

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

April 4, 2022

Honorable Michael J. Molina, Chair
Government Relations, Ethics, and Transparency Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Molina:

Respectfully transmitted are copies of the following documents that were referred to your Committee by the Council of the County of Maui at its meeting of April 1, 2022:

RESOLUTION:

- No. 22-86 - "APPROVING THE APPOINTMENT OF HELENE KAU AS THE DIRECTOR OF WATER SUPPLY"
- No. 22-87 - "AUTHORIZING SETTLEMENT OF CLAIM NO. 4063291 OF LORI DONALDSON"
- No. 22-95 - "AUTHORIZING SETTLEMENT OF CLAIM NO. 4073176 OF FIRST INSURANCE COMPANY OF HAWAII, LTD. ON BEHALF OF ITS INSURED ANITA MOSUELA"

BILL:

- No. 65 (2022) - "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, REGARDING THE ISSUANCE OF A MANAGEMENT RIGHT-OF-ENTRY FOR BRUSH CLEARING AND PUBLIC PARKING PURPOSES"

OFFICE OF THE
COUNTY CLERK

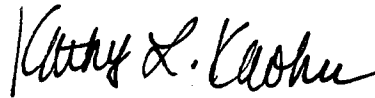
2022 APR -4 PM 12:51

RECEIVED

Honorable Michael J. Molina, Chair
Government Relations, Ethics, and Transparency Committee
Page 2
April 4, 2022

Also transmitted for your convenience are copies of communications received from the Mayor pertaining to Resolution Nos. 22-86 and 22-87, Deputy Corporation Counsel relating to Resolution No. 22-95, and Budget Director pertaining to Bill No. 65 (2022).

Respectfully,

A handwritten signature in black ink, appearing to read "Kathy L. Kaohu". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

KATHY L. KAOHU
County Clerk

/jym

Enclosures

cc: Director of Council Services

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

March 14, 2022



Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

For Transmittal to:

Michael P. Victorino 3-14-22
Mayor Date

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Members:

SUBJECT: **RIGHT-OF-ENTRY FOR BRUSH CLEARING AND PUBLIC
PARKING PURPOSES FOR KEAWAKAPU, KAMAOLE,
MAUI (TAX MAP KEY (2) 3-9-004:001 (POR.))**

On behalf of the Department of Finance, I am transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, REGARDING THE ISSUANCE OF A MANAGEMENT RIGHT-OF-ENTRY FOR BRUSH CLEARING AND PUBLIC PARKING PURPOSES."

The purpose of the proposed bill is to authorize the Mayor of the County of Maui to enter into an intergovernmental agreement for the management right-of-entry for brush clearing and public parking purposes of Tax Map Key No. (2) 3-9-004:001, located at Keawakapu, Kamaole, Maui, Hawaii.

Should you have any questions, please contact me at ext. 7212.

Sincerely,

A handwritten signature in blue ink, which appears to read "Michele M. Yoshimura", is written over a horizontal line.

MICHELE M. YOSHIMURA
Budget Director

Attachment

cc: Scott Teruya, Director of Finance

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 18, 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 21MD-074

MANAGEMENT RIGHT-OF- ENTRY PERMIT

Michael P. Victorino, Mayor
County of Maui
200 S. High Street
Wailuku, HI 96793

Dear Mayor Victorino:

SUBJECT: Issuance of a Management Right-of-Entry to County of Maui for Brush Clearing and Public Parking Purposes; Keawakapu, Kamaole, Maui, Tax Map Key: (2) 3-9-004:001 por.

We are pleased to advise you that on January 14, 2022, under Item No. D-3, the Board of Land and Natural Resources approved the issuance of a management right-of-entry permit to the County of Maui to allow for the clearing of overgrown brush from an unencumbered portion of TMK: (2) 3-9-004:001, outlined in red, in the attached Exhibit A and for public parking purposes thereon.

