

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

December 11, 2015

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

PSF:15MD-199

Maui

Approve Essential Terms and Conditions of Development Agreement, and Proposed Plans and Specifications for Improvements for General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee; Authorize Extension, Amendment and Restatement of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee, for an Aggregate Term of 55 Years, Kamaole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:029.

APPLICANT:

Ruby and Sons Hospitality, LLC, a California limited liability company.

PROPOSAL:

Lessee proposes to make "substantial improvements" to the subject lease premises worth approximately \$1,461,950 pursuant to Act 219 Session Laws of Hawaii Regular Session of 2011 (SLH 2011) within 36 months of Board approval in exchange for a 37-year extension of the lease.

LEGAL REFERENCE:

Sections 171-36(b), Hawaii Revised Statutes, as amended, and Act 219 SLH 2011.

LOCATION:

Portion of Government lands of Kamaole situated at 2980, S. Kihei Road, Maui, Hawaii, identified by Tax Map Key: (2) 3-9-004:029, as shown on the attached map labeled Exhibit A.

AREA:

1.119 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Solely for apartment-motel cottages and accessory uses.
Accessory uses shall include a restaurant-bar and other service
facilities.

TERM OF LEASE:

Original term of 65 years, commencing on September 04, 1968, and
expiring on September 03, 2033.

TERM OF LEASE EXTENSION:

Applicant requests a 37-year extension to GL S-4212 for an
aggregate term of 55 years (18 years remaining on lease plus 37
years extension) commencing on September 04, 2033 and expiring on
September 03, 2070.

ANNUAL RENTAL:

Current rent is \$208,000, due in semi-annual installments of
\$104,000 on March 04 and September 04 of each year.

RENTAL REOPENINGS:

Reopening in the original term was at the end of the 20th, 35th,
45th and 55th years of the term. The last rental reopening
occurred on September 04, 2013.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> X </u>	NO _____
Registered business name confirmed:	YES <u> X </u>	NO _____
Applicant in good standing confirmed:	YES <u> X </u>	NO _____

HRS CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land
and Natural Resources, approved by the Environmental Council on
June 5, 2015, the subject request is exempt from the
preparation of an environmental assessment pursuant to
Exemption Class 1, "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." See Exhibit C attached.

APPLICANT REQUIREMENTS:

Lessee shall:

1. Comply with requirements of Act 219 SLH 2011;
2. Pay for an appraisal to determine the minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, with such determination to address, as applicable, the percentage rent where gross receipts exceed a specified amount pursuant to Act 219;
3. Execute a formal, written development agreement and proceed with its proposed plans and specifications for improvements in connection with the extension of the lease term of GL S-4212 pursuant to Act 219 by December 10, 2016; and
4. Negotiate and execute the extended, amended and restated lease for the premises.

REMARKS:

In 1968 the subject premises were leased to Walter Witte and John Fagan under General Lease No. S-4212. In 1990, the Board of Land and Natural Resources consented to the assignment of the lease from Walter Witte and John Fagan, assignor, to Towa Shinyo Maui, Inc., assignee. In 2000, the Board consented to the assignment of the lease from Towa Shinyo Maui, Inc., assignor, to Western Apartment Supply and Maintenance Co., assignee. In 2007, the Board consented to a mortgage by Western Apartment Supply and Maintenance Co., as mortgagor, in favor of La Jolla Bank, as mortgagee, encumbering the subject premises.

In 2012, the lease was foreclosed on by the United States Bankruptcy Court and sold via public auction to USA Tainren Hotel Management, Inc. and Xiaoying Wang, doing business as Ruby & Sons Hospitality, LLC in the State of Hawaii, for \$7.5 million dollars.

The subject site contains a gross land area of 1.119 acres and is comprised of a roughly rectangular shaped parcel of land that has generally level topography with the west boundary fronting along the ocean and a white sand beach. The property is currently utilized as a Days Inn and is improved with two, two-story wood frame motel structures with 187 rooms and a one-story masonry restaurant building, all constructed in 1974. The remainder of

the site is either landscaped or paved in concrete or asphalt and utilized as open sidewalk, parking or driveway areas.

GL S-4212 terminates in 2033. With 18 years remaining on the lease, the aging hotel is in need of significant repair and upgrades. Therefore, the applicant proposes to make "substantial improvements" in exchange for a lease extension pursuant to Act 219. Under Act 219, "substantial improvements" means any renovation, rehabilitation, reconstruction or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds fifty per cent (50%) of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development."

