

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

September 9, 2022

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

PSF No.: 19HD-078

Hawaii

Amend Prior Board Action of July 22, 2022, Item D-5, *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.*

The purpose of the amendment is to delete a reference in Recommendation 2 of the prior Board action to the sale of improvements on the subject lands and affirm that the Request for Qualifications / Request for Proposals seeks to issue a lease of improved public lands.

BACKGROUND:

At its meeting of July 22, 2022, under agenda Item D-5, the Board of Land and Natural Resources (Board) authorized 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. A copy of the prior Board action is attached as Exhibit 1.

REMARKS:

In the course of preparing the RFQ/RFP solicitation documents, staff noticed an error in Recommendation 2 of the July 22, 2022 action. That recommendation reads as follows:

Find that the public interest demands that a lease of the subject property and a sale of the improvements thereon be disposed of through negotiation pursuant to §171-59(a), HRS, as amended.

Staff now seeks to clarify that no sale of improvements will be involved in the RFQ/RFP. Although staff explored the possibility of a sale of improvements previously, after consulting with the Department of the Attorney General on the matter, staff decided to recommend that result of the RFQ/RFP process be a lease of land and improvements thereon. Accordingly, staff is recommending an amendment to Recommendation 2 to strike the words “a sale of the” as indicated below.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

September 9, 2022 *wo*

RECOMMENDATION: That the Board:

- A. Amend its prior Board action of July 22, 2022, Item D-5, by deleting the words “a sale of the” from Recommendation 2 (as indicated by bracketed strikethrough below) and retaining the remainder of the language:
  2. Find that the public interest demands that a lease of the subject property and [~~a sale of the~~] improvements thereon be disposed of through negotiation pursuant to §171-59(a), HRS, as amended.
- B. Affirm that, except as amended hereby, all terms and conditions listed in its July 22, 2022 approval shall remain the same.

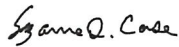
Respectfully Submitted,



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Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



*RT*

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Suzanne D. Case, Chairperson

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

July 22, 2022

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, A-2 and A-3.

AREA:

1.22 acres, more or less.

ZONING:

State Land Use District: Urban

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
July 22, 2022 *GD*

**EXHIBIT 1** <sup>D-5</sup>

County of Hawaii CZO: Hotel and Resort (V-.75) / Open

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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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 Part 1, Item 40 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 (Parcel 20).<sup>1</sup>

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.

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<sup>1</sup> The tax map (Exhibit A-2) shows a short driveway connecting Parcel 20 to Banyan Drive. However, staff verified with the Land Survey Division of the Department of Accounting and General Services that the driveway was consolidated into the larger parcel in 1970. Exhibit A-3 shows the current official Land Survey Division map for Parcel 20.

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. 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.<sup>2</sup>

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

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<sup>2</sup> The Erskine Report indicates that sub-consultants in the following disciplines were retained to help assess the property: Environmental Engineer, Civil Engineer, Structural Engineer, and Mechanical and Electrical Engineer.

would be \$6,244,717. Due to increased contracting costs and inflation, the estimated demolition cost at present is \$10,200,000.<sup>3</sup> 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 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, staff explored 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

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<sup>3</sup> In terms of demolition of structures in the Banyan Drive area, the Department’s priority is to secure capital improvement project (CIP) funds to demolish the nearby shuttered Uncle Billy’s Hilo Bay Hotel (Uncle Billy’s). The Department sought funding for the demolition of Uncle Billy’s during the 2019 legislative session but the legislature declined to appropriate funds at that time. The Department renewed its request for CIP funding during the 2022 legislative session, and the Legislature ultimately appropriated \$13.5 million, albeit from the Special Land and Development Fund (SLDF) instead of general funds or general obligation bonds. The SLDF has insufficient funds to cover the demolition cost of Uncle Billy’s, let alone both Uncle Billy’s and Country Club.

