 2021 to the Chairperson, Maui resident Kai Nishiki took the position that the RFQ/RFP published by the Department was void because (1) it appeared narrowly written to apply to only one qualified bidder and (2) the amendment to the settlement agreement was not fully executed. Land Division sent her a letter dated July 6, 2021 explaining why the RFQ/RFP was drafted the way it was and advising her that Land Division would continue with the process. Ms. Nishiki's email is attached as Exhibit D and Land Division's response is attached as Exhibit E.

Ruby & Sons proposes to pay a premium above and beyond the appraised fair market rent.

Ruby & Sons has already completed significant improvements to the parking lot under the November 25, 2005 settlement agreement. These improvements include increasing the ratio of public to private parking to 51 and 34 stalls, respectively. Signage has been installed to designate the stalls and Ruby & Sons assures that stalls are used only for their designated purpose. Ruby & Sons maintains the pervious surface of the parking lot which includes periodic re-graveling and grading, and has installed and maintained landscaping, lighting, and security measures. Finally, Ruby & Sons provides water for and maintains showers for public beach users free of charge.

Ruby & Sons proposes further improvements to the parking lot including installing photovoltaic lighting, security systems, irrigation, and planting 17 shade trees. Ruby & Sons is awaiting County approval of its Conditional Use Permit (CDUP) for the parking lot. Approval of the CDUP is contingent upon the receipt of a Special Management Area Permit, Covid-19 has significantly delayed the County approval process. Upon receipt of the CDUP, Ruby & Sons intends to complete improvements listed above. Ruby & Sons anticipates a construction period of 3-6 weeks to complete the remaining work once the County approves their applications. Ruby & Sons proposes no significant additions to the parking lot as it is currently developed and intends to maintain the current configuration providing at least 51 parking stalls for public and at least 34 stalls designated for hotel and restaurant parking.

Once the development agreement is negotiated and the rent is determined, Land Division will return to the Board for approval of the development agreement and the form of lease to be executed once the conditions of the development agreement are satisfied. The development agreement will provide additional detail on the project scope and cost.

The revenues generated from the hotel and parking lot site would provide much needed support to the division and department's operating budget, and therefore, staff believes that the parcel should be leased at fair market value to generate revenue to support the Special Land and Development Fund (SLDF). As background, the Land Division is comprised of 41 permanent staff positions with offices on Oahu, Maui, Kauai, and Hawaii Island. All 41 Land Division positions are fully funded by the SLDF. In addition to funding Land Division's operation, the SLDF fully or partially supports 48 positions spread throughout the Department. These include 7 positions at the Office of Conservation and Coastal Lands (OCCL), 1 at the Division of Forestry and Wildlife (DOFAW), 19 at the Engineering Division (ENG), 6 at the Commission on Water Resource Management (CWRM), 4 in the office of the Chairperson, 6 in Administrative Service, 4 in Information Technology Services, and 1 in the Personnel Office.

In addition to funding staff positions throughout the Department, the SLDF fully funds OCCL and provides funding support for lifeguards at state parks, dam safety and geothermal mining programs under ENG, stream monitoring and studies under CWRM, and various resource protection programs administered by DOFAW.

In Fiscal Year 2020, \$6,171,710 was transferred out of the SLDF to support the aforementioned positions and programs. This support is made possible through Land Division's management of revenue generating properties such as the subject parcel. In addition to recurring expenses, it is critical that the SLDF maintain sufficient reserve funds in order to address unforeseen expenses to address public health and safety. For example, the SLDF has been funding the maintenance of the East Kauai irrigation system to address public health and safety issues. Furthermore in 2021, the Legislature raided approximately \$10 million from the SLDF to support other government programs that provide critical public services². Staff emphasizes that the proposed disposition will preserve and even increase public parking at the site, while also generating income for the Department. Staff's recommendation represents a balance between providing free public parking to provide access the shoreline and generating much needed market rate commercial rent revenue for the SLDF.

Historically, neither the Department nor the Board intended for the subject parcel to be converted to a free public parking lot. In tandem with the adjoining hotel parcel, the subject parcel was originally zoned H-M Hotel District under the Kihei General Plan with the goal of generating revenue to support the Department's mission. Over time, the subject parcel was downzoned to its current designation as PK Park. This was done without the State's consultation or consent.

RECOMENDATION: That the Board:

1. Accept and approve the evaluation committee's recommendation to select Ruby & Sons Hospitality, LLC as the developer/lessee of the subject property.
2. Authorize the negotiation of a development agreement and proposed lease form with Ruby & Sons Hospitality, LLC subject to the terms and conditions cited above. Once the development agreement and lease form are negotiated, staff shall present the development agreement and proposed lease form to the Board for approval prior to execution.

² Despite the significant loss of funds, there was negligible impact to Department operations due to the consistent, reliable revenue provided by ground lease rents.

Respectfully Submitted,

Luke Sarvis

Luke J. Sarvis
Project Development Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

EXHIBIT A

EXHIBIT A

**REQUEST FOR QUALIFICATIONS /
REQUEST FOR PROPOSALS
FOR THE MAINTENANCE AND OPERATION OF A PUBLIC/PRIVATE PARKING LOT
Kamaole, Wailuku, MAUI**



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

May 24, 2021

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ATTACHMENTS:

Attachment 1: Land Board Approval dated January 8, 2021 (Agenda Item D-6)

NOTICE TO INTERESTED PARTIES
REQUEST FOR QUALIFICATIONS ("RFQ") /
REQUEST FOR PROPOSALS ("RFP")
FOR THE OPERATION AND MAINTENANCE OF A PRIVATE/PUBLIC PARKING LOT

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 operation and maintenance of a parking lot on a parcel of State land in Kamaole, Wailuku, Maui, designated as Tax Map Key: (2) 3-9-004:149.

The subject parcel is located on South Kihei Road in Kihei, Maui. This RFQ/RFP is intended to facilitate the operation and maintenance of the parking lot situated on the subject parcel through the issuance of a new lease for parking lot purposes to a qualified applicant who submits the best proposal to the State.

DLNR intends to select the operation and maintenance 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 the subject parcel and operate the improvements thereon upon satisfaction of the terms and conditions of the development agreement. The lease term will be up to approximately forty-nine (49) years with an expiration date no later than September 3, 2070. 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 June 1, 2021**, 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., June 10, 2021**. 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., June 30, 2021**, 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 operation and maintenance proposal for the improvements on the subject parcel. DLNR will evaluate the submitted proposals and select the applicant whose proposal best satisfies DLNR's operation and maintenance objectives and selection criteria as provided in this RFQ/RFP. Upon the Board of Land and Natural Resources' approval of the selected applicant and operation and maintenance proposal, the selected

applicant and DLNR will commence negotiations of the 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-public-private-parking-lot-kamaole-wailuku-maui/>.

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 Luke Sarvis, Project Development Specialist, at (808) 587-0545.

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

Honolulu Star-Advertiser
Maui News
May 24, 2021

**NOTICE OF INTENT
REQUEST FOR QUALIFICATIONS ("RFQ") /
REQUEST FOR PROPOSALS ("RFP")
FOR THE MAINTENANCE AND OPERATION OF A PUBLIC/PRIVATE PARKING LOT**

Parties interested in submitting qualifications and proposals in response to the RFQ/RFP for the operation of parking lot in Kihei, Maui, 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., June 10, 2021**. 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)

<u>Name</u>	<u>Address</u>	<u>% Interest</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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)

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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 Kamaole, Wailuku, Maui and designated as Tax Map Key: (2) 3-9-004:149 (Parcel 149). The improvements on the Parcel 149 include an unpaved parking lot, signage, lighting, landscaping, an irrigation system, and a public shower. The subject parcel 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-7780 to Ruby & Sons Hospitality, LLC (Ruby & Sons) for parking lot purposes. DLNR's Land Division manages the permit and is responsible for planning the future use of the Subject Property.

DLNR does not have the funding, expertise, or staffing to operate the Subject Property on its own. Accordingly, DLNR is seeking a private entity with the necessary expertise and financial capacity to maintain 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 and operate the Subject Property to facilitate its fullest utilization consistent with the Amended Settlement Agreement discussed below as well as applicable zoning and environmental assessment laws, to increase the lease rent revenues to the State and provide private/public parking and beach access to the public. Parking stalls required to be reserved for public beach access under the Amended Settlement Agreement shall be provided to the public at no cost. Sublease rent may be charged to Ruby & Sons, the user of the restaurant space formerly occupied by Sarento's on the Beach, LLC (Former Sarento's Space), their successors-in-interest and permitted assigns and any other commercial uses on Tax Map Key: (2) 3-9-004:029 (Parcel 29) for the private parking required to be provided for their use under the Amended Settlement Agreement. 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 setting forth any operation and maintenance plans for the Subject Property that are permitted under the Amended Settlement Agreement discussed below, 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 buildings is not permitted as part of this RFQ/RFP.

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

SUBJECT PROPERTY

The Subject Property, with an area of 0.694 acre, is located at Kamaole, Wailuku, Maui, and includes all improvements located thereon. The improvements consist of an

unpaved parking lot, signage, lighting, landscaping, an irrigation system, and a public shower.

PERMITTED USES

The Subject Property must be used for parking lot 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 AND TSUNAMI INUNDATION ZONES

The Subject Property is located in the Federal Emergency Management Agency's Flood Zone X (areas determined to be outside the 0.2% annual chance floodplain) and within the tsunami inundation zone. The selected applicant shall be responsible for complying with any statutes, rules, or regulations applicable to improvements located in the tsunami inundation zone.

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 compiled various documents regarding the Subject Property, which are available for review on-line at: <https://dlnr.hawaii.gov/ld/rfq-rfp-public-private-parking-lot-kamaole-wailuku-maui/>, 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) 587-0419. 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 documents.

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

The Subject Property is currently used as a parking lot shared by the public and guests of the adjacent Days Inn Maui Oceanfront hotel and will likely remain in use under Revocable Permit No. S-7780 (RP7780) to Ruby & Sons during the RFQ/RFP process.

