

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

June 9, 2022

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

PSF No.: 19HD-078

Hawaii

Approve Cancellation of Request for Qualifications / Request for Proposals for Lease of Improved Public Lands; Rescind Board's Prior Action of December 13, 2019, Item D-2; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

BACKGROUND:

At its meeting of December 13, 2019, under agenda Item D-2, 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 renovating the former Country Club Condominium Hotel (Country Club) 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; provided, however, that the RFQ/RFP documents shall notify all prospective applicants that if Oceanfront 121, Inc. is not selected as the lessee under the RFQ/RFP, the successful applicant will be required to reimburse Oceanfront 121, Inc. \$158,622.16 for improvements made to the property. A copy of the Board's action of December 13, 2019, Item D-2, is attached as Exhibit 1.

REMARKS:

In accordance with the Board's approval, Land Division prepared an RFQ/RFP for the project that was published in the *Star Advertiser*, the *Hilo Tribune Herald* and *The West Hawaii Today* on August 23, 2020 and posted on Land Division's website. A copy of the published RFQ/RFP is attached as Exhibit 2.

A virtual applicant briefing was held on September 1, 2020 at 2:00 PM, 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. Three parties timely submitted notices of intent for the subject project by the September 11, 2020 deadline: MacDonald Ladd Development LLC (MLD), Pagoda Hilo Bay LLC (PHB), and Tower Development, Inc. (TDI).¹ Additionally, MLD, PHB and TDI each timely submitted SOQs for the project on or before the deadline of September 30, 2020.

On August 3, 2020, the Chairperson appointed an evaluation committee to review the SOQs.² On October 16, 2020, the evaluation committee found all three applicants to be qualified to progress to the second phase of the process, which is the submission of proposals.

All three applicants submitted their proposals for the property on or before the deadline of November 30, 2020. The selection date published in the RFQ/RFP was December 15, 2020. However, that date turned out to be too optimistic. Pursuant to the authority reserved by the Chairperson in the RFQ/RFP, at Land Division's request the Chairperson extended the selection date five times to July 15, 2021.

On July 8, 2021 the evaluation committee made a preliminary selection of TDI's proposal. TDI is an affiliate of WHR LLC (WHR), which holds General Lease No. S-5844 (GL5844) for the Grand Naniloa Hotel next door to the subject property. The evaluation committee's preliminary selection was placed on the Board's September 24, 2021 agenda for approval as Item D-4, but the matter was withdrawn before the start of the meeting after one of the members of WHR filed a lawsuit against Ed Bushor and Stuart Miller who are principals of both TDI and WHR. The lawsuit alleged that TDI's submission of a proposal in response to the RFQ/RFP was a violation of WHR's operating agreement.

On December 6, 2021, Wilmington Trust National Association filed a foreclosure complaint against WHR for an alleged default on the mortgage for the Naniloa Hotel.

In view of these developments, the evaluation committee took a closer look at the qualifications TDI submitted and requested more detailed financial statements for TDI

1 A fourth interested party, Local Local Homes LLC (LLH), submitted a late notice of intent on September 23, 2020. This was 12 days after the published deadline of September 11, 2020. LLH also submitted SOQs for the project, but was notified by letter dated October 15, 2020 that its untimely submission of a notice of intent barred it from further consideration in the process.

2 As initially constituted, the evaluation committee consisted of five members. At the time of the SOQ review, one member was unavailable to participate. On October 13, 2020, the Chairperson approved an amendment to the designation of the evaluation committee to clarify that the committee could conduct business with only four members participating. On November 18, 2020, the Chairperson approved the addition of a sixth member to the committee and all six were involved with the review of submitted proposals.

and its principals. The RFQ/RFP listed the information required to be contained in an applicant's SOQ, which included, among other things, the following:

- The identity of 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 renovation / operation of the Subject Property.
- Satisfactory evidence to support the financial ability of the applicant to repair, renovate and operate the 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.**
- **Any other information regarding the applicant, the development team, or its members that may be pertinent to establishing the applicant's qualifications.**

Equally as important, the RFQ/RFP clearly stated:

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

The evaluation committee requested personal and company income statements and balance sheets, and a pro forma of the same. However, Mr. Bushor expressed reluctance to provide personal financial information for himself and Stuart Miller. Instead, after repeated requests, TDI ultimately provided what appears to be its operating statements, a consolidated financial statement and a list of lending institutions that have extended credit to TDI. At the end of 2021, staff asked Mr. Bushor whether TDI would be willing to provide tax returns as part of the evaluation committee's continued assessment of TDI's finances. Mr. Bushor responded that this kind of information is not pertinent to how developers operate, which involves identifying an asset for investment and getting financing lined up through investors and lenders. Mr. Bushor added that he would be willing to provide staff with more information on loan commitments for the renovation of the former Country Club. However, Mr. Bushor did not provide the additional information, and even if he had provided loan commitment information, that would not

be sufficient to show financial capability.³

The Board approved the RFQ/RFP for Country Club at the same time it approved a separate RFQ/RFP for the former Uncle Billy's Hilo Bay Hotel (Uncle Billy's) also on Banyan Drive. The plan was to address two properties in need of renovation at the same time. On March 4, 2022, a fire occurred at Uncle Billy's causing substantial damage to one wing of the property. In a separate item before the Board today, staff is recommending the cancellation of the RFQ/RFP for Uncle Billy's for similar financial reasons as set forth above and also due in part to the fire at the property and the resulting legislative support for the demolition of that hotel.⁴ This development suggests that it may be possible to seek an appropriation for a more comprehensive redevelopment plan for Banyan Drive instead of rehabilitating select properties. Accordingly, for all of the reasons set forth above, staff is recommending the Country Club RFQ/RFP be canceled.⁵

In view of the litigation and financial challenges affecting TDI, its reluctance to provide financial information to the level required by the RFQ/RFP, and the March 4, 2022 fire at Uncle Billy's, the evaluation committee unanimously agreed on March 22, 2022 to recommend to the Board that the RFQ/RFP for Country Club be cancelled in the best interests of the State. The RFQ/RFP reserves to the Department 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." See Exhibit 2 at pages ii and 23.

By letter dated April 8, 2022, staff notified TDI of its intention to present the recommendation for cancellation of the RFQ/RFP to the Board. A copy of the letter is attached as Exhibit 3. TDI objected to the proposed cancellation and requested an opportunity to address the Board. A copy of TDI's response is attached as Exhibit 4.

3 More recently, WHR sought rent relief from the Board requesting that WHR be allowed to pay the semiannual rent due on February 1, 2022 under General Lease No. S-5844 in the amount of \$290,135.22 in installments over six months. The Board approved that request at its meeting of February 25, 2022 under agenda Item D-1. WHR failed to make its March 1, 2022 installment due under the payment plan approved by the Board and a Notice of Default was issued to WHR on March 4, 2022. WHR later delivered a check in the amount of \$290,135.22 to the Hawaii District Land Office on March 28, 2022.

4 The Department unsuccessfully sought a capital improvement project (CIP) appropriation during the 2019 legislative session for the demolition of Uncle Billy's. After the March 4, 2022 fire, a renewed CIP request to demolish the hotel gained legislative traction but at the last moment during conference committee the method of funding was switched from general funds to the Department's Special Land and Development Fund, which does not have adequate funds to support a \$13.5 million demolition project. Nevertheless, the Department intends to proceed with expending funds on planning and permitting and seek a general fund appropriation for demolition costs during the next legislative session.

5 In any event, when the evaluation committee made its preliminary selection of TDI under the RFQ/RFP for Country Club, it did not identify a backup selection in the event TDI was not approved.

Staff is recommending that the Board approve the cancellation of the RFQ/RFP and rescind its prior action of December 13, 2019, Item D-3, finding that such cancellation and rescission are in the best interests of the State based upon the aforementioned facts and circumstances. Finally, the Department may also consider a separate redevelopment of the land in the future if an environmental assessment/environmental impact statement is first conducted for the property.