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 its meeting of December 13, 2019, under agenda Item D-2, the Board previously approved an RFQ/RFP for the renovation of this property under a new lease for continued hotel and/or apartment use. Four parties expressed interest in response to the RFQ/RFP published in 2020, with three of those four submitting statements of qualification and proposals for renovation. The evaluation/selection committee appointed by the Chairperson made a preliminary selection of a proposal submitted by Tower Development, Inc. (Tower) subject to Board approval, but the recommendation to select Tower was withdrawn from the Board's agenda of September 24, 2021 after one of the members of WHR LLC (WHR), the State's lessee of the Grand Naniloa Hotel Hilo property, filed a lawsuit against Ed Bushor and Stuart Miller who are principals of both Tower and WHR. The lawsuit alleged that Tower's submission of a proposal in response to the RFQ/RFP was a violation of WHR's operating agreement, questioned WHR's solvency and sought an audit of its financial books and records. Unable to verify Tower's financial capacity, staff ultimately recommended the cancellation of the RFQ/RFP, which the Board approved at its meeting of June 9, 2022, under agenda Item D-8.

On June 30, 2022, OceanFront 121 notified Land Division that it is unable to continue managing the Country Club property under a month-to-month revocable permit because the short-term nature of the disposition does not allow it to make necessary investments in the property. OceanFront 121 advised that it intends to surrender RP7914 at the end of December 2022. To avoid the situation where Land Division is managing the day-to-day operations of a multi-tenanted residential building or is alternatively expending substantial resources of the Department to vacate and police the building, staff is proposing that the property be put out once again for lease under and RFQ/RFP 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.<sup>4</sup> There are also 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 real property taxes 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 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 that 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

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<sup>4</sup> 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.

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 ground lease up to the

maximum allowable term of 65 years 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.

In 2019, 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 Coastal Lands	No objections
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. On June 25, 2022, OceanFront 121 represented that it had brought all utility

accounts for the property current, but staff has not independently verified this. As noted above, staff plans do disclose these issues to potential RFQ/RFP applicants and ask them how they plan to address them.

When the Board approved the prior RFQ/RFP, it authorized OceanFront 121 to be reimbursed for expenses for improvements to the property in recent years to cure County building, plumbing, electrical, and fire code violations in the event it was not selected as the developer/lessee under the prior RFQ/RFP. The Board authorized reimbursement of OceanFront 121 by the selected applicant for the following expenses:

Table 1

<b>Date</b>	<b>Item</b>	<b>Cost</b>
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
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 sought reimbursement for the following expenditures relating to the property:

Table 2

<b>Item</b>	<b>Cost</b>
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

As discussed in the staff report of December 13, 2019, Item D-2, 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 again 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.

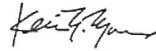
The proposed use has continued since 1969 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion 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 and a sale of the improvements thereon 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,

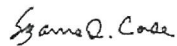


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Kevin E. Moore  
Assistant Administrator