The County of Maui is hereby granted a management right-of-entry permit to utilize a portion of State lands consisting of approximately 0.524 acre (more or less) subject to the following terms and conditions:

1. This right-of-entry shall be effective upon signing of this agreement and is valid for one calendar year.
2. County of Maui (Government Agency), its consultants, contractors and/or persons acting for or on its behalf shall procure, at their own cost and expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board of Land and Natural Resources (Board). The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources (Department). The insurance shall

cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of Government Agency, its consultants, contractors and/or persons acting for or on its behalf. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require Government Agency, its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify Government Agency, its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit Government Agency, its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve Government Agency, its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by Government Agency, its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

3. At all times herein, Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
4. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
5. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of Government Agency, its consultants, contractors and/or persons acting for or on its behalf relating to the use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises by Government Agency, its consultants, contractors and/or persons acting for or on its behalf; (2) any failure on the part of Government Agency, its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in the use and control of Government Agency, its consultants, contractors and/or persons acting for

or on its behalf, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of Government Agency, its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance by Government Agency, its consultants, contractors and/or persons acting for or on its behalf, of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

6. All equipment shall be placed within the right-of-entry area or premises described on the attached map.
7. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall supply to Land Division a name and local telephone number of the contact person responsible for the project area.
8. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of business of the Government Agency, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the Department of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Government Agency, its consultants, contractors and/or persons acting for or on its behalf, then the Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning the best knowledge and belief of Government Agency, its consultants, contractors and/or persons acting for or on its behalf, regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by Government Agency, its consultants, contractors and/or persons acting for or on its behalf.
9. Government Agency, its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while Government Agency, its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by Government Agency, its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended,

the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

10. Government Agency, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
11. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall not store any personal belongings in the right-of-entry area or premises during the effective period of this right-of-entry.
12. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the Government Agency, its consultants, contractors and/or persons acting for or on its behalf.
13. Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from Government Agency, its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the Department's satisfaction the areas affected by such pollution or contamination, all at Government Agency, its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
14. Best management practices shall be employed to avoid having silt or dirt enter the ocean.
15. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, paving or walls are encountered the Government Agency, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservations Division in Kapolei at (808) 692-8015 immediately.
16. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Government Agency and the Government Agency's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.
17. The parties acknowledge that reference made to persons acting for or on Government Agency's (example DAGS') behalf does not include public officers and employees.
18. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
19. This right-of-entry is revocable and terminable at any-time for any reason in the sole and absolute discretion of the Chairperson.

20. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
21. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this right-of-entry is in force.

Should you have no objections to the above-mentioned items, kindly sign in the space provided below and return to the DLNR Maui Land Division Office. If you have any questions, please contact Daniel Ornellas, District Land Agent at the DLNR Maui District Land Office, at (808) 984-8103 or (808) 264-0783.

Sincerely,

Suzanne D. Case

Suzanne D. Case
Chairperson

for RT

We Concur:
County of Maui

Michael P. Victorino, Mayor

Date: _____, 2022

Enc. (1)

Cc: Sen. Baker
Rep. Wildberger
Councilmember King
Maui Board Member
Maui DOCARE
Maui DOBOR
Maui DAR
CoM Parks Dept.
CoM Public Works Dept.
Central / District Files

Subject Area Outlined in Red: Portion of TMK (2) 3-9-004:001; 0.524 acre (more or less)



EXHIBIT A

DEFERRED

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

January 14, 2022

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

PSF No.: 21MD-074

Maui

Set Aside to County of Maui for Public Parking, Beach Access and Ancillary Purposes; Board to Consider Two Alternatives for Set Aside Related to Subdivision Requirements, Set Aside of Either the Whole or a Portion of the Property Located at Keawakapu, Kamaole, Maui, Tax Map Key: (2) 3-9-004:001

APPLICANT:

County of Maui

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Keawakapu, Kamaole, Maui identified by Tax Map Key: (2) 3-9-004:001, as shown on the attached maps labeled Exhibit A.

AREA:

Alternative 1: Approximately 0.524 acre (more or less)

Alternative 2: 2.21 acres with reservations limiting use to 0.524 acre (more or less)

ZONING:

State Land Use District: Urban
County of Maui CZO: PK Park

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

Deferred
~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 14, 2022 Go.