SETTLEMENT AGREEMENT TERMS AND CONDITIONS BINDING SUBJECT PROPERTY

The selected applicant shall comply with the terms and conditions of November 25, 2005 Settlement Agreement between Western Apartment Supply & Maintenance Co. (Western) and the Planning Department, County of Maui, as subsequently amended by a 2018

Amendment to Settlement Agreement (Amended Settlement Agreement). The current permittee purchased the assets of the adjacent hotel free and clear of liens and encumbrances and obtained and assignment of RP7780 for the parking lot (Subject Property) area as part of Western's bankruptcy proceedings. The following terms and conditions of the Amended Settlement Agreement are binding on the selected lessee:

1. Prepare and file with the County of Maui an Environmental Assessment pursuant to HRS Chapter 343 for the projects as a whole on Parcels 29 and 149 and complete, as appropriate the environmental process intended by Chapter 343.
2. Prepare and file with the County of Maui an application for a Conditional Use Permit allowing commercial parking on Parcel 149 for the required off-site parking for Ruby & Sons' Maui Oceanfront Inn, Former Sarento's Space and any other commercial uses on Parcels 29 and/or 149, pursuant to Chapter 19.40 of the Maui County Code and use best efforts to obtain the approval of the Maui County Council for the Conditional Use Permit.
3. Apply to the Planning Department for Planning Director approval of the use of Parcel 149 for off-site parking for the Maui Oceanfront Inn, Former Sarento's Space and other commercial uses of Parcel 29 pursuant to Chapter 19.36A of the Maui County Code. The Parties agreed to use their best efforts to obtain the approval of the Planning Director for the off-site parking as provided herein. (Amended)
4. Prepare a Traffic Impact Assessment Report to accompany the aforementioned applications and/or filings.
5. Apply for concurrently and to use best efforts to obtain SMA permit(s) for the applicable variances and process further the application for an after-the-fact SMA permit for Parcel 149 in accordance with Chapter 205A and the regulations promulgated thereto.
6. Apply for and use best efforts to obtain a Shoreline Setback Variance.
7. Apply for and use best efforts to obtain a shoreline certification.
8. Any lease of Parcel 149 from the State of Hawaii shall be for vehicular parking purposes, providing at least 51 parking stalls for public beach access parking to be available for such purposes twenty-four hours per day and at least 34 stalls for commercial, offsite parking for the Maui Oceanfront Inn and Former Sarento's Space, both located on Parcel 29. (Amended)
9. Post and maintain appropriate signs at the entry of Parcel 149 from South Kihei Road and within the property notifying the public of its right to park on Parcel 149 for public beach access parking.
10. In the event the County provides substantial additional public beach access parking on the parcel adjoining Parcel 149 to the north, then Ruby & Sons and the user of the Former Sarento's Space may request that the County of Maui and Dana Naone Hall and Leslie Kuloloio agree in their discretion to further amend the Settlement Agreement to increase the parking stalls allocated for use by Maui Oceanfront Inn and Former Sarento's Space on Parcel 149 by up to 8 additional stalls and to reduce public beach access parking on Parcel 149 by an equal number

of stalls. Any addition of stalls for Maui Oceanfront Inn and Former Sarento's Space on Parcel 149 or deletion of public beach access stalls shall take place in a manner that configures the beach access stalls so that they abut one another. The County of Maui and Hall and Kuloloio agreed to take into consideration the substantiality of the increase in public beach parking stalls made available on the parcel adjoining Parcel 149 in exercising their discretion regarding this request. (Amended/New)

11. The parking lot on Parcel 149 shall not be paved with impervious materials. The selected lessee shall be responsible for clearly marking with signage those at least 34 contiguous parking stalls located on Parcel 149 dedicated for use by the hotel and Former Sarento's Space located on Parcel 29, including by their employees. The selected lessee shall also be responsible for clearly marking with signage those at least 51 parking stalls located on Parcel 149 dedicated for use by the public for public beach access purposes twenty-four hours per day and for maintaining the signage for the public beach access stalls after installation by the selected lessee. Such signage shall include a sign at the entrance of Parcel 149 visually depicting which stalls are dedicated for public beach access parking and which stalls are dedicated for use by the hotel and restaurant. Hall and Kuloloio shall approve of all parking signage prior to installation.

The selected lessee and use of the Former Sarento's Space shall be responsible to prevent the guests, employees, invitees and agents of the Maui Oceanfront Inn and user of the Former Sarento's Space from using the at least 51 parking stalls dedicated for use by the public for public beach access purposes for any period of time between 6 a.m. and 9 p.m., the at least 51 stalls dedicated for use by the public for public beach access purposes twenty-four hours per day and shall be responsible for assuring that these stalls are used for public beach access and not for any other purpose. Nothing herein prevents the County of Maui or Hall and Kuloloio or any member of the public from requesting that any vehicle improperly parked in the public beach access parking stalls be towed away, at the vehicle owner's expense, through the Maui Police Department or by a licensed towing company or requesting any other remedy allowed by law.

The selected lessee shall be responsible for assuring that the at least 34 stalls designated for use by the hotel and restaurant are not used for any other purpose and for maintaining the signage for such stalls. (Amended/New)

To date, Ruby & Sons reports it has taken the following actions to satisfy the terms of the settlement with Maui County. Ruby & Sons applied for and obtained a Conditional Use Permit from the Maui County Council with the support of the Maui County Planning Department satisfying items 2 and 3. Ruby & Sons also reports that it posted required signage and marked parking stalls for public use of the gravel paved parking lot satisfying items 8, 9, and 11. Applicants are responsible for verifying the extent of Ruby & Sons' compliance with the settlement agreement as the Department makes no representations or warranties regarding such compliance.

In the event circumstances arise such that public parking is made available in the general surrounding area or zoning and entitlements are modified to promote a higher and better use of Parcel 149, or the Amended Settlement Agreement is further amended or its terms and conditions are released in whole or in part, the selected applicant may request the Board allow uses other than public and private parking. Such other uses will only be allowed if

approved by the Board at a public, sunshine meeting, the selected applicant's proposed use complies with all applicable laws including, without limitation to, Chapter 343, HRS, and the rent payable for the land is appraised based on the other uses proposed.

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 January 8, 2021, the Board approved agenda Item D-6 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 application form by or before the stated deadline (**June 10, 2021, 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 project.

RFQ/RFP SOLICITATION AND SELECTION PROCESS

After submission of a Notice of Intent, participants 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") from interested parties detailing their experience in operating and maintaining a parking lot, 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) will then be invited to participate in the proposal process.

Step 2: Submission of Proposals. The RFP solicits detailed operation and maintenance 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 operation and maintenance objectives and selection criteria. The Board, at a meeting open to the public, must approve the recommended applicant and its operation and maintenance 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-lease 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 operate and maintain 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 applicant commencing any operation or maintenance of the Subject Property.

SIGNIFICANT DATES AND TIMES*

Item / Event / Deadline	Date	Time
Advertisement of RFQ/RFP	May 24, 2021	
Virtual Applicant Briefing	June 1, 2021	2:00 p.m.
Deadline to Submit Notice of Intent	June 10, 2021	4:00 p.m.
Deadline to Submit Statement of Qualifications	June 30, 2021	4:00 p.m.
Notify Qualified Applicants of RFP*	July 12 2021	
Deadline to Submit Proposals*	July 30, 2021	4:00 p.m.
Evaluation Committee's Selection of Developer*	August 31, 2021	
Land Board Approval of Selected Developer* and Negotiation of Development Agreement	September 24, 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.

Luke Sarvis
Land Division
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Phone: (808) 587-0545
Facsimile: (808) 312-6357

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-public-private-parking-lot-kamaole-wailuku-maui/>.

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 instructions provided in the prior paragraph.

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 continued operation and maintenance of the Subject Property as a public/private parking lot in a way that promotes the dual use of the area for hotel/restaurant parking and public recreational purposes. The proposed use will:

- Be undertaken by a qualified private sector lessee who will bear all of the costs of the operation and maintenance of the parking lot and will not be subsidized by the State or DLNR.
- Be performed under a leasehold arrangement between DLNR and the selected applicant.
- Provide a benefit to the community of Wailuku, Maui.
- Maximize the financial returns to the State from the Subject Property in a timely manner factoring the allowed uses under the lease.
- 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 operating and maintaining the Subject Property under a long-term lease. DLNR’s review and evaluation of the potential developers’ or lessees’ SOQ will help in ensuring that the selected applicant has the experience, expertise and financial capacity to successfully undertake its proposed operation and maintenance 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-lease 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 June 1, 2021**, to explain DLNR’s operation and maintenance 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 June 10, 2021**. 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 RFQ/RFP.

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 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 management plan and use of the Subject Property. 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 operate and maintain 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 operation and maintenance 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 operation and maintenance of the Subject Property.

IMPORTANT: The applicant identified in the Notice of Intent should match the information provided above. If there are any discrepancies, please explain. 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 BLNR.

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, operate or maintain 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 operation and maintenance 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-lease 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 operate and maintain 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 June 30, 2021**. 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 operation and maintenance proposals in accordance with Section IV (Request for Proposals) of this RFQ/RFP.¹

- a. Qualification Criteria. DLNR or the evaluation committee shall evaluate the applicants' qualifications based on the following criteria:
 - Successful real estate development experience relevant to the applicant's proposed operation and maintenance of the Subject Property, including experience in community outreach and in obtaining land use entitlements and government approvals/permits.

¹ If there is only one qualified applicant, DLNR may, in its sole discretion, waive certain RFP submission requirements.

- Real estate management experience relevant to the applicant's proposed use of the Subject Property.
 - Financial capacity to fund the applicant's proposed operations and maintenance.
 - Creditworthiness and past experience in leasing private and public lands.
- 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 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 operation and maintenance proposals in accordance with this Section IV (Request for Proposals).

DLNR, through its evaluation committee, will evaluate the operation and maintenance 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-lease 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 an operation and maintenance proposal, which shall include: (1) an operation and maintenance plan; (2) an economic proposal; and (3) a business plan. The 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 of their operation and maintenance 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 operation and maintenance proposal.
3. Operation and Maintenance Plan. Provide the applicant's operation and maintenance plan for the Subject Property. The operation and maintenance plan **must** include the following plans, information, and details:
 - a. Site Plan. Provide a conceptual site plan showing the configuration of the parking lot 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 operation and maintenance proposal, including but not limited to the following:
 - i. Descriptions of the proposed project and proposed uses;
 - ii. An outline of the operation and maintenance program and phases (if any);
 - iii. Statements indicating how the operation and maintenance plan satisfies DLNR's objectives for the Subject Property;
 - iv. Descriptions of the benefits to be realized by the State and the Wailuku community as a result of the proposed project;
 - v. Any other pertinent information regarding the operation and maintenance 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 operation and maintenance 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 Wailuku, Maui.
- i. Changes/differences from SOQ Response. If the operation and maintenance plan provides for operations or maintenance 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 operation and maintenance 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, determines that the applicant does not possess the necessary experience with respect to such revised operation and maintenance 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. Lease rents shall be no less than fair market value as determined under HRS Section 171-17. DLNR may reject any proposal that proposes lease rents below fair market value as determined by an appraisal procured by DLNR.