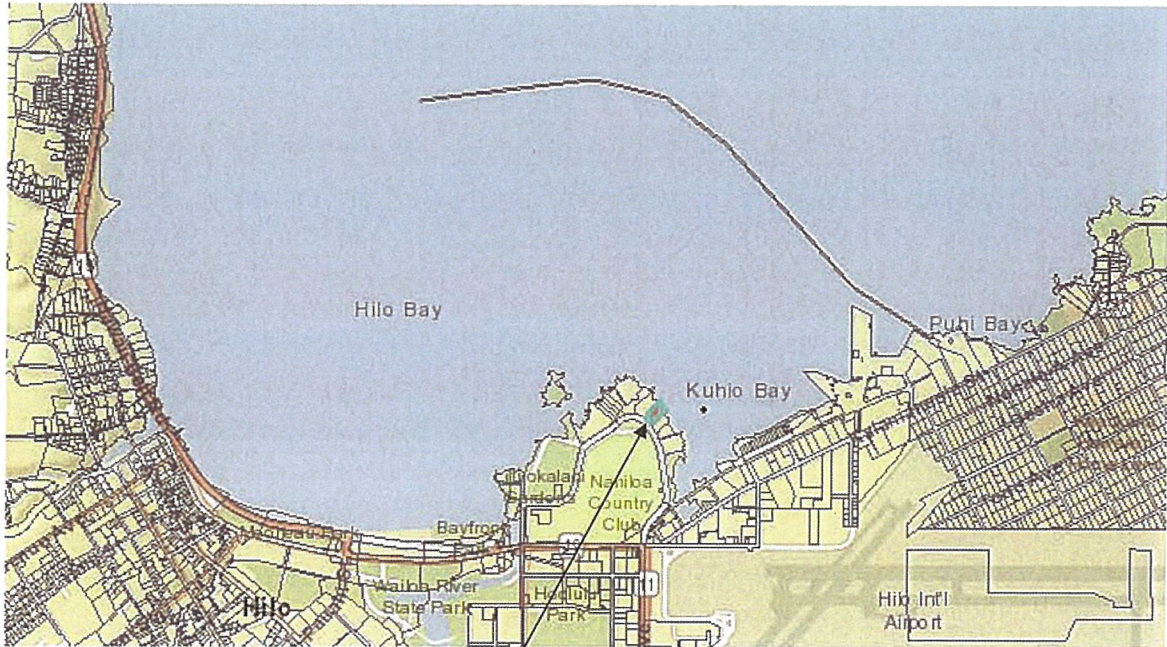
APPROVED FOR SUBMITTAL:

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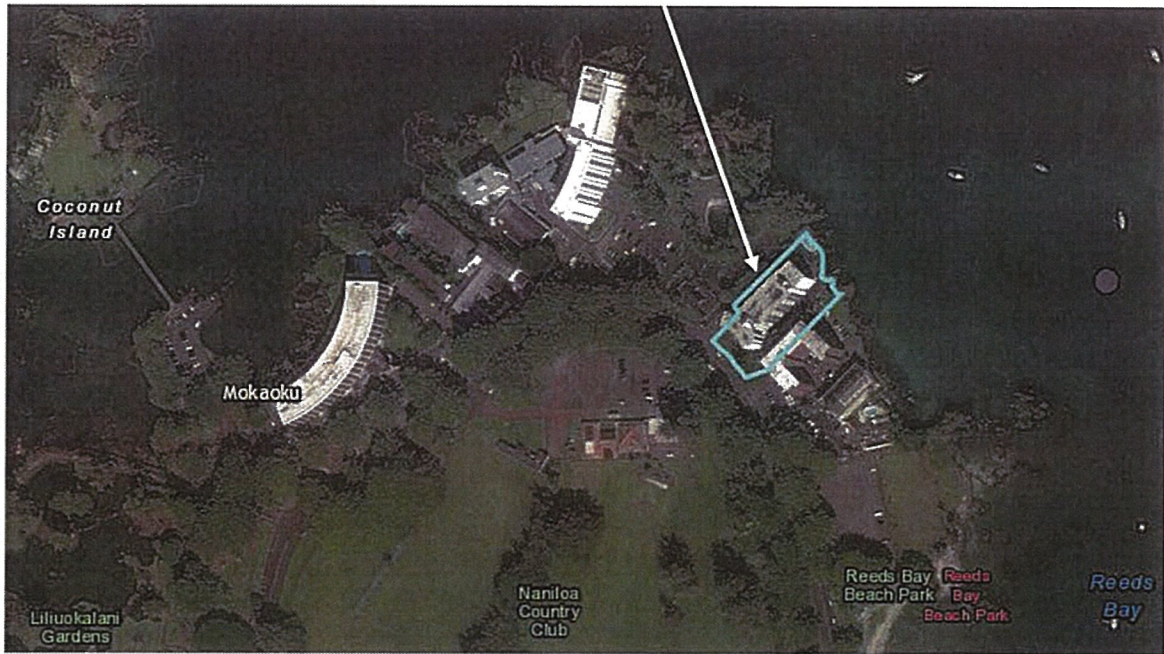