CURRENT USE STATUS:

Revocable Permit S-5405 to Mana Kai Maui for Landscape & Maintenance
Revocable Permit S-7723 to Mana Kai Maui for Storage Tank & Parking
General Lease S-4112 to Mana Kai Maui for Access Easement
General Lease S-4375 to Mana Kai Maui & Kihei Surfside for Utility Easement
General Lease S-4442 to Kihei Surfside for Access and Utility Easement

PURPOSE:

Public Parking, Beach Access, and Ancillary purposes.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on 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 minor expansion or minor change of use beyond that previously existing" and Part 1, Item 36 that states, "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order." The proposed disposition is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State of Hawaii Department of Accounting and General Services (DAGS) standards and at Applicant's own cost.
- 2) Bear all costs associated with formal subdivision of the parcel if subdivision is necessary.

REMARKS:

The subject area identified as tax map key parcel (2) 3-9-004:001 is 5(b) government lands that originally extended from Keawakapu beach to Kamaole beach to the north. In the early 1980s, this undeveloped and unencumbered formerly 27.2 acre parcel began to be disposed for various public purposes: 5.3 acres was set aside to the County of Maui for expansion of Kamaole III beach park now identified as parcel 061; 11.5 acres was set aside

to the DLNR Division of Boating and Ocean Recreation (DOBOR) for operation and management of the Kihei Boat Ramp, parcel 150; 8.2 acres was set aside to the Kahoolawe Island Reserve Commission, parcel 151; and areas seaward of the shoreline are now identified as parcel 777. The remaining portion of parcel 001 is an approximately 2.2-acre parcel of land situate amongst various land uses that include a hotel, resort, park, and commercial zones and is a critical link between South Kihei road and Keawakapu beach.

On July 28, 2021, the Department of Land and Natural Resources (Department) met with Maui Mayor Michael Victorino and County Budget Chief Scott Teruya regarding the need for more public beach parking in the area. Staff informed the Mayor and Budget Chief that a portion of the subject parcel could be made available to the County for parking purposes via Governor's executive order. This offer was enthusiastically accepted, and the County submitted a formal letter of interest requesting the Department transfer the subject parcel to the County for public parking on July 29, 2021 (Exhibit B).

On November 5, 2021, Maui Mayor Victorino sent the Department a letter requesting both the subject parcel and the neighboring parcel (2) 3-9-004: 149 for public beach parking (Exhibit C). The Department responded on November 15, 2021, explaining that staff was in the process of preparing this submittal requesting the set-aside of parcel 001 via executive order (Exhibit D). Meanwhile, staff is continuing the process of selecting a developer for parcel 149 through the Request for Qualifications / Request for Proposals (RFQ/RFP) process approved by the Board at its meeting on January 8, 2021 under agenda Item D-6.

The revenues generated from the hotel and parking lot site on parcel 149 would provide much needed support to the division and department's operating budget, and therefore, staff believes that the parcel should be leased at fair market value to generate revenue to support the Special Land and Development Fund (SLDF). As background, the Land Division is comprised of 41 permanent staff positions with offices on Oahu, Maui, Kauai, and Hawaii Island. All 41 Land Division positions are fully funded by the SLDF. In addition to funding Land Division's operation, the SLDF fully or partially supports 48 positions spread throughout the Department. These include 7 positions at the Office of Conservation and Coastal Lands (OCCL), 1 at the Division of Forestry and Wildlife (DOFAW), 19 at the Engineering Division (ENG), 6 at the Commission on Water Resource Management (CWRM), 4 in the office of the Chairperson, 6 in Administrative Service, 4 in Information Technology Services, and 1 in the Personnel Office.