<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.

- b. Lease Terms and Conditions. Describe the proposed commencement of the lease in relation to the applicant's proposed operation and maintenance 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. If the applicant is proposing a lease rent structure that differs from the structure set forth above, explain and provide evidence that applicant's proposed lease rent is equal to or greater than the estimated appraised total minimum annual rents above. If an alternative rent structure is proposed, successive rent re-openings should reflect an amount that is no less than the prior lease rental amount.

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 operation and maintenance of the Subject Property. The business plan must specify all of the major elements necessary to implement the applicant's operation and maintenance 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. Operation and Maintenance Schedule. Provide an outline of the proposed operation and maintenance 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 commencement of operations and maintenance.

The operation and maintenance schedule should include a separate timetable for the pre-lease 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 commencement of operation and maintenance and lease-up activities. If the operation and maintenance are 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 commence the operation and maintenance 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 operation and maintenance 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, if any, 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, repairs, 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. 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 operation and maintenance 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 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 operated or maintained 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 operation and maintenance 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 July 30, 2021; provided, however that this deadline is subject to change in DLNR's sole discretion. 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 an operation and maintenance 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 operation and maintenance 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 operation and maintenance proposal best satisfies DLNR's operation and maintenance 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' operation and maintenance 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:

Operation and Maintenance Plan

- Degree to which the operation and maintenance plan meets DLNR's operation and maintenance 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 operation and maintenance 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 operation and maintenance proposal.
- Demonstrated ability to finance the proposed operations and maintenance.

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 operation and maintenance 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 best interest to do so.

DEVELOPMENT AGREEMENT

In general, the development agreement will require the selected applicant to perform, all at its sole expense, all pre-lease duties necessary and/or desirable to successfully implement its operation and maintenance 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-lease 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 operation and maintenance 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-public-private-parking-lot-kamaole-wailuku-maui/>. Applicants wishing to review hard copies of the documents and information should contact the Land Division Administration office in advance at (808) 587-0545. 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.

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 South Kihei Road, which is a 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 Chapter 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 approximately forty-nine (49) years with an expiration date no later than September 3, 2070. 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-public-private-parking-lot-kamaole-wailuku-maui/> 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, fees 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 regarding any aspect of this 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.

EXHIBIT B

**RANKING CRITERIA AND RUBY & SONS HOSPITALITY, LLC PROPOSAL
FOR A PUBLIC/PRIVATE PARKING LOT**

RFQ/RFP Criteria	Ruby & Sons Hospitality, LLC Proposal
Degree to which the repair, renovation and operation of the property will be undertaken by a qualified private sector lessee who will bear all costs without subsidy from DLNR.	Applicant has an established track record in managing the premises under a revocable permit, will pay for all costs required without subsidy from DLNR, and is willing to pay a premium over fair market rent for the land.
Degree to which proposal restores the property to its highest and best use to the extent permitted by under applicable law, including but not limited to Chapters 171 and 343, HRS.	The proposed use of the land as a public/private parking lot approaches highest and best use due to county downzoning.
Degree to which the proposal provides a benefit to the community of Banyan Drive, Hilo, and Hawaii Island.	Applicant's proposal includes maintenance of parking spaces for public use free of charge to include lighting, shade trees and irrigation.
Degree to which the proposal maximizes the financial returns to the State in a timely manner. In evaluating applicant's proposed lease rents, preference will be given to the proposed annual minimum base rents over the proposed percentage rents.	Applicant states it is willing to pay a premium over fair market rent under a new lease of the land. Percentage rents inapplicable since no revenues will be generated directly from the parking lot use of the land.
Organization of the business plan, reasonableness of the development schedule, and demonstrated understanding of the requirements necessary to implement the repair, renovation, and operation proposal in a timely manner.	Applicant's business plan, development schedule and understanding of requirements necessary for operation and development of the parking lot are sound.
Demonstrated understanding of the required land use entitlements and government approvals and evidence of the ability to obtain said entitlements/approvals in a timely manner.	Applicant's proposal shows it has a thorough understanding of the land use entitlements and government approvals required for its use of the land as a public/private parking lot.
Demonstrated market and financial feasibility of the development proposal.	The applicant will not generate revenue directly from its use of the parking lot. However, the private spaces in the parking lot are necessary for its operation of the hotel on the adjoining State parcel.
Demonstrated ability to finance the development proposal.	Applicant appears to have the financial wherewithal to make its proposed operation succeed without borrowing funds.

EXHIBIT C

RUBY & SONS HOSPITALITY, LLC's
RESPONSE TO
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION'S
REQUEST FOR PROPOSALS FOR THE
MAINTENANCE AND OPERATION OF A
PUBLIC/PRIVATE PARKING LOT
Kamaole, Wailuku, MAUI

Submitted: July 30, 2021

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I. EXECUTIVE SUMMARY

Applicant Ruby & Sons Hospitality, LLC is the long-term lessee of the premises situated at Kamaole, Wailuku, Maui, Hawaii, identified as TMK (2) 3-9-004:029 ("Parcel 29") pursuant to General Lease No. S-4212, as extended, amended and restated ("Hotel Lease"). Applicant owns and operates the Days Inn by Wyndham Maui (formerly, the Maui Oceanfront Inn) and a restaurant located on Parcel 29 (collectively, "Hotel"). Applicant also operates and maintains the parking lot adjacent to the Hotel, situated on TMK (2) 3-9-4-149 ("Parking Lot"), pursuant to Revocable Permit No. S-7780.

Applicant proposes to continue its operation and maintenance of the Parking Lot, as it has since 2006, under a new, long-term lease with the State. The long-term lease will allow Applicant to complete development of the Parking Lot in accordance with the settlement agreement with the County of Maui and community members. In addition, Applicant is the only authorized operator of the Parking Lot pursuant to the approvals received from the County of Maui, which are specific to Applicant. Applicant is willing to pay a premium over market rate rent, because the Parking Lot is essential for the operation of the Hotel and its restaurant, and the lease rent being paid for the adjoining Hotel property is predicated upon continued use of the Parking Lot. Applicant will continue to operate the Parking Lot for no profit and self-fund all Parking Lot expenses, for the benefit of the public beach access users and its Hotel guests.

II. OPERATION AND MAINTENANCE PLAN

A. Site Plan

See Parking Lot Plan attached hereto as Exhibit A.

B. Narrative Description

Applicant has already completed most of the development of the Parking Lot in accordance with the Parking Lot Plan described in the November 25, 2005 Settlement Agreement between Western Apartment Supply & Maintenance Co. and the Planning Department, County of Maui, as subsequently amended by that certain 2018 Amendment to Settlement Agreement ("Settlement Agreement") and additional requirements established by the County of Maui. Applicant is the only authorized operator of the Parking Lot pursuant to the approvals it has already received from the County of Maui. Applicant developed the Parking Lot with the expectation that Applicant's Revocable Permit would be converted to a long-term lease coterminous with the Hotel Lease on the adjoining property. The Parking Lot is essential for the successful operation of the Hotel. Applicant's Hotel Lease and the rent payable under the Hotel Lease are predicated upon the Applicant having sufficient parking in the Parking Lot. Applicant successfully completed the requirements under the Development Agreement, dated January 24, 2017, between Applicant and the State of Hawaii, through the Board of Land and Natural Resources ("Development Agreement"), in order to obtain the extension of the term of the Hotel Lease.

Applicant has an established history of developing, operating, and maintaining the Parking Lot at Applicant's own expense. Community members also requested that the State receive market rent under a long-term lease as opposed to the low rent payable under the Applicant's Revocable Permit. Applicant's operation and maintenance program for the Parking Lot is already in place, so Applicant is qualified and prepared to continue operating and maintaining the Parking Lot without any interruption. Applicant has historically operated the Parking Lot to provide parking for the Applicant's Hotel and for public beach access parking since 2006 and proposes to continue to operate it consistent with the Parking Lot Plan described in the Settlement Agreement. Specifically, Applicant currently:

- ☐ Provides vehicular parking available twenty-four (24) hours per day, with at least fifty-one (51) stalls designated for public beach access parking and at least thirty-four (34) parking stalls designated for hotel and restaurant parking in connection with the use of Parcel 29;
- ☐ Maintains the signage it installed to depict and mark those stalls dedicated for use by the hotel and restaurant, and those stalls dedicated for use by the public for public beach access;
- ☐ Assures that the stalls are used only for the purpose for which they are designated;
- ☐ Maintains the pervious surface of the Parking Lot, which requires annual regravelling, and other periodic filling and leveling;

- ☐ Provides routine maintenance, landscaping, lighting, security, and insurance for the Parking Lot; and
- ☐ Provides water for the showers for public beach users on State property free of charge and maintains the showers.

To meet the additional requirements of the Maui Planning Department's Conditional Use Permit for the Parking Lot (see Ordinance No. 4950), Applicant also plans to plant seventeen (17) shade trees, install security solar lighting, and install irrigation. This work cannot commence until the SMA Permit is approved, but Applicant has prepared the plans and specifications and is prepared to begin this work once the permit is approved and Applicant receives a long-term lease. See Exhibits B and C. The estimated timeframe for completion is approximately 3-6 weeks from the start date.

C. Special Management Area

Applicant's current and proposed use of the Parking Lot is consistent with the County's objectives for the Special Management Area as follows:

Objective: Provide coastal recreational resources accessible to the public.

The Parking Lot is located near the shoreline and existing public beach access to the State beach reserve and provides the public 60% of the total parking stalls (51 stalls), allowing for enhanced public accessibility to coastal recreational resources.

Objective: Protect, preserve and where desirable, restore those natural and fabricated historic and prehistoric resources in the coastal zone management areas that are significant in Hawaiian and American history and culture.

The site contains pre-existing structures and no new development is planned. Parcel 149 has been used by Applicant for additional parking for its Hotel and Restaurant and for public beach access parking since 2006. If required by the State Historic Preservation Division, an approved Archaeological Monitoring Plan will be implemented during installation of the irrigation system in order to minimize adverse impacts on unanticipated archaeological resources or human remains.

Objective: Protect, preserve and, where desirable, restore or improve the quality of the coastal scenic and open space resources.