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Suzanne D. Case, Chairperson

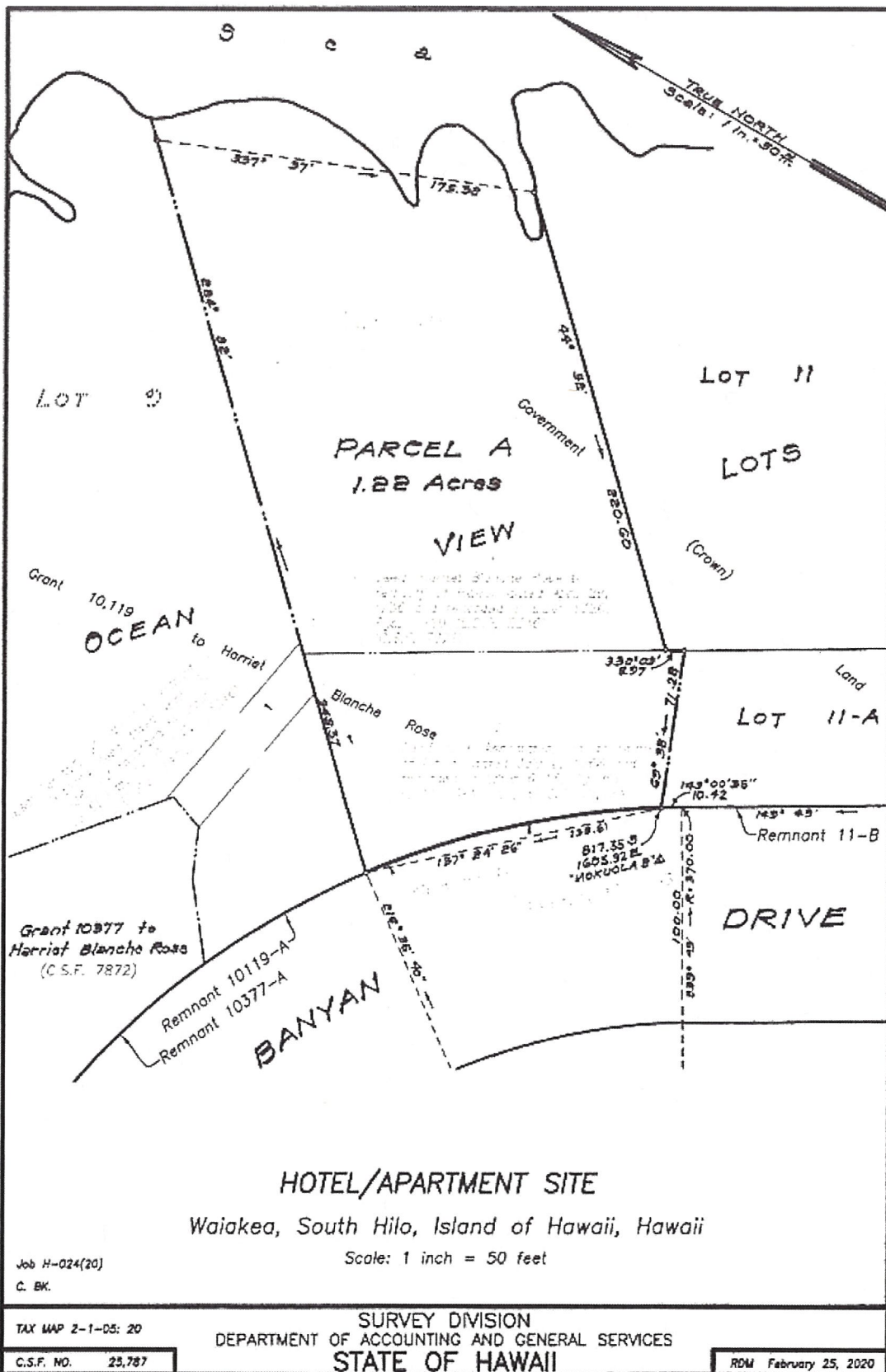


Former Country Club Hawaii  
Condominium and Hotel  
TMK: (3) 2-1-005:020









**EXHIBIT A-3**

## 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.

# EXHIBIT B

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

July 22, 2022

**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 Public Lands.

**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 for a new long-term lease of the property for apartment and hotel purposes.