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

In Fiscal Year 2020, \$6,171,710 was transferred out of the SLDF to support the aforementioned positions and programs. This support is made possible through Land Division's management of revenue generating properties such as the subject parcel. In

addition to recurring expenses, it is critical that the SLDF maintain sufficient reserve funds in order to address unforeseen expenses to address public health and safety. For example, the SLDF has been funding the maintenance of the East Kauai irrigation system to address public health and safety issues. Furthermore in 2021, the Legislature raided approximately \$10 million from the SLDF to support other government programs that provide critical public services. Staff emphasizes that the proposed disposition of parcel 149 will preserve and even increase public parking on that parcel, in addition to the parking created on parcel 001 as a result of the requested set aside, while also generating income for the Department. Staff's recommendation represents a balance between providing free public parking to provide access to the shoreline and generating much needed market rate commercial rent revenue for the SLDF.

The portion of parcel 1 to be converted to public parking (outlined in red on Exhibit A) abuts South Kihei Road and is bordered on the remaining sides by an access road, parking for the Mana Kai Maui, and parking for the neighboring Days Inn by Wyndham Maui Oceanfront. Currently, this area is overgrown with a stand of kiawe trees. Prior to using this area for public parking, the County will need to clear the area and prepare an appropriate parking surface at its own expense. The County will be responsible for all costs associated with the maintenance and operation of this parking lot.¹

There are two possible courses of action to transfer this area to the County for public parking. The preferred approach would be to set aside only the portion of parcel 001 outlined in red on Exhibit A, if the set-aside can be executed without conducting a formal subdivision of the parcel. If subdivision is required and the County is willing to bear all associated costs, then the portion so subdivided will be set aside to the County (Alternative

¹ Ruby & Sons Hospitality, LLC (Ruby & Sons) is the permittee under Revocable Permit No. S-7780 for parking covering parcel 149, which is also the subject of the RFQ/RFP referenced above. Ruby & Sons is additionally the State's lessee under General Lease No. S-4212 covering parcel 029 immediately to the south of parcel 149. Ruby & Sons owns and operates the Days Inn by Wyndham Maui Oceanfront on parcel 029. Through counsel, Ruby & Sons has requested the State's assistance on a settlement agreement initially entered into between Ruby & Sons' predecessor-in-interest (Western Apartment Supply and Maintenance Co.), the County and several community members in 2005. Among other things, the 2005 settlement agreement required Ruby & Sons to dedicate 51% of the parking spaces on parcel 149 for public beach access parking.

A proposed 2018 amendment to the settlement agreement was signed by Ruby & Sons and all other parties to the original agreement except the County. Under the proposed amendment, Ruby & Sons was required to make another eight parking stalls on parcel 149 available for public parking. However, the 2018 amendment further specified that if the County were to provide substantial additional public beach access parking on parcel 001, then Ruby & Sons could request the parties to the settlement agreement, as amended, to increase the commercial parking stalls on parcel 149 by eight.

Through counsel, Ruby & Sons has requested that the State condition the set-aside of parcel 001 to the County on the return of eight parking stalls to Ruby & Sons as provided for in the proposed 2018 amendment, as well as on Planning Commission approval of a shoreline setback variance and special management area application affecting parcels 029 and 149. Land Division does not believe that the State should include such a condition because the State was not a party to the 2005 settlement agreement or the proposed 2018 amendment and the use of parcel 001 has not previously been tied to the hotel/parking use of parcels 029 and 149.

1). If Alternative 1 is not viable, the Board could approve the issuance of an executive order setting aside the entirety of the subject parcel outlined in yellow on Exhibit A to the County subject to the Department's reservation of the management of the existing easements and revocable permits as described above (Alternative 2). The Department will ensure that these encumbrances are not affected in any way by the set-aside of the subject parcel to the County and will not permit any future expansion or modifications without the County's consent. Both of these courses would achieve the objective of increasing the amount of public beach access parking while providing continuity and security to the Department's existing tenants on the subject parcel.

Staff is recommending that the Board approve the issuance of an executive order setting aside a portion of the subject parcel outlined in red on Exhibit A to the County of Maui for public beach access parking under Alternative 1. However, if the set-aside cannot be completed without a formal subdivision approval, then staff recommends that the Board authorize Alternative 2, which is the set-aside of the entire parcel subject to existing encumbrances as noted above.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-16, 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 as a de minimis activity.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside a portion of the subject land outlined in red on Exhibit A to the County of Maui under the terms and conditions cited above applicable to Alternative 1,² which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

² As noted above, the clearing of the trees and brush and development of the public parking lot shall be limited to the area generally outlined in red on Exhibit A.