There will be no significant additions to the Parking Lot, as it is currently developed. All new work, including continuing maintenance, installation of landscape planting, irrigation, and lighting fixtures on Parcel 149 will not interfere with coastal view planes from South Kihei Road, as no views to the ocean occur on the parcel due to existing mature vegetation. Thus, in terms of scenic resources, the project will have no significant effect on the visual character of the site and its immediate environs.

Objective: Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems; Protect beaches and coastal dunes for: (i) Public use and recreation, (ii) The benefit of coastal ecosystems, and (iii) Use as natural buffers against coastal hazards; and Coordinate and fund beach management and protection.

Although a portion of the subject property is located near the shoreline, the proposed use will not significantly impact coastal ecosystems. No change or expansion of use or facilities is proposed. No improvements are proposed that would directly affect or alter the shoreline in this area. Moreover, at the request of the community and the County of Maui, the Parking Lot is surfaced with pervious materials which minimizes adverse impacts on the surrounding ecosystem.

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

The Parking Lot will continue to be used for public beach access use and for patrons of the Hotel and Restaurant.

Objective: Reduce hazard to life and property from coastal hazards.

The risk to life and property from coastal hazards is relatively low with respect to a parking lot, as compared to a residential or commercial building. According to the Flood Insurance Rate Map No. 150003-0330 B for this region, the Parking Lot is situated within Zone "X", an area outside the 0.2% annual chance flood plain, and is located within the Tsunami Evacuation Zone. Applicant will follow recommended safety measures associated with these advisory zones, as necessary, including but not limited to accommodating and advising individuals who may be on premises regarding evacuation and sheltering information, plans, and detailed routes.

Objectives: Improve the development review process, communication, and public participation in the management of coastal resources and hazards; Stimulate public awareness, education and participation in coastal management.

Community input was considered with respect to the terms of the Settlement Agreement and the additional County of Maui requirements for the Parking Lot. Any further development of the Parking Lot is also being conducted in accordance with applicable State and County requirements. The opportunity for public review of the project has been provided through the review of the Draft Environmental Assessment and applications for Community Plan Amendment, Conditional Use Permit, Special Management Area Use Permit, and Shoreline Setback Variance.

D. Proposed Design Standards

The existing parking lot conforms to the standards that were in effect pursuant to Maui County Code Chapter 19.36B ("MCC") when it was initially constructed (standard: 18 ft. by 8.5 ft.; compact: 16 ft. by 7.5 ft.). Aisle widths are 24 feet for standard cars and 22 feet for

compact cars. In accordance with MCC 19.36B.080, and upon approval of the Conditional Use Permit and SMA Permit, one shade tree will be provided for every five parking stalls, along with required appurtenances (root barriers, stakes, irrigation, etc.). Solar lighting for safety purposes will be provided that will adhere to MCC Chapter 20.35 to minimize light glare, pollution, and trespass. The lighting will be downward directed and fully shielded as required. Signage is already provided identifying the stalls available for beach access parking and identifying the stalls for use by the adjacent Hotel and Restaurant. See Exhibit A for the current Parking Lot design and Exhibits B and C for the proposed design.

E. Phasing Plan

As described above, Applicant plans to install shade trees, irrigation, and solar lighting, which is anticipated to take 3-6 weeks, upon the approval of an extension of Applicant's Conditional Use Permit, SMA/SSV Permit applications, and issuance of a long-term lease.

F. Protection of Shoreline Areas and Coastal Waters

Public access to the shoreline is protected by the reservation of fifty-one (51) stalls for use by the public for public beach access purposes twenty-four hours per day. Applicant will continue ensure the Parking Lot is surfaced with pervious materials to protect the shoreline and coastal waters from runoff. Applicant has no proposed significant changes or expansion of use under the current zoning and entitlements.

G. Illustrations & Other Information

See Exhibits A-C.

H. Community Benefits

Applicant operates and maintains the Parking Lot at its own cost, providing a financial benefit to the State and community. In addition to providing for public beach access parking, Applicant provides an additional benefit to beach users through its operation and maintenance of the public shower on Parcel 149. The transition from a revocable, month-to-month lease to a long-term lease will also increase the lease rent revenue to the State.

I. Changes/differences from SOQ Response

None.

III. ECONOMIC PROPOSAL

A. Annual Minimum Lease Rent

Applicant proposes to pay a premium over the market rental rate to be determined by the DLNR appraisal, because the Parking Lot is essential for the operation of the Hotel and its restaurant, and the lease rent being paid for the adjoining Hotel property is predicated upon continued use of the Parking Lot.

B. Lease Terms and Conditions

Because Applicant is already operating and maintaining the parcel under Revocable Permit No. S-7780, Applicant is prepared to commence the long-term lease immediately. Applicant requests that the lease term be coterminous with the Hotel Lease, because the Hotel Lease is predicated upon Applicant having sufficient parking in the Parking Lot. Applicant has not identified any other special conditions required at this time and remains open to negotiating the terms and conditions with the State for the mutual benefit of the parties.

C. Lease Rent Waiver

None.

D. Other

None identified at this time.

IV. BUSINESS PLAN

A. Operation and Maintenance Schedule

Applicant currently operates the Parking Lot and conducts regular, routine maintenance on an as-needed basis on the existing gravel, landscaping, lighting, wheel stops, parking stall lines, signage, beach shower, and security cameras. Pursuant to County requirements, and upon two-week notice to the County, Applicant closes the parking lot for a short time twice a year to conduct required maintenance, including but not limited to regravelling, compacting, and leveling. Applicant is prepared to continue with this operation and maintenance upon execution of a long-term lease.

Upon County approval of all land use entitlements and permits, as described below, Applicant will commence installation of 17 shade trees, irrigation, and solar lighting, as indicated in Exhibits B and C. This work is expected to take 3-4 weeks to complete. These activities are not required to be completed prior to the execution of the lease.

B. Land Use Entitlements and Approvals/Permits

The use of Parcel 149 as Parking Lot was approved by the County of Maui under Applicant's Conditional Use Permit No. CP 2006/012, as stated in Ordinance 4950. This permit was issued in 2018 and was valid for two years. In satisfaction of a condition of the Settlement Agreement, on September 30, 2020, Applicant applied for a 5-year extension of this use permit. This application is pending with the County, and approval has been delayed because of COVID and is expected to be further delayed because the County of Maui is dealing with more urgent matters. Pursuant to MCC § 19.36.B.100(B), "off-site parking that is approved as part of a ... conditional permit does not require director approval." Thus, approval of the conditional permit renewal application will also satisfy the Settlement Agreement condition with respect to offsite parking for the Hotel.

On January 21, 2020, Applicant submitted an SMA Assessment application (SMX-2020/0025) for the Parking Lot. Pursuant to the Planning Department's request, Applicant resubmitted a consolidated SMA Application (SM1-2006/0017) that included a revised assessment for both the Parking Lot and Hotel. The SMA Application included an HRS Ch. 343 environmental assessment, a traffic impact assessment report, and a shoreline setback variance application (SSV-2006/0004). A shoreline survey was completed in July 2021 and submitted to the Planning Department. Applicant is currently awaiting the approval and issuance of the SMA and SSV permits. The SMA and SSV permits are required prior to the landscaping, irrigation and lighting improvements can be made, but they are not required for Applicant to be issued a long term lease in order to continue its current operation and maintenance of the Parking Lot.

C. Project Cost Estimates

See Exhibit D.

D. Financial Pro Forma

The Parking Lot does not provide Applicant with any revenue, cash flow, income, or profits. All projected operating expenses, including total projected lease payments, are included in the attached Exhibit D.

E. Market and Financial Feasibility Analysis

Applicant must continue to provide a certain number of parking stalls for the Hotel and Restaurant in accordance with County requirements and the Hotel Lease. Applicant's key assumptions are that all land use permit applications will be approved, land use entitlements will not change, and the Hotel will remain in business throughout the term of the Parking Lot and Hotel leases.

F. Financing Strategy and Preliminary Commitments

Applicant has financed the purchase of the Hotel, the payments under the Hotel Lease and the Revocable Permit, and the cost of development and maintenance of the Hotel and Parking Lot with cash, without any loans or debt. Applicant plans continue to self-finance the operation of the Parking Lot. Attached hereto as Exhibit E is a letter from [REDACTED], verifying that Applicant and its related parties maintain a combined deposit balance of [REDACTED] with the bank, and attached hereto as Exhibit F is Applicant's recent bank statements. Applicant is current on its lease rent and other charges under the Hotel Lease and has never defaulted on any financial obligations. Applicant's directors and officers also bring with them a wealth of business experience.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

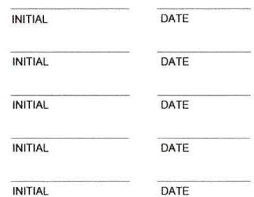
G. Marketing and Leasing Plan

Applicant intends to operate and maintain the Parking Lot in the same manner and method as it has since 2006, as described herein.

