



Sept. 19, 2018

1. How many general leases does DLNR have and how much in revenue do those generate each year? (If you have the data broken down by island or county, that would be helpful).

Land Division has 631 general leases that generate \$17,365,598.25 in base rent annually. A few leases also require payment of percentage rent over base rent. The percentage rent paid varies from year-to-year depending on the lessee's revenues.

2. How many revocable permits does DLNR have and how much in revenue do those generate each year? (If you have the data broken down by island or county, that would be helpful).

Land Division has 332 revocable permits that generate \$2,425,408.68 annually. See the annual revocable permit renewals for detailed information on revocable permits by county. The Oahu revocable permits were just renewed at the Land Board meeting of September 14, 2018, Item D-17. Hawaii Island revocable permits for land are expected to be taken up by the Board at its meeting of September 28, 2018, Item D-1, and the Maui and Kauai land permits should go before the Board in October 2018. For Board actions on revocable permits for land in 2017, see Board meetings of August 25, 2017, Item D-8 (Oahu); September 8, 2017, Item D-1 (Hawaii); October 13, 2017, Item D-4 (Maui); and October 27, 2017, Item D-3 (Kauai). Revocable permits for water are presented to the Board at meetings separate

from the land permits. In 2017, the annual renewals for water revocable permits were presented to the Board at its meetings of November 9, 2017, Item D-5 (Maui), and December 8, 2017, Item D-4 (Hawaii and Kauai).

3. What is the single largest lease and single largest RP in terms of revenue generation? Please list the lessee/permit holder, the location and size of the parcel, when the agreement originally was signed, its scheduled termination date and the monthly or annual rent.

The general lease generating the most annual revenue is: General Lease No. S-5261 to SAND ISLAND BUSINESS ASSN., TMK: (1) 1-5-41: Various, commencing 7/1/1992 and presently scheduled to expire on 6/30/2047. This is an industrial lease over 72.952 acres at Sand Island, Oahu and the annual rent is \$9,285,600.00.

The revocable permit generating the most annual revenue is: RP7566 to HILTON HAWAIIAN VILLAGE, LLC, JOINT VENTURE; TMK: (1) 2-6-008:029, issued 3/1/2010 for Pier/Dock purposes at Duke Kahanamoku beach, Waikiki. Land area: 0.09 acre. Annual rent: \$465,970.80.

4. Does DLNR have other types of use agreements that generate revenue and, if so, what would those entail and how much in revenue do they generate collectively each year?

Yes, land licenses and term easements generate \$532,829.08 annually. Until recently, a geothermal mining lease in Puna was a revenue generator as well. Additionally, the Board approves rights-of-entry for various events throughout the year that also generate revenue. The Board approves the sale of remnants at fair market value, and these sales produce additional revenue.

5. I have found many examples that raise questions about DLNR's land management practices. One that I prominently intend to mention is the pending lawsuit over the department's enforcement of its Big Island lease with the military for 22,000 acres in Pohakuloa for training exercises. In that case, a judge ruled in April that DLNR breached its trust obligations by not sufficiently caring for the land. His ruling pointed out that DLNR did only two inspections prior to the lawsuit being filed in 2014. One was in 1984, the other in 1994, and the single-page form documenting the latter inspection did not have any

findings and was missing an inspector's signature. Given that the property was used for live-fire training, why did the department do only two inspections over roughly the first 50 years of the lease?

We have no comment at this time as this matter is still in litigation and an appeal of the trial court's decision is pending.

6. People I have spoken to say the Pohakuloa example and many others I have examined are representative of a land management system that is broken. They say such examples are not isolated and reflect decisions that are not made with the best interests of the land trust and public in mind. How would you respond to that contention? What would you say to the public about the department's ability to effectively manage our land trust?

The Department's land management system is not broken. DLNR is responsible for the conservation, natural & cultural resource protection and preservation for many of Hawai'i's most unique and precious public trust assets. Our mission is to "enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors." The Department's obligation is to charge fair market rent in cases where the law requires it. The Department will not charge more than fair market rent, but may charge less for certain types of dispositions as allowed by law (e.g., leases to government agencies and Internal Revenue Code Section 501(c)(3) entities).