Act 219 sunsets on December 31, 2015. Applicant has ordered an appraisal report of the leasehold improvements, but has not yet received the report.¹ The County of Maui Real Property Tax Office records indicate the value of the existing improvements as of 2015 is \$2,923,900. Fifty percent of that amount is \$1,461,950. Applicant proposes to install a photo-voltaic system and related electrical upgrades, improvements to guest rooms, lobby, roof and landscaping at a cost of not less than \$1,461,950, or if the appraised value comes in higher than the tax assessed value of the improvements, the value of the renovations will not be less than 50% of the market value of the existing improvements as determined by appraisal.

The act also stipulates that prior to entering into a development agreement, the lessee shall submit to the Board the plans and specifications for the total development being proposed. The Board shall review the plans and specifications and determine: 1) Whether the development proposed is of sufficient worth and value to justify the extension; 2) The estimated time to complete the improvements and expected date of completion; 3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the Board, and the percentage rent where gross receipts exceed a specified amount.

Applicant is endeavoring to prepare plans and specifications for its hotel upgrade by the time of the Board meeting on December 11, 2015. Assuming that the plans and specifications detail applicant's proposed installation of a photo-voltaic system and related electrical upgrades, improvements to guest rooms, lobby, roof and landscaping at a cost meeting the requirements under Act 219, staff is recommending that the Board approve the lease

¹ Applicant anticipates receiving the completed appraisal report prior to the Board meeting date of December 11, 2015.

extension. In exchange for applicant committing to these upgrades, the Board is requested to authorize an extension of approximately 37 years to the existing lease. Applicant will have 36 months from the execution of the development agreement to complete the improvements. These are the essential terms and conditions of the development agreement. A formal, written development agreement confirming these essential terms and conditions will be prepared and brought back to the Board for approval at a later date.

By letters dated September 12, 2012 and January 24, 2014, the State notified the applicant of existing defaults related to operation and use of the subject premises. Noted defaults included: 1) an unauthorized rock revetment installed by the previous tenant as a result of an episodic shoreline erosion event in the early 1980's, 2) overgrown vegetation that encroaches onto adjacent shoreline areas, 3) drainage issues related to an exterior beach shower, 4) drainage from the paved parking lot, and 5) drainage from the kitchen and patio areas of the Sarento's on the Beach restaurant. All of these issues existed prior to the tenure of the existing tenant. The applicant has made recent efforts to rectify ongoing defaults by applying for necessary permits from the State of Hawaii and County of Maui in order to begin construction to resolve 3 of the 5 outstanding defaults noted above. For example, at this time, the applicant is in the process of obtaining approval from the State Department of Health for installation of an underground injection well to service necessary onsite drainage needs. Construction is estimated to begin in spring of 2016. Mitigation of the other two defaults is also anticipated to be resolved in 2016 by removal of the encroachments.


RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirements and Conditions of Lease Extension listed above:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, 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. As required by Act 219, Session Laws of Hawaii 2011, determine that:
 - a. The development proposed is of sufficient worth and value to justify the extension of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee;

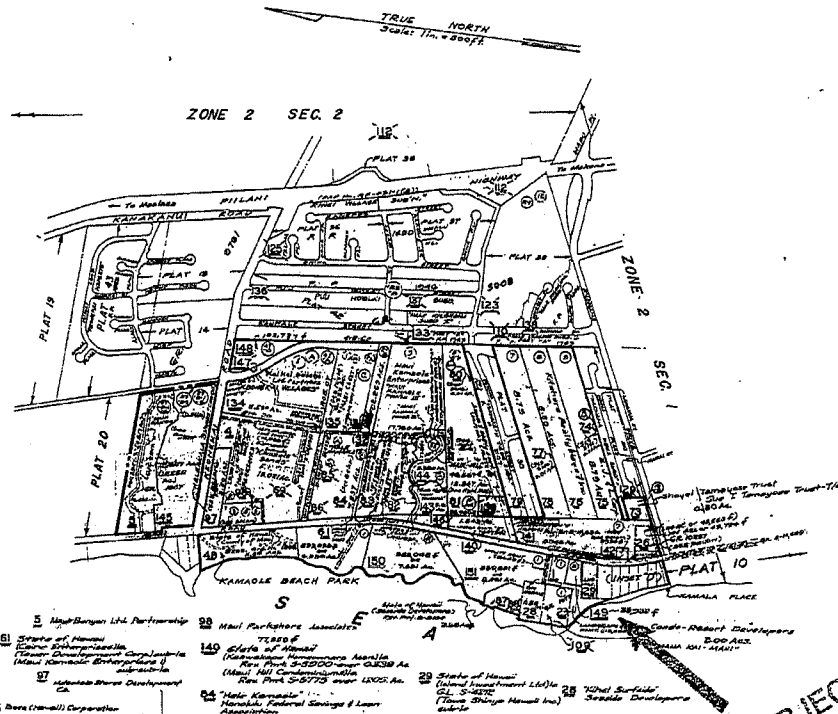
- b. The estimated time to complete the improvements and expected date of completion is 36 months after execution of the formal, written development agreement; and
 - c. The minimum revised annual rent to be paid by the Lessee shall be based on the fair market value of the subject land to be developed as determined by and appraiser for the Board, with such determination to address, as applicable, the percentage of rent to be paid by Lessee when gross receipts exceed a specified amount.
3. Approve the essential terms of the development agreement as set forth above, and the proposed plans and specifications for improvements by applicant, in connection with an extension of the term of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee. The formal, written development agreement shall be submitted to the Board within one year.
4. Subject to the applicant fulfilling all of the Applicant Requirements listed above, authorize the extension, amendment and restatement of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. The standard terms and conditions of the most current extension, amendment and restatement of lease document form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