RECOMMENDATION: That the Board:

1. Approve the cancellation of the RFQ/RFP for the subject property published on August 23, 2020, finding such action to be in the best interests of the State.
2. Rescind the Board's Prior Action of December 13, 2019, Item D-2.

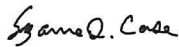
Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

RT



Suzanne D. Case, Chairperson

EXHIBIT 1

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

December 13, 2019

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

PSF No.: 19HD-078

Hawaii

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

REQUEST:

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

APPLICANT:

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

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

1.166 acres, more or less.

ZONING:

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 13, 2019 (30.

EXHIBIT 1 ^{D-2}

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

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

PROPERTY CHARACTERISTICS:

Utilities – Electricity, water and sewer

Elevation – Two to eleven feet above sea level

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

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

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

STATUTORY AUTHORITY:

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

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) §11-200.1-15 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 47 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." See Exhibit C attached.

BACKGROUND:

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

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

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

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

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

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

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

REMARKS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 1

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

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

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

Table 2

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

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

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

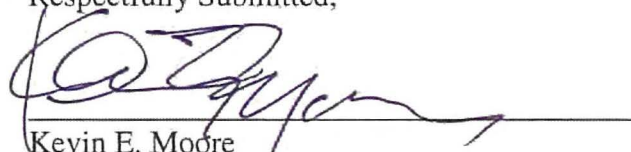
The proposed use has continued since 1969 and will continue. Such use has resulted in

no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

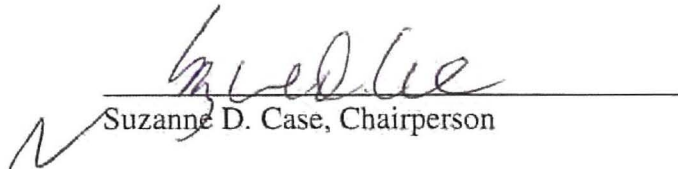
RECOMMENDATION: That the Board:

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

Respectfully Submitted,


Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

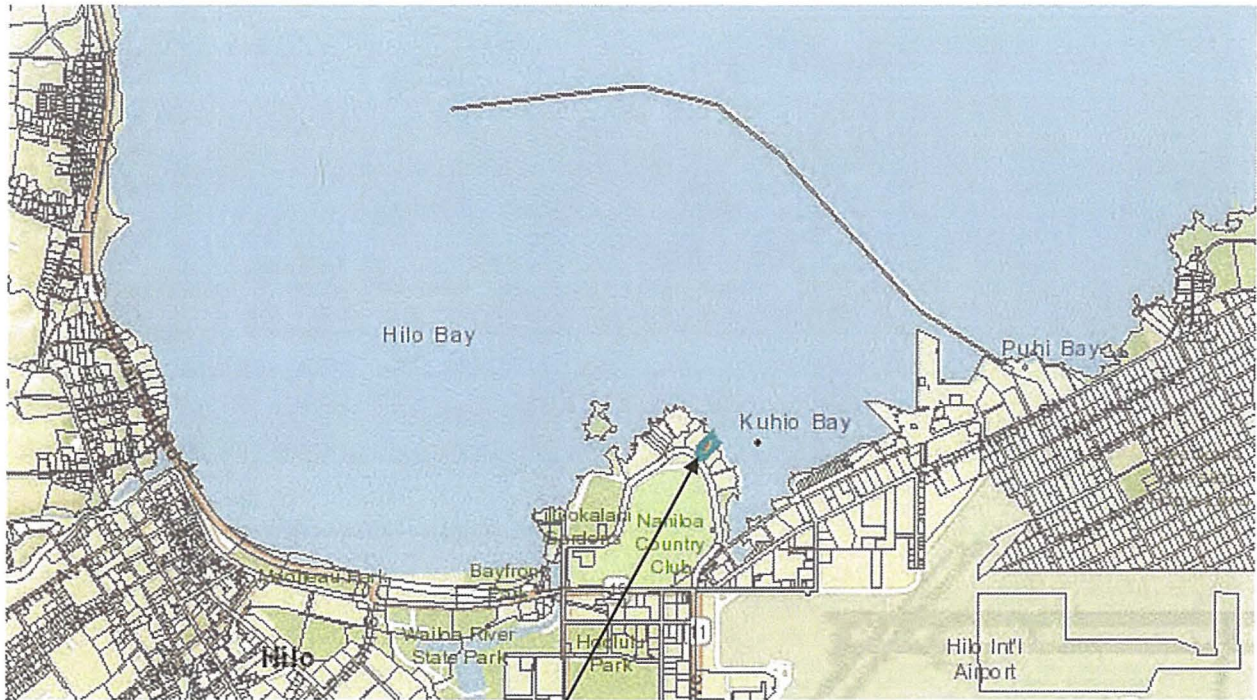

Suzanne D. Case, Chairperson

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

Approved as submitted. See attached page.

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

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



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



EXCERPT OF SECTION 171-59, HAWAII REVISED STATUTES

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

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

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

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

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

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

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

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

December 13, 2019

EXEMPTION NOTIFICATION

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

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

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

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

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

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

Exemption Class No. and Description: In accordance with HAR Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 47 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing;" Exemption Class No. 7 that states, "Interior alterations involving things such as partitions, plumbing, and

EXHIBIT C

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

- a. installation of office partitions, utility outlets or connections, air conditioning, lighting, and security systems;
- b. renovations required to bring existing structures into compliance with current building codes and applicable health, safety, and access regulations;
- c. renovations that will result in energy or other operational/cost savings; or
- d. other similar interior alterations;” and

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

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

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

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?:**

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

Analysis:

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

Consulted Parties:

Agencies listed in the attached submittal.

Recommendation:

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

EXHIBIT D

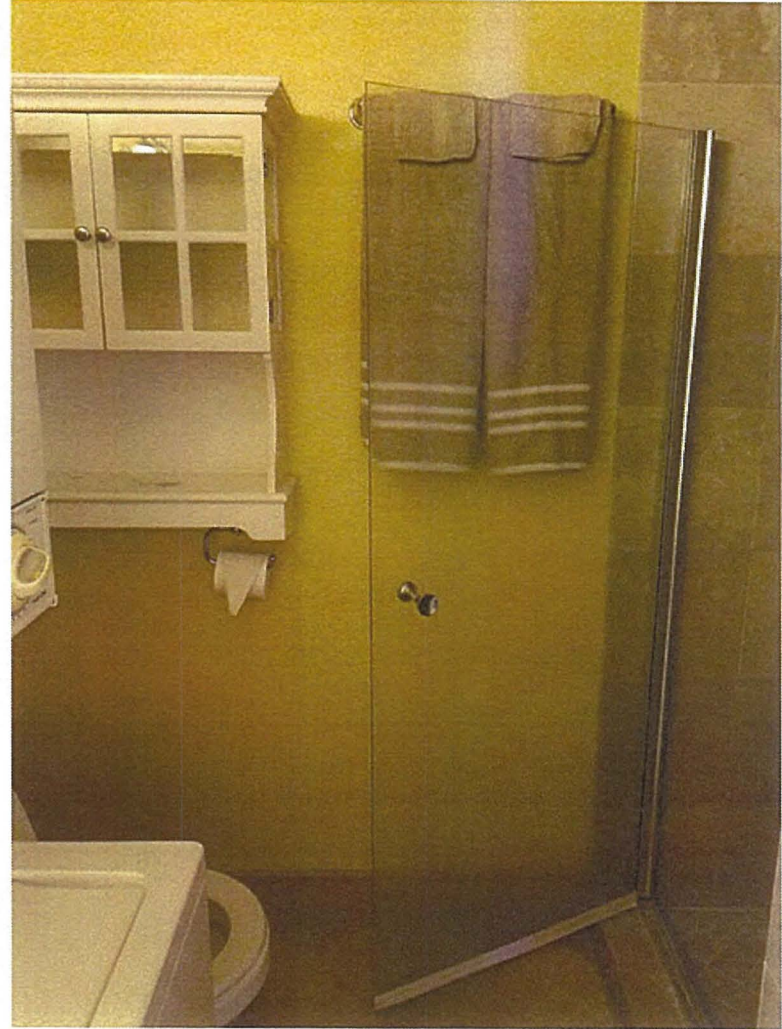
Inspection Photos of RP S-7867 on 11/05/2018:



Streetside View

New Backflow Prevention Device





Kitchenette and Bathroom in renovated room



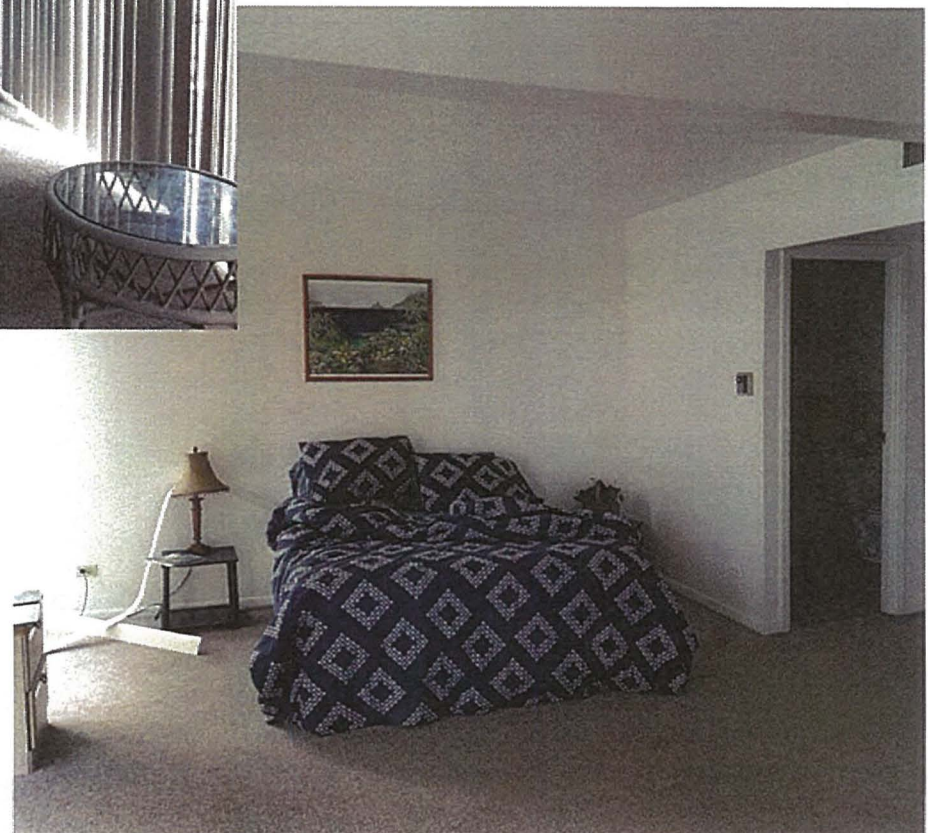
Sleeping area and entry with bathroom and kitchenette
to the left and right at back of photo



Bathroom and kitchenette from previous photo



Kitchenette and bedroom of a double room





Bathroom of a double room



Kitchenette and sleeping area of a nicely renovated room





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

EXCERPT OF JUNE 2016 REPORT OF ERSKINE ARCHITECTS, INC.

3.2.2 Country Club Condominium/Hotel

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

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

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

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

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

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

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

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

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

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

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

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

OUTLINE OF PROPOSED PROCESS

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

**Public review/comment opportunities

Harry Kim
Mayor

Wilfred M. Okabe
Managing Director



William A. Kucharski
Director

Diane A. Noda
Deputy Director

County of Hawai'i
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

345 Kekūanāo'a Street, Suite 41 · Hilo, Hawai'i 96720
Ph: (808) 961-8083 · Fax: (808) 961-8086
Email: cohdem@hawaiicounty.gov

July 23, 2019

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

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

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

Dear Mr. Moore:

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

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

Mr. Kevin E. Moore


July 23, 2019

Page 2

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'W. A. Kucharski', written in a cursive style.