3. In event the portion of the parcel outlined in red on Exhibit A cannot be set aside to the County without a formal subdivision approval, then approve of and recommend to the Governor the issuance of an executive order setting aside the whole of the parcel to the County of Maui under the applicable terms and conditions cited above for Alternative 2, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; provided that the set-aside shall be subject to the existing easements and revocable permits listed above, together with any extensions, renewals or continuations thereof that the Board may approve from time to time;³ provided further that public parking shall be limited to the area outlined in red on Exhibit A attached;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,



Daniel L. Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:

Land Board Meeting: January 14, 2022; D-3:
Deferred.



RT



Suzanne D. Case, Chairperson

The Board authorized the Department to issue a management right-of-entry to the County that allows for clearing the brushed area of lot 001 outlined in red in the submittal for public parking. Submittal was deferred in all other respects.

³ Under Section 171-11, HRS, when portions of public lands set aside to an agency or county "are not presently utilized or required for the public purpose stated, the board shall have the power, without withdrawing the order setting aside the lands, to dispose of any and all real property interest less than the fee in the portions of such lands where the disposition is for a use which is consistent or inconsistent for which the land was set aside. . . ."

EXHIBIT A
TMK: (2)3-9-004: 001

Approximate area of parcel staff is recommending be set-aside and cleared for public parking.

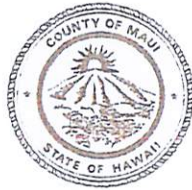


Exhibit A

EXHIBIT B

MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director



COUNTY OF MAUI
OFFICE OF THE MAYOR
200 SOUTH HIGH STREET
WAILUKU, HI 96793

July 29, 2021

DEPARTMENT OF LAND AND NATURAL RESOURCES
KALANIMOKU BUILDING
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813
ATTN: SUZANNE CASE, CHAIRPERSON

RECEIVED
2021 AUG -5 AM 8:04
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

SUBJECT: LETTER OF INTEREST
TMK: (2) 3-9-004:001

Dear Ms. Case:

Please accept this letter as communication of the County of Maui's interest to acquire a Governor's Executive Order for all or a portion of the above referenced property. The County intends to utilize the property for public beach parking and for beach access purposes.

Please contact Guy Hironaka, Real Property Management Specialist V, at 270-7725 (direct line) or guy.hironaka@co.maui.hi.us should you have any questions or require further information.

Your assistance regarding this matter is greatly appreciated.

Sincerely,

A handwritten signature in blue ink that reads "Michael P. Victorino".

MICHAEL P. VICTORINO
Mayor

Cc: Scott K. Teruya, Finance Director

Exhibit B

EXHIBIT C

Michael P. Victorino
Mayor

Sananda K. Baz
Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

November 5, 2021

Ms. Suzanne Case, Chair
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Ms. Case:

**SUBJECT: EXECUTIVE ORDER FOR PROPERTY IDENTIFIED
AS TAX MAP KEYS: (2) 3-9-004:001 AND (2) 3-9-
004:149**

I am requesting an Executive Order for parcels identified as Tax Map Keys (2) 3-9-004:001 and (2) 3-9-004:149, at Kamaole, Wailuku (Kula), Maui, Hawaii. This area is commonly known as Keawakapu Beach. I am acquiring shoreline properties to assure public beach access throughout Maui County for our residents.

Through an Executive Order for the management and maintenance of the parking areas, the County would acquire the parcels in the best interest of the public. The County will provide beach access parking for our residents while maintaining the current obligations of the parcels. Furthermore, a restroom facility and proper lighting will be considered for the public's benefit.

On behalf of the people of Maui County, I hope for your favorable consideration to my request. Thank you and I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "Michael P. Victorino".