81 Hill Enterprises Ltd.-54%
 Russell A. Hill Trust-53%
 Christine A. Hill Trust-53%
 (Krusa-Anderson St. Paul Div.)

139 "Koravathapuzhi"

74 E. J. & L. Corp. - 46
Kitchener Bldg. (Hawthorn) Inc. - 46

123 Main County Materials Board
Tomball, Texas 77455

7 Krefeldener Fluchtig (Hauptstadt)

• 60 Various Owners see TMB 1924 '67

13.5 Maui County

43 *Hand Karmachaka Antaprasanga*

NOTE

Parcels 17, 18, 19, 24, 24, 26, 27, 28, 29, 40, 41, 42,
48, 30, 38, 39, 21, 29, 28, 111, 118, 119, 116, 117, 6,
113, dropped into Plat 3-2-17.

Parcels 7, 11, 12, 20, 51, 52, 60, 63, 66, 67, 70, 72,
130, 121, 136, & 128 dropped into Plat 3-2-18
Parcels 13, 14, 15, 65, 124 & 127 dropped into
Plat 3-2-17.

Parcel 6, 7, 8, 21, 22, 32, 33, 34, 35, 36, 37,
70, 71, 72, 73, 76, 106, 107, 108, 114, 120 & 122,
dropped into Plat 2-2-20.

Parcel 33 & 34 dropped into Plat 2-2-09.

Parcel 2 dropped into 3-3-03-32.
Parcel 3 dropped into 3-3-12-31.
Parcel 10 dropped into 3-0-16-1
Parcel 16, 5d drop'd into 3-0-13 & 14

Parrot 50 dropped into 2-3-12-1, etc.

Dropped Parcels: 100, 125, 20, 110,
115, 92, 33, 120, 132, 16, 45, 20,
112, 129, 127, 69, 136, 22, 142, 72, 124

DEPARTMENT OF THE TAX COMMISSIONER		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
SECOND		DIVISION
ZONE	SEC.	PLAT
3	9	04
CONTAINING		PARCELS
SCALE 1 IN. = 500 FT.		

SUBJECT TO CHANGE

Por. KAMAOLE HOMESTEADS, WAILUKU, MAUI

SERVO NO. 1202 (Revised) *1202-1203*
 SOURCE *INT. MEX. BUREAU* *1202-1203*
 BY *J. K. H. Feb. 1926* *1202-1203* *May 24, 1960*

Tan: Private Property

Red: State Land

EXHIBIT B

001
RP-5104
Landscape, Maintenance
& Recreation

KIHEI SURFSIDE
TMK: (2) 3-9-004:028

EO-3963
K.I.R.C.
TMK: (2) 3-9-004:151

MANA KAI
TMK: (2) 3-9-004:023

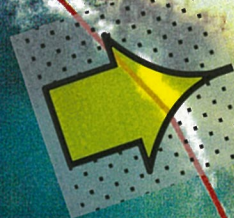
GL-4442
GL-4375
RP-7723
TMK: (2) 3-9-004:001