William A. Kucharski

Director

WK:mef

EXHIBIT 2

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



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

EXHIBIT 2

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ATTACHMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Name of Applicant: _____

Mailing Address: _____

Contact Person and Title: _____

Phone Number: _____ Fax Number: _____

Email Address: _____

Type of Organization: _____

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

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

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

<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 Waiakea, South Hilo, Island of Hawaii, Hawaii, and designated as Tax Map Key: (3) 2-1-005:020 (Parcel 20). The improvements on Parcel 20 include a six-story, 152-room hotel built in 1969. Parcel 20 and all the improvements thereon are hereinafter referred to collectively as the “Subject Property.”

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

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

PURPOSE

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

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

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

SUBJECT PROPERTY

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

REQUIRED REPAIRS AND RENOVATIONS

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

PERMITTED USES

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

SPECIAL MANAGEMENT AREA ("SMA")

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

FLOOD ZONES

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

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

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

HILO OPPORTUNITY ZONE

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

CONDITION OF SUBJECT PROPERTY

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

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

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

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

The County Department of Environmental Management ("DEM") reported that as of July 18, 2019, there was a balance of \$174,608.83 owed on a stipulated judgment regarding delinquent sewer fees for the Subject Property. DEM also advised that the active sewer account for the Subject Property had a balance of \$10,360.00, of which \$5,280.00 was past due as of July 23, 2019. DEM further reported that there is a real property tax delinquency associated with the Subject Property in the amount of \$96,655.56, including unpaid taxes, penalties and accrued interest. **It is the responsibility of each applicant to conduct appropriate due diligence to determine whether the applicant would have any responsibility for these or any other outstanding obligations pertaining to the Subject Property if the applicant were to be selected through the RFQ/RFP process and be issued a lease for the Subject Property.**

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

AUTHORITY

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

NOTICE OF INTENT

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

RFQ/RFP SOLICITATION AND SELECTION PROCESS

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

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

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

DEVELOPMENT AGREEMENT

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

SIGNIFICANT DATES AND TIMES*

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

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

sole discretion.

ISSUING OFFICE AND CONTACT PERSON

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

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

REQUEST FOR CLARIFICATION

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

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

CONFIDENTIAL INFORMATION

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

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

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

LAND DIVISION OFFICES

Land Division's office addresses are as follows:

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

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

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

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

II. DEVELOPMENT OBJECTIVES

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

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

III. REQUEST FOR QUALIFICATIONS (“RFQ”)

INTRODUCTION

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

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

APPLICANT BRIEFING

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

NOTICE OF INTENT

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

SUBMISSION REQUIREMENTS

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

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

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

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

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

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

operation of the Subject Property.

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

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

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

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

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

SOQ SUBMISSION DEADLINE

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

EVALUATION OF QUALIFICATIONS

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

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

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

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

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

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

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

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

IV. REQUEST FOR PROPOSALS ("RFP")

INTRODUCTION

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

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

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

APPLICANT BRIEFING

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

SOQ & RFP SUBMISSION REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

any proposed rental waivers.

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

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

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

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

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

RFP SUBMISSION DEADLINE

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

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

EVALUATION PROCEDURES

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

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

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

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

RFP SELECTION CRITERIA

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

Repair and Renovation Plan

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

Economic Proposal

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

Business Plan

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

V. EXCLUSIVE NEGOTIATIONS / DEVELOPMENT AGREEMENT

EXCLUSIVE NEGOTIATIONS

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

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

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

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

DLNR's sole discretion.

DEVELOPMENT AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. OTHER TERMS AND CONDITIONS

FEES/COSTS

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

DLNR'S NON-LIABILITY AND WAIVERS

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

aspect of this RFQ/RFP.