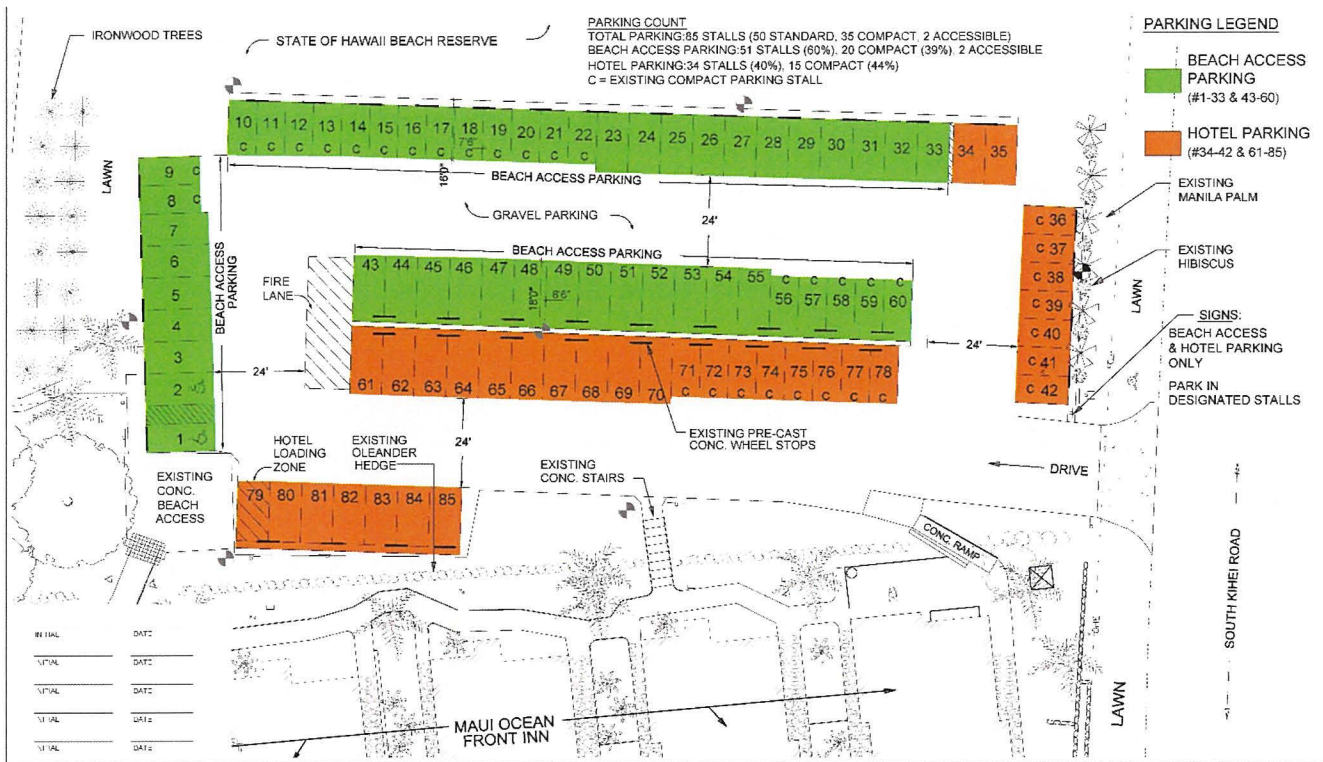
H. Method of Operation

Applicant is a California limited liability company [REDACTED]

[REDACTED] The Parking Lot is currently being operated by Applicant through its General Manager of the Hotel. The General Manager is responsible for daily oversight of the Parking Lot in accordance with the Settlement Agreement and in accordance with requirements established by the County of Maui. The General Manager exercises general oversight over the Parking Lot's security, signage, access, lighting, grounds and landscaping, and shower. Applicant's team also includes a Planning Consultant who acts as a liaison between Applicant and the County of Maui with respect to the County's regulations and requirements. The Planning Consultant has historically assisted, and will continue to assist, Applicant in obtaining any permits required for the continued operation of the Parking Lot. Lastly, Applicant's Legal Counsel advises Applicant with respect to state and county law and has assisted with the Settlement Agreement, Hotel Lease, Development Agreement, and other matters relating to the Hotel and Parking Lot. Legal Counsel is well versed in the history of the Hotel and Parking Lot and is prepared to enter into exclusive negotiations with DLNR on behalf of Applicant. See Exhibit G for an organizational chart of Applicant's Development Team.



BAR SCALE
10 20 40
SCALE: 1"=10'-0"
PROJECT: 16-005
DATE: 02/07/18



REPLACEMENT EXHIBIT A

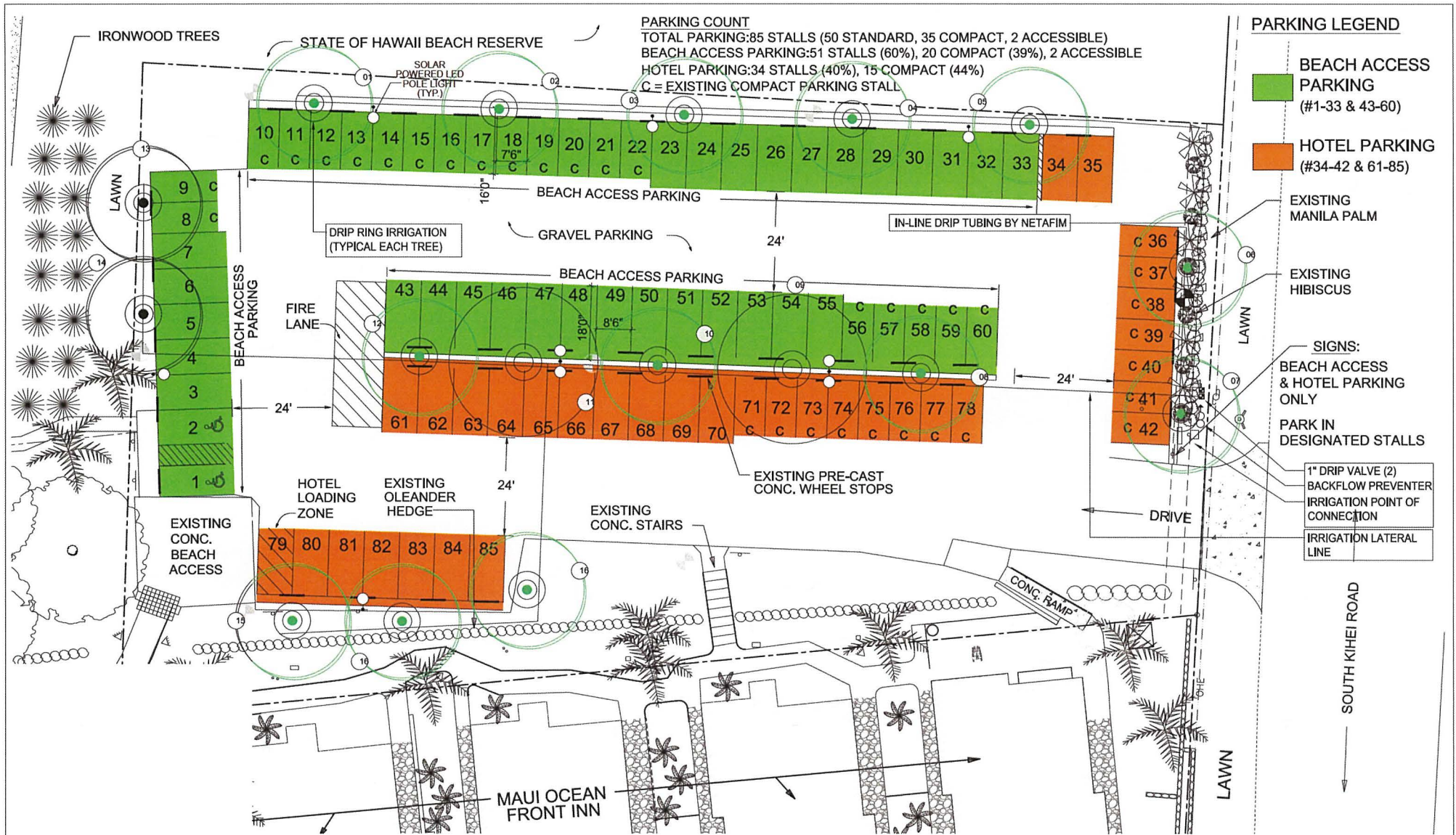


PARKING LOT PLAN

MAUI OCEANFRONT INN PARCEL 149
 KIHAI, MAUI, HAWAII



**EXHIBIT A -
 (HALF SHEET)**

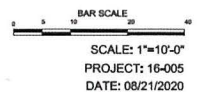


IRRIGATION PLAN

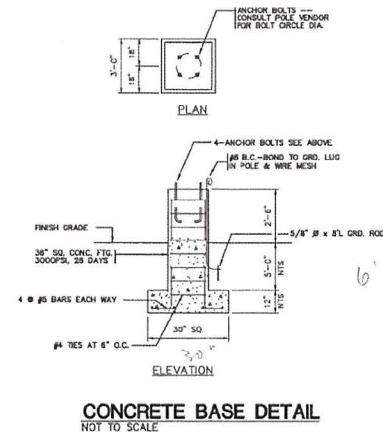
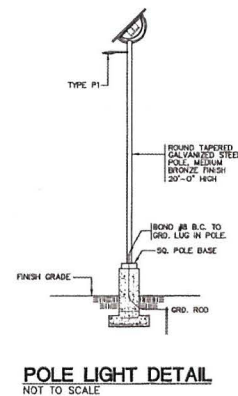
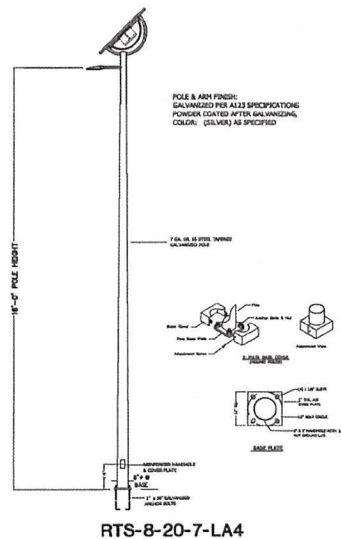
MAUI OCEANFRONT INN PARCEL 149

KIHEI, MAUI, HAWAII

EXHIBIT B



LIGHT FIXTURE SCHEDULE			
TYPE	DESCRIPTION	MANUFACTURER	LAMP
(P1)	1720 SOLAR POWERED LED LIGHTING SYSTEM USING FIXTURE, INTEGRATED POLE TOP SOLAR ENGINE ENCLOSURE CONTAINING SOLAR PANELS, BATTERIES AND MOTION SENSOR, FIXED NORTH.	SELUX AVANZA AV4LS-R3W-1-L35-40 SERIES POLE	(INCLUDED)



SOLAR PARKING LOT LIGHTING

TMK: (2) 3-9-004:149

EXHIBIT C

PARKING LOT PROJECT COST ESTIMATES & ANNUAL FINANCIAL PRO FORMA

	TOTAL	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Solar Lighting	\$75,000	\$75,000														
Irrigation System	\$10,000	\$10,000														
Shade Trees (17)	\$17,000	\$17,000														
Gravel	\$806,275	\$40,000	\$41,200		\$42,436		\$43,709		\$45,020		\$46,371		\$47,762		\$49,195	
Landscaping	\$292,090	\$7,200	\$7,344	\$7,491	\$7,641	\$7,794	\$7,949	\$8,108	\$8,271	\$8,436	\$8,605	\$8,777	\$8,952	\$9,131	\$9,314	\$9,500
Security Cameras	\$31,500	\$3,000				\$3,500					\$4,000					\$4,500
Insurance	\$827,345	\$20,394	\$20,802	\$21,218	\$21,642	\$22,075	\$22,517	\$22,967	\$23,426	\$23,895	\$24,373	\$24,860	\$25,357	\$25,865	\$26,382	\$26,909
Repairs	\$243,408	\$6,000	\$6,120	\$6,242	\$6,367	\$6,495	\$6,624	\$6,757	\$6,892	\$7,030	\$7,171	\$7,314	\$7,460	\$7,609	\$7,762	\$7,917
Shower Water Use	\$1,141,810	\$24,000	\$24,720	\$25,462	\$26,225	\$27,012	\$27,823	\$28,657	\$29,517	\$30,402	\$31,315	\$32,254	\$33,222	\$34,218	\$35,245	\$36,302
Estimated Lease Rent*	\$1,372,500	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$36,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000
Planning Consultant Fees	\$324,545	\$8,000	\$8,160	\$8,323	\$8,490	\$8,659	\$8,833	\$9,009	\$9,189	\$9,373	\$9,561	\$9,752	\$9,947	\$10,146	\$10,349	\$10,556
Legal Fees	\$420,000	\$42,000	\$42,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000