MICHAEL P. VICTORINO
Mayor, County of Maui

cc: The Honorable David Y. Ige, Governor
Russell Tsuji, Land Division Administrator, Department of Land and Natural Resources

Exhibit C

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

November 15, 2021

Michael P. Victorino, Mayor
County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793

Subject: **County of Maui Request for Executive Order Setting Aside
Property Identified as Tax Map Keys: (2) 3-9-004:001 and (2)
3-9-004:149**

Dear Mayor Victorino,

We are in receipt of for your letter requesting the set-aside to Maui County of the two parcels identified above. The Department of Land and Natural Resources (Department) appreciates your desire to acquire shoreline properties to provide public beach access throughout Maui County for its residents.

However, we were surprised by your request for parcel (2) 3-9-004:149. As you will recall, we met with yourself and County Budget Chief Scott Teruya regarding the County's interest in acquiring parcel 149 for public parking on July 28, 2021. We explained that the Department was already going through the process of selecting a developer through the Request for Qualifications / Request for Proposals (RFQ/RFP) process for parcel 149. We added, as an alternative, that the Department was open to transferring parcel (2) 3-9-004:001 to the County for public parking purposes. At the time, this proposal was greeted with enthusiasm and staff were directed accordingly.

Following our meeting, the Department received your July 29, 2021 letter of interest requesting the Department convey parcel 001 to the County via executive order for public beach parking and beach access purposes. Staff has been diligently working to prepare a Board of Land and Natural Resources (Board) submittal requesting the set-aside of parcel 001 to the County for public beach parking and access.

As discussed, the Board approved the issuance of a RFQ/RFP for the maintenance and operation of a public/private parking lot on parcel 149 at its meeting on January 8, 2021. While the Department did receive a timely Notice of Intent from the County on June 9, 2021, the County did not further pursue the RFQ/RFP process by submitting its qualifications or proposal for this parcel. Accordingly, the Department continued the RFQ/RFP process of selecting a developer for this revenue generating parcel. It must be noted that Parcel 149 is bound by a

Exhibit D

number of terms and conditions that protect public beach access. Specifically, the chosen applicant is required to provide at least 51 designated parking stalls for public beach access, more than 60% of the available parking is dedicated for beach access.

We feel your desire to provide Maui residents with public beach access can be achieved by completing the set-aside of parcel 001 while the Department continues its RFQ/RFP process for parcel 149.

Thank you for your attention on this matter.

Sincerely,

Suzanne D. Case

RT

Suzanne D. Case
Chairperson

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
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

January 14, 2021

EXEMPTION NOTIFICATION

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

Project Title:	Set Aside to County of Maui for Public Parking, Beach Access and Ancillary Purposes; Board to Consider Two Alternatives for Set Aside Related to Subdivision Requirements, Set Aside of Either the Whole or a Portion of the Property Located at Keawakapu, Kamaole, Maui, Tax Map Key: (2) 3-9-004:001
Project / Reference No.:	PSF No. 21MD-074.
Project Location:	Keawakapu, Kamaole, Maui, Tax Map Key: (2) 3-9-004:001.
Project Description:	Set Aside to County of Maui for public parking, access, and ancillary purposes at Keawakapu, Kamaole, Maui.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on 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 minor expansion or minor change of use beyond that previously existing" and Item 36 that states, "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order.
Cumulative Impact of Planned Successive Actions in Same Place	No. This is an administrative action and does not involve any changes to the physical environment.

Exhibit E

Significant:

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

No. The requested area to be set aside involves a portion of State lands historically used for parking and access purposes characterized by an existing gravel parking lot abutting overgrown kiawe trees along South Kihei and a landscaped pedestrian right away leading toward the shoreline to the west. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Analysis:

The Board has permitted similar uses on public lands in the past. The set aside and proposed use is of a similar type and scope and continues to occur on this and other public lands across the State. The proposed use will involve a minor increase in the amount of parking on the subject parcel due to the clearance of overgrown kiawe trees abutting South Kihei Road. Such activities have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Agencies Consulted:

DLNR Office of Conservation and Coastal Lands, Division of Boating and Ocean Recreation; County of Maui Mayor's Office, Department of Finance and Department of Planning

Recommendation:

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