TITLE TO SUBJECT PROPERTY

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

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

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

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

EXHIBIT 3

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 8, 2022

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

PSF No.: 17HD-028

PSF No.: 19HD-078

Via Email [ed@towerdevcon.com] and Regular Mail

Mr. Ed Bushor
Tower Development, Inc.
1050 Bishop Street, Suite 530
Honolulu, Hawaii 96813

**Subject: Request for Qualifications/Request for Proposals (RFQ/RFP) for the
Former Uncle Billy's Hilo Bay Hotel and Former Country Club
Condominium Hotel in Hilo, Hawaii**

Dear Mr. Bushor:

As you will recall, in July 2021 the Evaluation Committee appointed by Chairperson Suzanne Case to review proposals submitted in response to the RFQs/RFPs published for the above-referenced projects made a preliminary selection of the proposals submitted by Tower Development, Inc. (TDI) for both projects, subject to the approval of the Board of Land and Natural Resources (Board) at a public meeting to be scheduled.

The staff submittals for approval of the selections were placed on the Board agenda for its meeting of September 24, 2021, under agenda Items D-4 and D-5, but were withdrawn prior to the start of the meeting after a complaint was filed by Olson/Naniloa LLC against you and Stuart Miller over TDI's authority to submit redevelopment proposals for the properties.¹ On December 6, 2021, a separate mortgage foreclosure complaint was filed against WHR LLC (WHR) alleging a default on the loan for the Grand Naniloa Hotel. We understand TDI is a manager of WHR and, together with certain affiliates, is the majority owner of WHR.²

In view of these developments, the Evaluation Committee took a closer look at TDI's qualifications. The RFQs/RFPs listed the information required to be contained in an applicant's Statement of Qualifications (SOQ), which included, among other things, the following:

¹ In an email dated March 23, 2022, you mentioned that an agreement had been reached to remove Edmund C. Olson from ownership of WHR. However, a recent search of the records of the Hawaii State Judiciary showed that the Olson/Naniloa LLC lawsuit is still pending.

² The other manager of WHR is Tower Hotels Hilo LLC, of which TDI is also the manager.

EXHIBIT 3

- The identity of 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 renovation / operation of the Subject Property.
- Satisfactory evidence to support the financial ability of the applicant to repair, renovate and operate the Subject Property. Such evidence should include evidence of applicant's past or current debt or equity financing (such as letters from past or current lenders or financing sources confirming the amounts financed, repayment terms, and repayment status), **applicant's financial statements for the past three fiscal years**, current credit report(s), and evidence of capital resources or financing commitments. **Describe any loan or lease defaults, bankruptcies, judgments, or any litigation or other disputes that may potentially have an adverse effect on the applicant's current financial capability. A personal guarantee (or personal guarantees) will be required upon issuance of a lease.**
- **Any other information regarding the applicant, the development team, or its members that may be pertinent to establishing the applicant's qualifications.**

Equally as important, the RFQs/RFQs clearly stated:

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

The SOQ that TDI initially submitted did not include letters from past or current lenders or financing sources confirming the amounts financed, repayment terms, and repayment status, TDI's financial statements for the past three fiscal years, current credit reports, or evidence of capital resources or financing commitments. Nor was financial information provided for you personally or for Mr. Miller, who we understand are the principals of TDI. In contrast, the other two applicants for the former Country Club Condominium Hotel (Country Club) project provided extensive supporting financials, including personal financial statements for each principal, consolidated investment statements, and bank statements. One applicant went further and provided information on life insurance policies, real estate ownership with loan balances and income and expenses, and retirement assets. The personal financial information is important because of the personal guaranties that would be required for the development agreements and leases issued for the projects.

In September 2021, we requested more detailed financial statements for TDI and its principals (such as personal and company income statements and balance sheets, and a pro forma of the same). You expressed reluctance to provide personal financial information for yourself

and Stuart Miller. Instead, after repeated requests, TDI ultimately provided what appears to be its operating statements, a consolidated financial statement and a list of lending institutions that have extended credit to TDI. At the end of 2021, we asked you whether TDI would be willing to provide tax returns as part of the Evaluation Committee's continued assessment of TDI's finances. You responded that this kind of information is not pertinent to how developers operate, which involves identifying an asset for investment and getting financing lined up through investors and lenders.³ You added that you would be willing to provide us with more information on loan commitments for the former Uncle Billy's Hilo Bay Hotel (Uncle Billy's) and Country Club projects. However, you did not provide the additional information, and even if you provided loan commitment information, that would not be sufficient to show financial capability.