TOTAL COST \$5,561,474

Annual Cost \$288,594 \$186,346 \$116,736 \$160,801 \$123,535 \$165,455 \$123,499 \$170,316 \$127,136 \$179,394 \$139,957 \$189,701 \$143,970 \$195,246 \$152,685

Year 16	Year 17	Year 18	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30
\$50,671		\$52,191		\$53,757		\$55,369		\$57,030		\$58,741		\$60,504		\$62,319
\$9,690	\$9,884	\$10,082	\$10,283	\$10,489	\$10,699	\$10,913	\$11,131	\$11,354	\$11,581	\$11,812	\$12,049	\$12,290	\$12,535	\$12,786
				\$5,000					\$5,500					\$6,000
\$27,448	\$27,997	\$28,557	\$29,128	\$29,710	\$30,304	\$30,910	\$31,529	\$32,159	\$32,802	\$33,459	\$34,128	\$34,810	\$35,506	\$36,217
\$8,075	\$8,237	\$8,401	\$8,569	\$8,741	\$8,916	\$9,094	\$9,276	\$9,461	\$9,651	\$9,844	\$10,041	\$10,241	\$10,446	\$10,655
\$37,391	\$38,513	\$39,668	\$40,858	\$42,084	\$43,347	\$44,647	\$45,986	\$47,366	\$48,787	\$50,251	\$51,758	\$53,311	\$54,910	\$56,558
\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$45,000	\$56,250	\$56,250	\$56,250	\$56,250	\$56,250	\$56,250	\$56,250	\$56,250	\$56,250
\$10,767	\$10,982	\$11,202	\$11,426	\$11,654	\$11,888	\$12,125	\$12,368	\$12,615	\$12,867	\$13,125	\$13,387	\$13,655	\$13,928	\$14,207
\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000

Annual Cost \$201,042 \$152,613 \$207,101 \$157,265 \$218,435 \$173,403 \$231,309 \$178,540 \$238,236 \$189,438 \$245,481 \$189,612 \$253,061 \$195,576 \$266,991

*estimate of premium over market rate

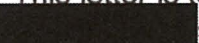
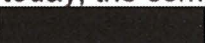
EXHIBIT D



June 30, 2021

Re: Ruby & Sons Hospitality LLC

To Whom It May Concern:

This letter is to certify that Ruby & Sons Hospitality LLC is a valued customer of  since 2012 and the company has maintained a satisfactory banking relationship with us. As of today, the company and its related parties maintain a combined deposit balance  with the bank.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



EXHIBIT E

MEMBER
FDIC
LENDER

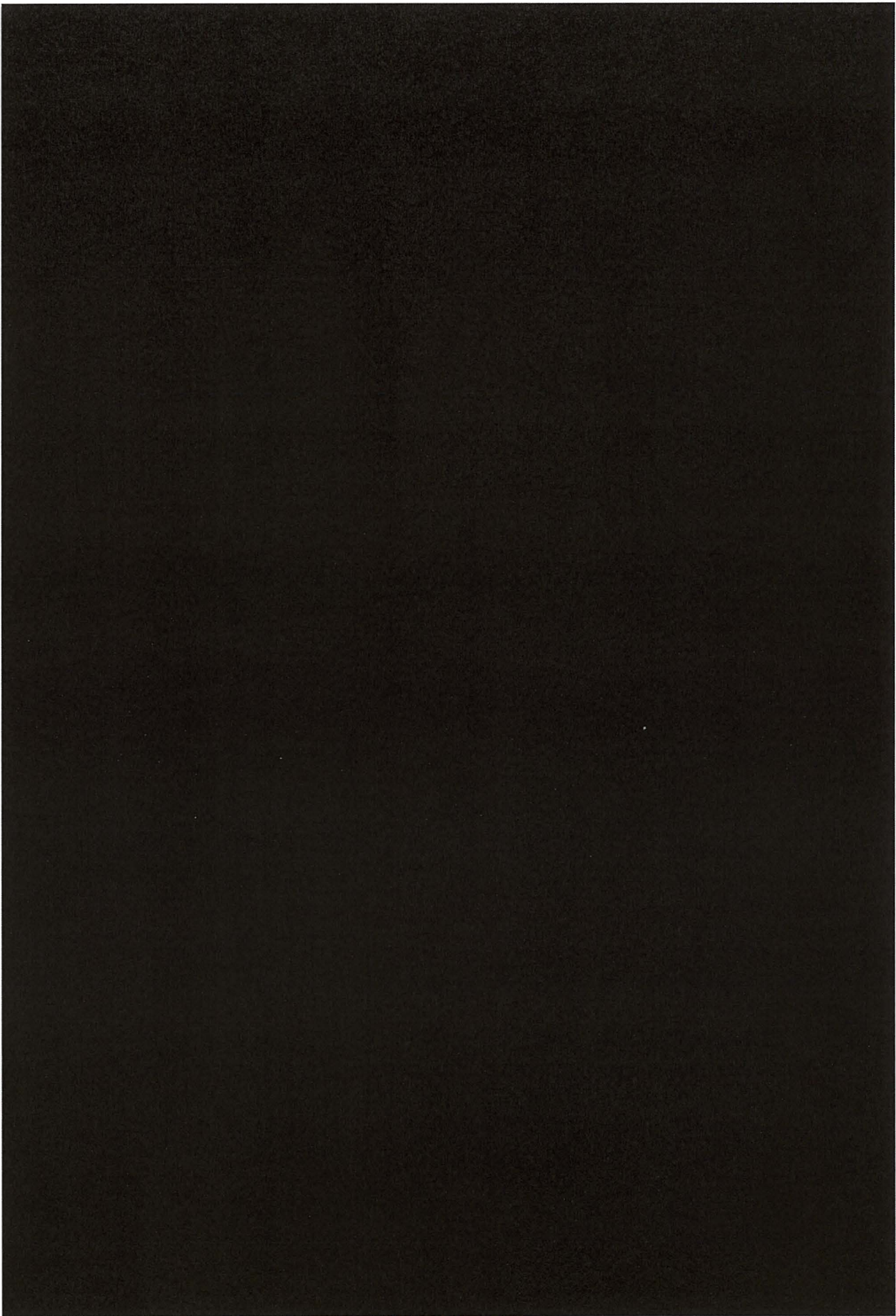
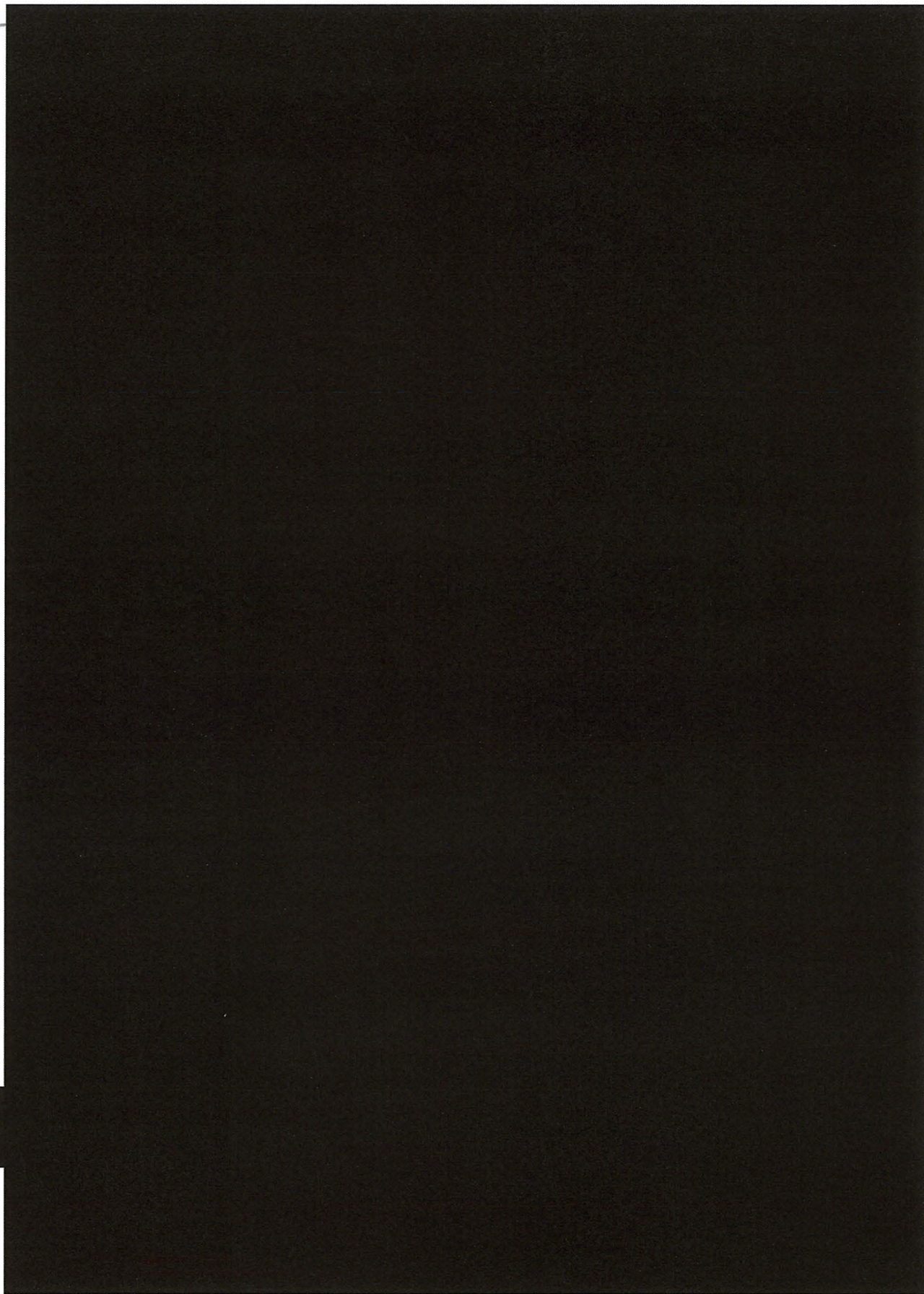
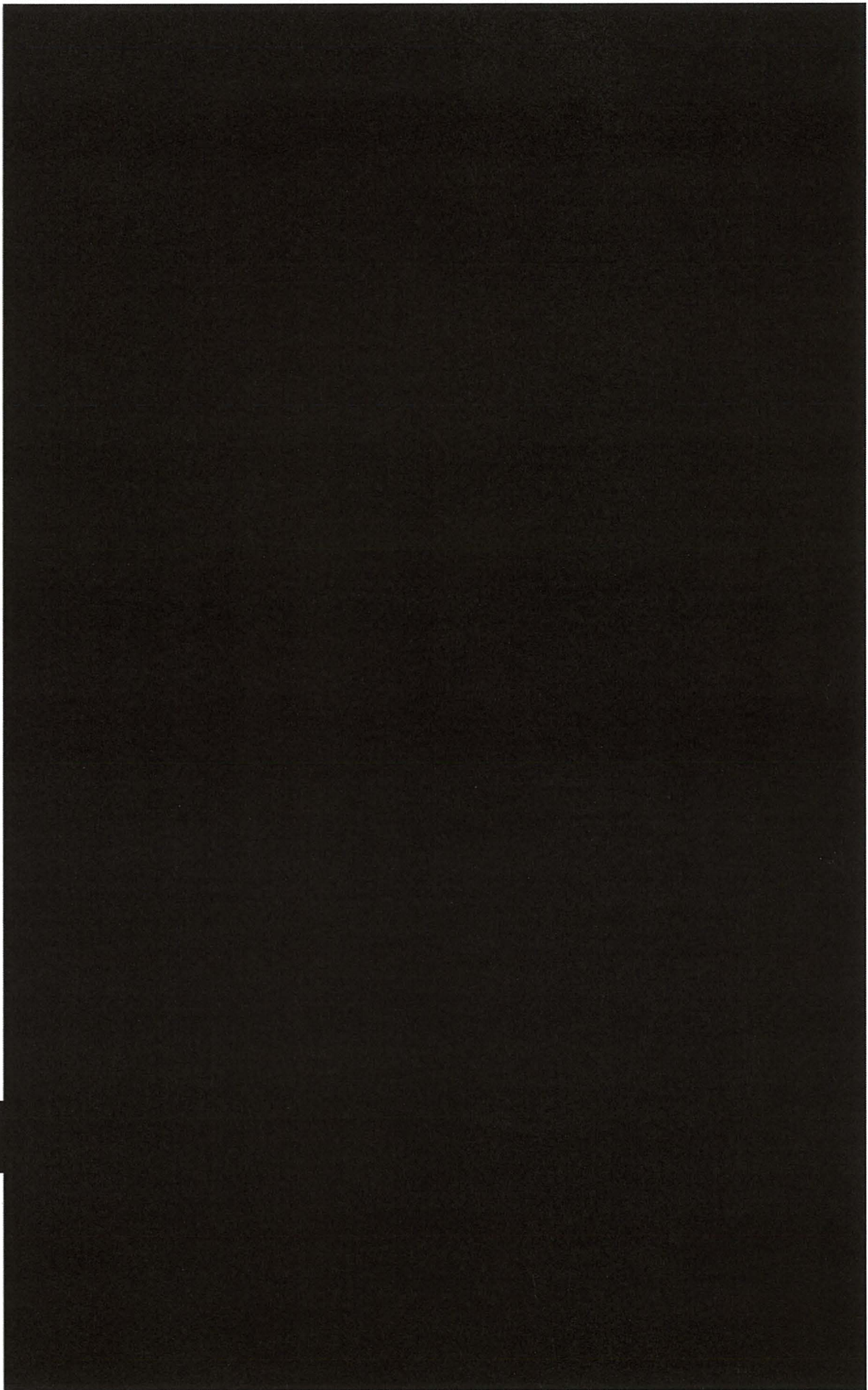