**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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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 Part 1, Item 40 that states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

**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.

**EXHIBIT C**

**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 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

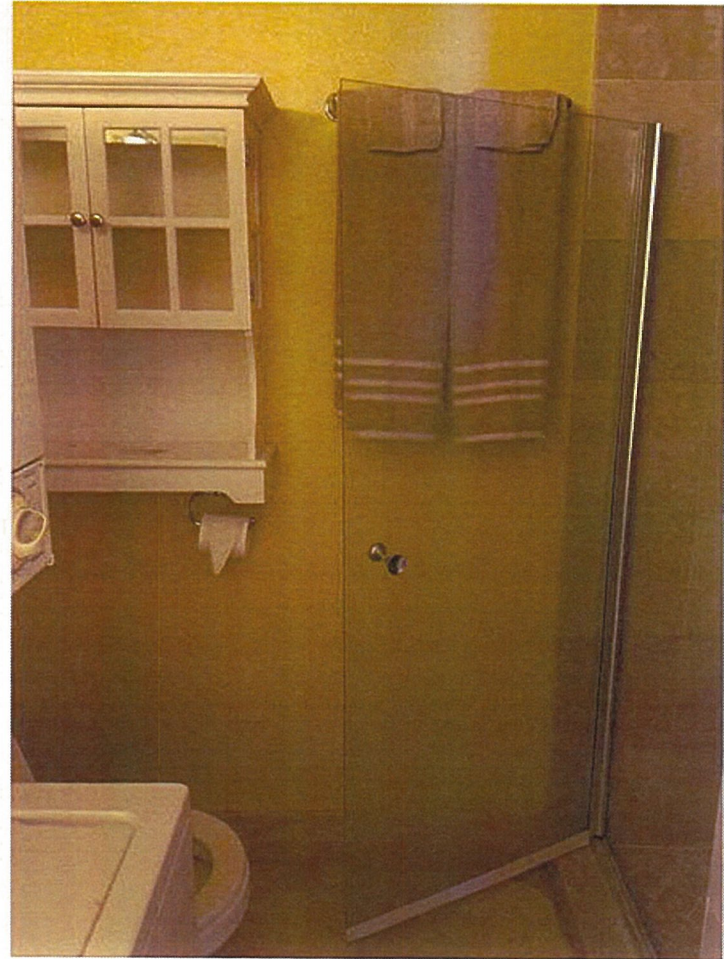
Inspection Photos of RP S-7867 on 11/05/2018:



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

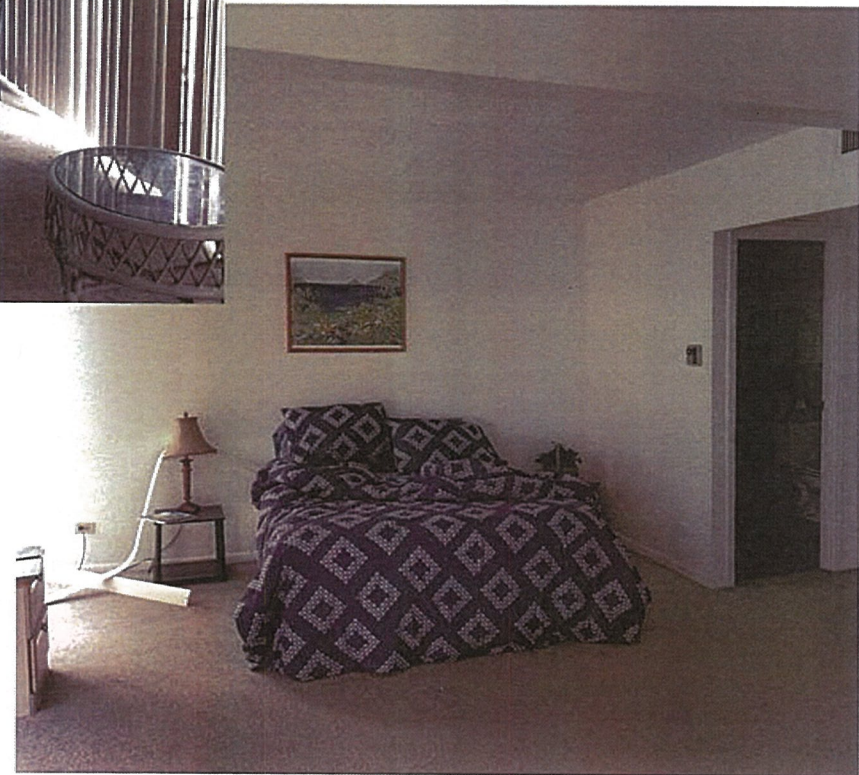


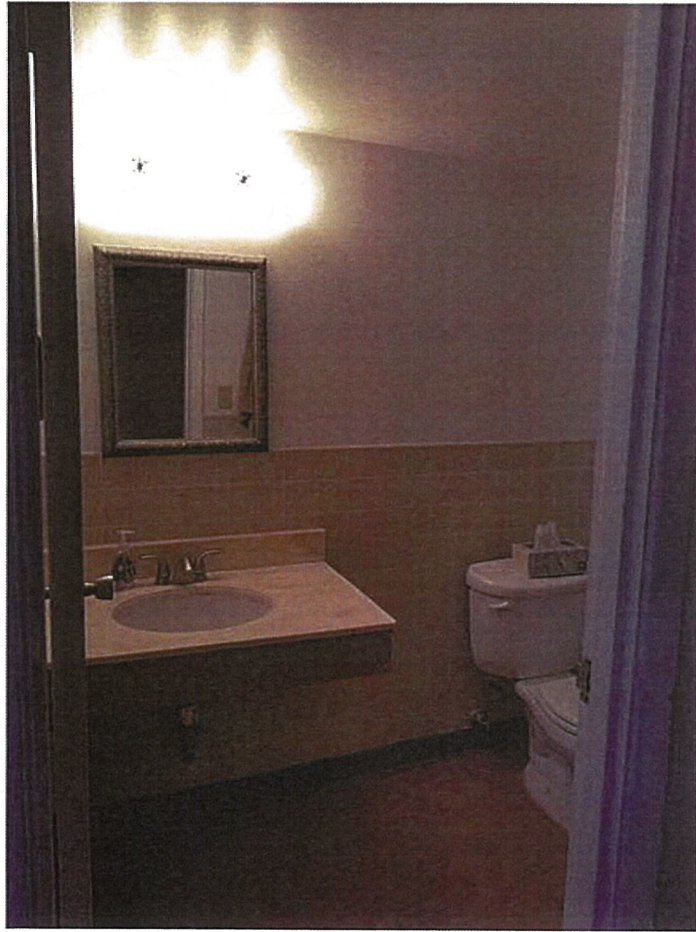
Bathroom and kitchenette from previous photo





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 2<sup>nd</sup> 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

# EXHIBIT E

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

## **EXHIBIT E**

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.

**EXHIBIT E**

## 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

**EXHIBIT F**