Parking Lot
RP-6914
TMK: (2) 3-9-004:149

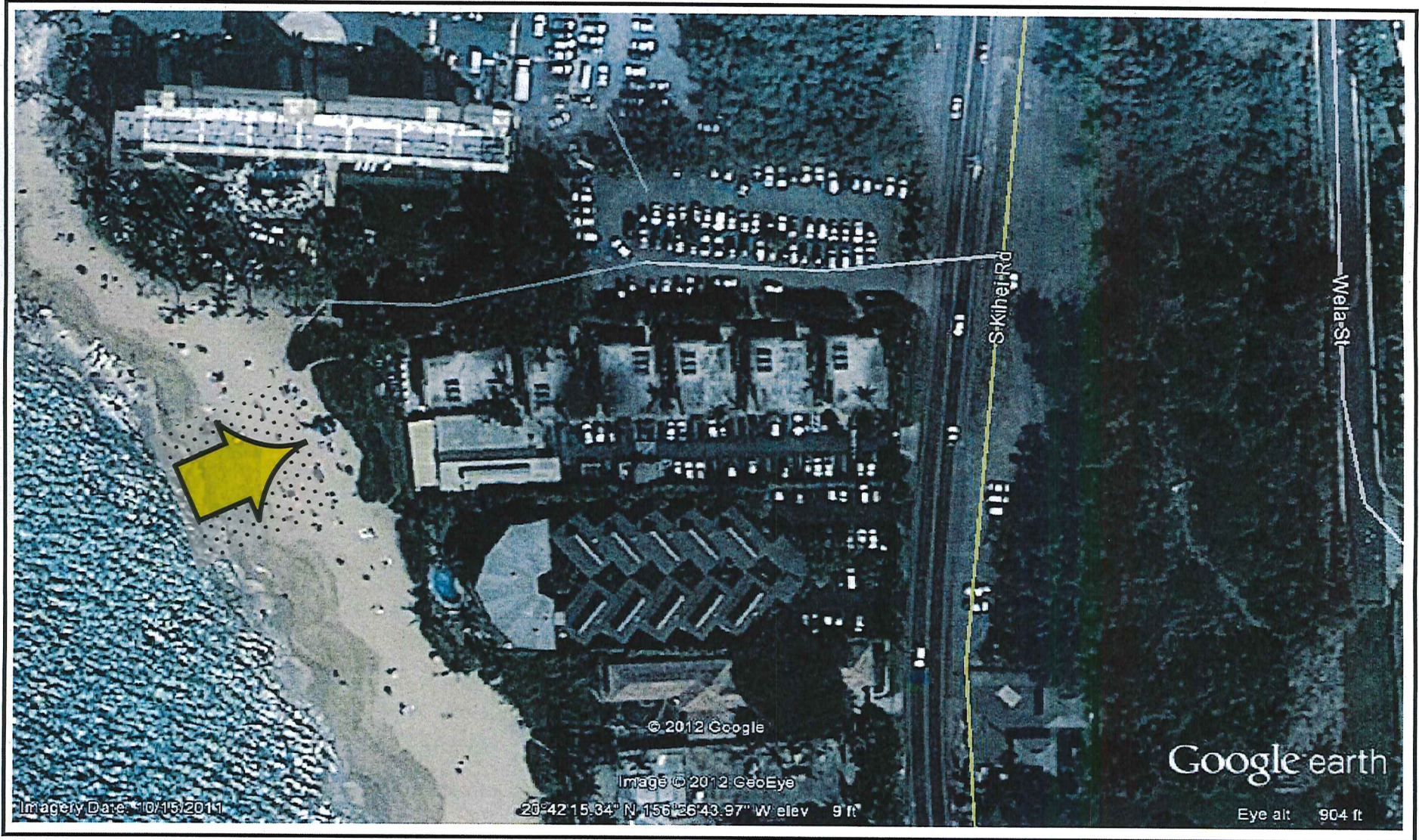
RP-5405
Landscape & Maintenance
001

Ruby & Sons
GL-4212
TMK: (2) 3-9-004:029

South Kihei Road



SUBJECT AERIAL PHOTOGRAPH
Second Division Tax Map Key 3-9-04, Parcel 29
Kamaole, Maui, Hawaii





View of the subject property
from across South Kihei Road.

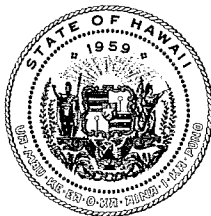
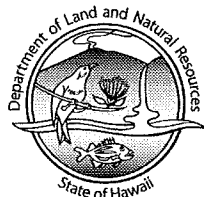


View of the subject property
from the entrance driveway
facing west.



View along the rear or west
oceanfront boundary of the
subject property.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 11, 2015

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

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
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

EXEMPTION NOTIFICATION

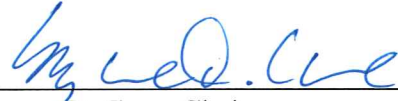
regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Approve Essential Terms and Conditions of Development Agreement, and Proposed Plans and Specifications for Improvements for General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee; Authorize Extension, Amendment and Restatement of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee, for an Aggregate Term of 55 Years.
Project / Reference No.:	15MD-199
Project Location:	Portion of Government lands of Kamaole situated at 2980, S. Kihei Road, Maui, Hawaii, identified by Tax Map Key: (2) 3-9-004:029
Project Description:	Lessee proposes to make "substantial improvements" to the subject lease premises worth approximately \$1,461,950 pursuant to Act 219 Session Laws of Hawaii Regular Session of 2011 (SLH 2011) within 36 months of Board approval in exchange for a 37-year extension of the lease .
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "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."

EXHIBIT C

Recommendation:

It is anticipated 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.



Suzanne D. Case, Chairperson