EXHIBIT F



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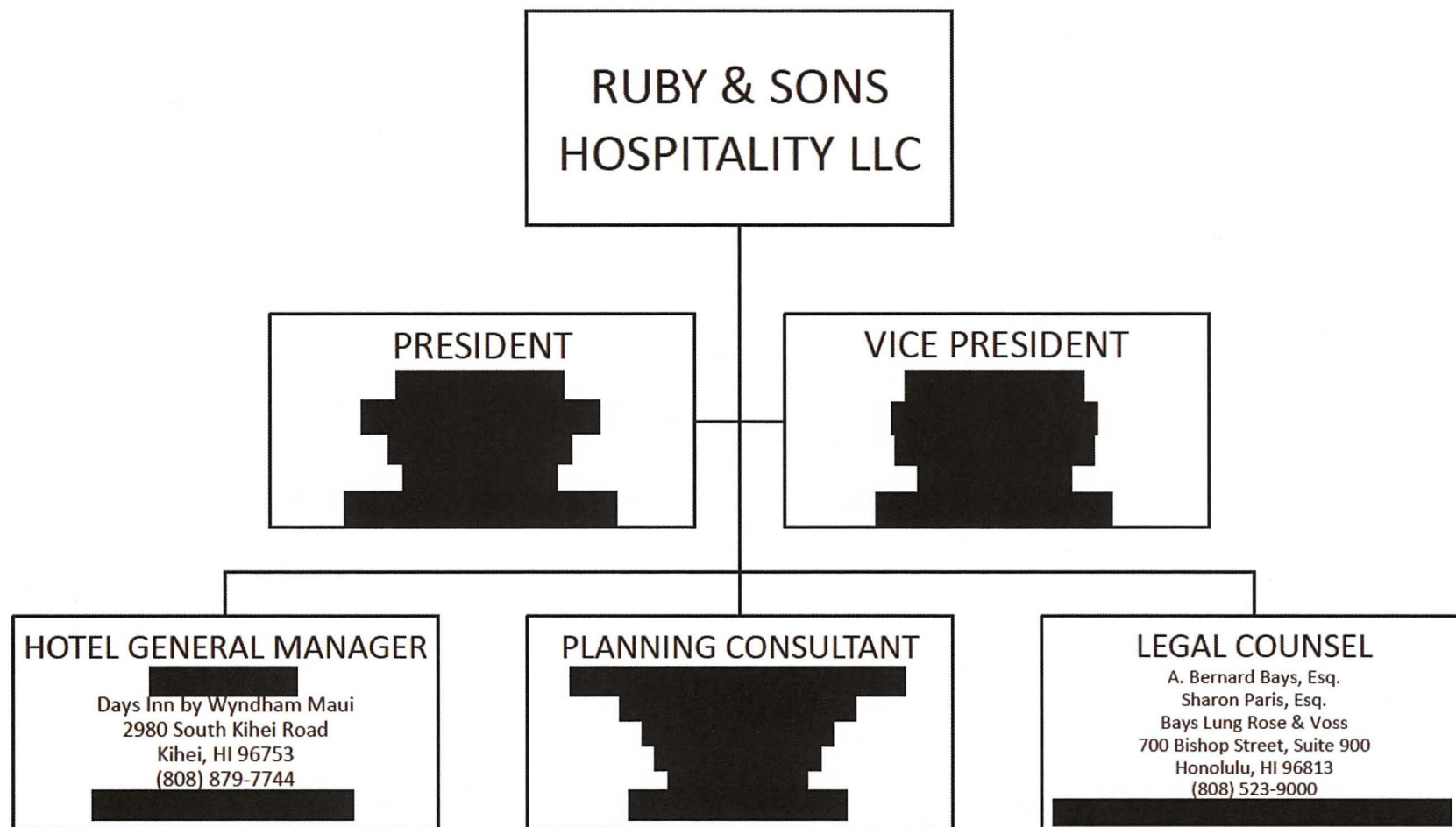


EXHIBIT G

EXHIBIT D

EXHIBIT D

From: Kai Nishiki [REDACTED]
Sent: Tuesday, June 29, 2021 5:17:03 PM
To: Case, Suzanne D [REDACTED]
Cc: HAWAII-Jimmygomes [REDACTED]
Subject: [EXTERNAL] RFQ/RFP Parking Lot Maui - Formal Request to CANCEL

Aloha e Chair Case,

I hope you are well! Please see the attached correspondence. After receipt, Mr. Sarvis informed me that you are the one to contact to make this request. I am able to provide a lot more documentation and back story on this matter. To summarize, this is a beloved area in S. Maui and the County and Mayor Victorino are in full support in acquiring parcels 1, 87, and 149 via EO as per your advice. As you know, we are trying to proactively acquire shoreline properties to protect access and to combat the impending loss of up to half our beaches due to climate change.

May I meet with you on this matter? Our community would be so grateful!

~Kai

Aloha Mr. Sarvis,

Thank you for taking the time to talk with me regarding the Department of Land and Natural Resources ("DLNR") ongoing Request for Qualification/Request for Proposals for the Maintenance and Operation of a Public/Private Parking Lot in Kamaole, Wailuku on the island of Maui, dated May 24, 2021 ("RFQ/RFP"). The property that is the subject of the RFQ/RFP consists of .694 acres and is designated as Tax Map Key: (2) 3-9-004:149 ("Parcel 149").

Link: <https://dlnr.hawaii.gov/ld/rfq-rfp-public-private-parking-lot-kamaole-wailuku-maui/>

As a community advocate, I have worked to ensure community concerns relating to development in Maui County are appropriately accounted for in the development process. As a result, other community members and I (the "Community") have been monitoring Parcel 149 for several years. Given this, the Community has serious reservations about DLNR's ongoing RFQ/RFP.

First, the RFQ/RFP appears narrowly written to only apply to one qualified bidder, Ruby & Sons LLC, the current leaseholder for Parcel 29, the parcel adjacent to Parcel 149. This assumption is evidenced by DLNR's requirements which include mandating the selected lessee:

- Prepare an "Environmental Assessment pursuant to [Hawaii Revised Statutes] Chapter 343 for the projects as a whole on Parcels 29 and 149...."
- Prepare and file "an application for a Conditional Use Permit allowing commercial parking on Parcel 149 for the required off-site parking for Ruby & Sons'... and any other commercial uses on Parcels 29 and/or 149...."