While TDI and WHR are separate entities, as noted above TDI is a manager and, together with certain affiliates, the majority owner of WHR.⁴ WHR's Grand Naniloa Hotel is listed as an asset of TDI on Schedule C of TDI's Consolidated Financial Statement for Third Quarter 2021, which also shows the mortgage amount for the hotel allocable to TDI as \$39,840,000. The foreclosure action against WHR noted above is ongoing according to the records of the Hawaii State Judiciary.⁵ WHR's financial health has a direct bearing on the financial capability of TDI as the applicant, and yourself and Mr. Miller as potential guarantors.

The Evaluation Committee discussed TDI's supplemental financials and your rationale for not providing personal financial information for yourself and Mr. Miller. Based upon the foregoing and considering what is in the best interests of the State, the Evaluation Committee will not be recommending that TDI be selected as the developer for the renovation projects. Furthermore, in light of the recent fire that occurred at the Uncle Billy's site on March 4, 2022 the Land Division will be recommending to the Board that it cancel the current RFQs/RFPs for the properties on the grounds that cancellation is in the best interests of the State. The Department will instead focus on obtaining funding for the demolition of Uncle Billy's.

³ We understand this explanation to also be the rationale for not providing personal financial information.

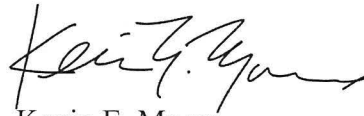
⁴ We also understand that you have an ownership interest or management control over TDI, WHR and the neighboring Grand Naniloa Hotel and golf course operation. In other words, we understand that you are (or you held yourself out to be) a principal of WHR and TDI, and under the express terms of the RFQs/RFPs, would be required to personally guarantee TDI's performance if it was selected.

⁵ Additionally, WHR recently sought rent relief from the Land Board requesting that WHR be allowed to pay the semiannual rent due on February 1, 2022 under the lease for the Grand Naniloa Hotel in the amount of \$290,135.22 in installments over six months. The Board approved that request at its meeting of February 25, 2022 under agenda item D-1. WHR failed to make its March 1, 2022 installment due under the payment plan approved by the Board and a Notice of Default was issued to WHR on March 4, 2022. WHR later delivered a check in the amount of \$290,135.22 to the Hawaii District Land Office on March 28, 2022.

Mr. Ed Bushor
Tower Development, Inc.
April 8, 2022
Page 4

Thank you for your participation in the RFQ/RFP process.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin E. Moore". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kevin E. Moore
Assistant Administrator

EXHIBIT 4

From: Ed Bushor
To: Moore, Kevin E
Cc: Masuda, Robert K; Tsuji, Russell Y; Heit, Gordon C; Stuart Miller; Case, Suzanne D
Subject: [EXTERNAL] Re: Letter re Banyan Dive RFQs/RFPs
Date: Friday, April 8, 2022 3:25:06 PM

Kevin,

This letter is unacceptable. It is deserving of a Hearing at DLNR and Tower requests the hearing to present all necessary support.

Please request a hearing as we have invested \$50M into Hilo, and no other party has. So the decision making does not support such a letter and we deserve, after award letters, the opportunity to present to the BLNR, in all fairness after 5 years of working on these projects.

Please let us know of a hearing date.

Aloha and blessings,

Ed "Z" Bushor
CEO
Tower Development, Inc.
1050 Bishop Street 530
Honolulu, Hawaii 96813
808.268.1903 (M)
[REDACTED]
www.towerdevcon.com

From: Kevin Moore [REDACTED]
Date: Friday, April 8, 2022 at 3:21 PM
To: Edward Bushor [REDACTED]
Cc: Robert DLNR Masuda [REDACTED], "Tsuji, Russell Y"
[REDACTED], "Heit, Gordon C" [REDACTED], Stuart Miller
Subject: Letter re Banyan Dive RFQs/RFPs

Dear Mr. Bushor – Attached please find a pdf of my letter to you dated April 8, 2022 regarding the Banyan Drive RFQs/RFPs. Thank you.

Kevin

EXHIBIT 4