RFQ/RFP at 3. Further evidence supporting that DLNR explicitly wrote RFQ/RFP for Ruby & Sons, LLC can be seen in the January 8, 2021, DLNR board submittal that approved the issuance of the RFQ/RFP. Specifically, the header on pages 2-9 of Board Submittal D-6 contains the following reference "BLNR-RFQ/RFP for Ruby & Sons LLC Lease." RFQ/RFP, Attachment 1, Board Submittal D-6 ("Board Submittal D-6"), at pgs. 2-9.

Second, and more concerning, is DLNR's reference and use of the "Amended Settlement Agreement." For example, in the RFQ/RFP, DLNR states:

The selected applicant shall comply with the terms and conditions of November 25, 2005 Settlement Agreement ... as subsequently amended by a 2018 Amendment to Settlement Agreement [...]. The following terms and conditions of the Amended Settlement Agreement are binding on the selected lessee[.]

RFQ/RFP at 2-3. Board Submittal D-6, attached to the RFQ/RFP, also notes:

In 2018, Ruby & Sons and the County agreed to amend the settlement agreement. The conditions described below are required of Ruby and Sons or any potential lessee of the subject parcel for parking lot purposes. Items 8, 10, and 11 reflect the amendments agreed to by Ruby & Sons and the County."

Board Submittal D-6 at 3. The Community firmly believes that the Amended Settlement Agreement was not fully executed. As evidence of this, the Community points to the unsigned Amended Settlement Agreement posted on DLNR's RFQ/RFP website. Corporation Counsel for the County of Maui also stated during a hearing on the Conditional permit(since expired) at the Maui County Council that the County would not be party to a settlement agreement such as this. See Amended Settlement Agreement at 5. Given that Maui County did not sign the Amended Settlement Agreement, it is not binding on Maui County. Furthermore, the RFQ/RFP's heavy reliance on the Amended Settlement Agreement likely voids the RFQ/RFP in its entirety.

Finally, the Community notes that the RFQ/RFP has other errors that raise further questions that need clarifying and/or correction before proceeding. These errors include DLNR's statement that "Ruby & Sons applied for and obtained a Conditional Use Permit from the Maui County Council with the support of the Maui County Planning Department satisfying items 2 and 3." RFQ/RFP at 4. However, the "Conditional Use Permit" for the property that Ruby and Sons obtained in 2019 expired in January of 2021 and is no longer valid. The RFQ/RFP also requires that "Hall and Kuloloio shall approve of all parking signage prior to installation," even though Mr. Kuloloio is deceased, making this requirement impossible. RFQ/RFP at 4.

Ultimately, the Community would like to see Parcel 149 transferred to the County of Maui and improved to facilitate public access (including parking) to the shoreline for south Maui residents. These improvements would include any requirements necessary to comply with the original Settlement Agreement, County of Maui current parking requirements for Ruby & Sons, as well as paid parking for non-residents and reserved free parking for residents. The issue of providing shoreline access through Parcel 149 has previously come before the State Legislature in SENATE BILL 1327 (2019) ("SB 1327"). SB 1327 called for the DLNR to collaborate "with the county councilmember representing the south Maui residency area, Kihei Community Association, and 'Aha Moku O Kula Makai, to develop a master plan to expand public access to the shoreline in South Maui."

In her February 11, 2019, testimony relating to SB 1327, Chair Case of the Board of Land and Natural Resources ("Board"), noted:

If the intent of the measure is to increase the public recreational use of the land, the department suggests that an alternative maybe for the County of Maui to request parcels 87, 149 and 1 be set aside to it by Governor's executive order for county beach park purposes the department does not have the staff or funding necessary to manage shoreline access or shoreline recreational lands that are not designated as a state managed area.

DLNR Testimony at 2. Based on the above statements by Chair Case and the present RFQ/RFP, I have reached out and begun initial discussions with the County of Maui regarding Parcel 149. The County, thus far, appears to be ready, willing, and able to take control of Parcel 1, 87, and 149 and has submitted a letter of interest.

Given this, I and the Community urge DLNR to cancel the present RFQ/RFP and seek further input regarding the Amended Settlement Agreement and the possible transfer of Parcel 149 via executive order. Therefore, please consider this letter a FORMAL REQUEST for DLNR to cancel the "Request for Qualification/ Request for Proposals for the Maintenance and Operation of a Public/Private Parking Lot in Kamaole, Wailuku, on the island of Maui that was issued on May 24, 2021.

Link to testimony: https://www.capitol.hawaii.gov/Session2019/Testimony/SB1327_TESTIMONY_WTL-PSM_02-11-19_.PDF

The Community looks forward to working with the Governor, DLNR, Chair Case, and the rest of the Board to successfully transfer Parcel 149, 1 and 87 to the County via executive order.

Together, we can make this a "win-win" situation for the State, County, and Community while abiding by any requirements laid out in the Settlement Agreement (if applicable).

Again, thank you for your time, and please let me know what the next steps will be.

Mahalo,

Kai Nishiki

Sent from my iPad

EXHIBIT E

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 6 2021

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

Via Electronic Mail: [REDACTED]

Ms. Kai Nishiki

Dear Ms. Nishiki:

Chair Case asked that we write to you in response to your email to her of June 29, 2021 regarding the Department's Request for Qualifications/Request for Proposals (RFQ/RFP) for a lease of a public/private parking lot at Kamaole, Wailuku, Maui, Tax Map Key: (2) 3-9-004:149 (Parcel 149).

We understand your main concerns about the RFQ/RFP to be: (1) it appears narrowly written to apply to only one qualified bidder, Ruby & Sons Hospitality, LLC (Ruby & Sons) and (2) the RFQ/RFP's reference to the Amendment to Settlement Agreement prepared in 2018 (2018 Amendment) and signed by Ruby & Sons, Sarento's on the Beach, LLC (Sarento's), Dana Naone Hall (Hall) and Leslie Kuloloio (Kuloloio), likely voids the RFQ/RFP because the 2018 Amendment has not been signed by the County of Maui.

We disagree with your assessment. As to your first point, a Settlement Agreement dated November 25, 2005 (2005 Settlement) was signed by the County, Hall, Kuloloio, Western Apartment Supply & Maintenance Co. (Western) (who was the predecessor in interest to Ruby & Sons), Tri-Star Restaurant Group, LLC and Sarento's. The 2005 Settlement is the primary source of restrictions on the use of Parcel 149. Although the State was not a party to the administrative proceeding that resulted in the 2005 Settlement, the settlement placed the following restrictions and conditions on Western's and Sarento's (collectively referred to as Applicants) use of Parcel 149:

- 2.4.2. Prepare and file with the County an Environmental Assessment pursuant to HRS Chapter 343 for the projects as a whole on Tax Map Key: (2) 3-9-004:029 (Parcel 29) and Parcel 149 and complete, as appropriate, the environmental process intended by Chapter 343;
- 2.4.4. Prepare and file with the County an application for a Conditional Use Permit allowing commercial parking on Parcel 149 for the required off-site parking for the Maui Oceanfront Inn, Sarento's and any other commercial uses on Parcels 29 and/or 149, pursuant to Chapter 19.40 of the Maui County Code and

use their best efforts to obtain the approval of the Maui County Council for the Conditional Use Permit;

- 2.4.5. Apply for off-site parking approval from the Maui Planning Commission for the use of Parcel 149 for off-site parking for the Maui Oceanfront Inn, for Sarento's and for Western's other commercial uses of Parcels 29 and 149, pursuant to Chapter 19.36 of the Maui County Code and use their best efforts to obtain the approval of the Maui Planning Commission for the off-site parking;
- 2.4.6. Prepare a Traffic Impact Assessment Report to accompany the applications and/or filings referenced in subsections 2.4.2. - 2.4.5. of the 2005 Settlement, which include the three bullet points above;
- 2.4.7. Apply for concurrently and to use their best efforts to obtain SMA permit(s) for the applicable variances and process further the application for an after-the-fact SMA permit for Parcel 149 in accordance with Chapter 205A and the regulations promulgated thereto;
- 2.5.1. The Lease with the State for Parcel 149 shall contain a term stating that the property will be used for required commercial, off-site parking for Western, the Maui Oceanfront Inn and Sarento's Restaurant, and that no less than 51% of the parking on the property will be dedicated for public beach access parking; and
- 2.5.4. Western agrees to post and maintain appropriate signs at the entry of Parcel 149 from South Kihei Road and within the property notifying the public of its right to park on Parcel 149 for public beach access parking, the particular words to be used on the signs to be agreed upon by Applicants and Interested Parties (Hall and Kuloloio) within two (2) months of the execution of this Settlement Agreement by all parties.

Accordingly, it is the 2005 Settlement that drives the scope and content of the RFQ/RFP. The 2018 Amendment changes the procedure to be followed to obtain approval of offsite parking under section 2.4.5 (apply to Planning Director instead of Planning Commission). The 2018 Amendment also increases the number of parking stalls devoted to public beach access parking and includes details for maintaining the parking lot and identifying the stalls through signage. Even if the 2018 Amendment is not effective as an amendment to the 2005 Settlement due to the County not signing it, the Department believes the 2018 Amendment is in the best interests of the State and the public and therefore included it in the RFQ/RFP.

To recap the Department's progress on the RFQ/RFP to date, Land Division obtained the approval of the Board of Land and Natural Resources (Board) at its meeting of January 8, 2021, under agenda Item D-6, to utilize the RFQ/RFP process in issuing a lease for Parcel 149. The Board made its decision at a public meeting at which anyone opposed to the disposition could have so testified. On May 24, 2021, Land Division published notice of the RFQ/RFP in the *Honolulu Star-Advertiser* and *The Maui News* and posted the notice, the RFQ/RFP and relevant documents on its website. On the same date, letters were sent to Senator Rosalyn Baker and

Representative Tina Wildberger advising them of the RFQ/RFP. As set forth in the RFQ/RFP, a virtual briefing was held for interested parties on June 1, 2021 at 2:00PM, at which time anyone could have posed questions to the Land Division about the RFQ/RFP or any of the documents posted on the website.

In light of the foregoing, Land Division will proceed with the RFQ/RFP process. If a proposal is selected, it will be presented to the Board at a public meeting for approval. You will have an opportunity at that time to express any objections you may have to the proposal or the RFQ/RFP process.

Please contact Assistant Administrator Kevin Moore at [REDACTED] or email: [REDACTED] should you have any questions.

Sincerely,

Russell Tsuji

Russell Y. Tsuji
Administrator