The DLNR Land Division assists the Board of Land and Natural Resources (BLNR) in managing approximately 1.3 million acres of State lands, a large majority of which are designated for conservation. Though title is in the BLNR, a large portion of non-conservation lands are set aside or leased to other government agencies for public and government purposes. These land set-asides are managed by the Department of Agriculture, Agribusiness Development Corp., Department of Transportation for airports, commercial harbors and highways, the University of Hawaii System, the Department of Education, the Department of Accounting and General Services, Counties, HHFDC, HCDA, the Natural Energy Laboratory of Hawaii Authority, etc.

Remaining lands not leased or set aside to other government agencies are held by the Land Division for various purposes, including an inventory of permits and leases to private entities, nonprofit organizations, utilities and renewable energy producers. However, the leasing and permitting of lands is just a portion of the many tasks the Land Division is asked to assist on.

For example, there have been significant land acquisitions in recent years that included the historical Turtle Bay acquisition, the Lipoa Point acquisition, the lands acquired for expansion of the Maui Veterans Cemetery, and lands for the Central Maui Regional Park. A review of the current September 14th Agenda list acquisitions of private accreted lands, and resource lands in Pupukea and around Helemano Plantation. The division also is actively working on other acquisitions that are in various stages of due diligence. The Land Division also handles the following additional projects and programs:

- IT Systems such as manage and maintain the State Lands Inventory System (SLIMS) and the Public Land Trust Information System**
- Emergency management and response**
- Shoreline certification program**
- Shoreline encroachments and shoreline enforcement actions**
- Sea level rise issues**
- Illegal or unauthorized commercial activities on unencumbered public lands**

The forty or so staffers working in the Land Division provide a public service beyond merely managing permits or leases.

- 7. What one or two examples of general leases would you cite to demonstrate the effectiveness of the department's land management practices?**

The vast majority of the Department's 631 active general leases present no major management issues and receive no public attention. All of these leases are examples of the Department's effective lease management practices.

8. Another case I intend to mention: Amid a lease dispute, a Waimanalo landscaping company went more than a decade without paying rent to the department – and DLNR was aware of the mounting tab, kept sending bills and in 2014 issued a default notice to the lessee. Yet the board didn't take action against Landscape Hawaii until July 2017 – more than a decade after the company stopped paying rent for the 19-acre parcel, recently assessed at \$2.3 million. “Why are we still limping around this?” one board member asked at a July 2017 BLNR meeting. Why did it take so long for DLNR to act while permitting the company to continue using the site even though rent wasn't being paid? How was prolonging this situation in the best interests of the trust and the public?

The factual background and circumstances are set forth in the Land Board submittal of July 14, 2017, item D-4. In short, staff previously sought to terminate the lease at a Board meeting of July 13, 2012, Item D-13, but the Board deferred the matter, directing staff to try to resolve the dispute with the assistance of the Department of the Attorney General. Settlement negotiations that followed were not fruitful. The lessee threatened litigation against the State asserting substantial claims for damages. These claims had to be fully assessed before the Department was comfortable returning to the Board with a recommendation to terminate the lease for the rent default.

9. What is the status of the Landscape Hawaii case? Was a settlement reached (per the July 2017 instructions of the board)? If so, what were the terms and how much in outstanding rent has the company paid? Is Landscape Hawaii still on the property?

The matter was settled after the Board action of July 14, 2017. Tenant paid \$311,800 for delinquent rent and late fees, and signed a promissory note to pay interest in the amount of \$155,240 that had accrued on the delinquent rent at the rate of 12% per annum. Lessee was granted a 60-month period to pay off the accrued interest. The monthly payment is \$4,309. Lessee is in compliance with the lease and payment plan and remains in possession of the premises.

10. My understanding is that boaters at Honokohau Small Boat Harbor on the Big Island have erected permanent structures – with wood posts anchored in concrete – next to their moored boats without

written authorization from the department. The structures are along the southern edge of the harbor. I also understand that top managers at DLNR had a meeting to specifically discuss this problem in June 2015. What actions did the department take as a result of that 2015 meeting? If the structures are indeed still unauthorized, how long have they been there and why have they been allowed to remain? Are the owners paying any compensation to DLNR for use of that waterfront land? If so, how much? And if they are authorized, did DLNR provide authorization before the structures were erected? And if they are authorized, what are the terms of the use agreements? Please provide a copy of one.

Division of Boating and Ocean Recreation (DOBOR) staff have met with Hawaii County's Planning Division to discuss these structures. The structures in question were authorized by Hawaii District DOBOR staff and there are use agreements for some. Currently owners are not paying anything to DLNR for these structures. DOBOR is currently looking at standardizing all structures in this harbor.

11. At Heeia Kai Small Boat Harbor, the 2011 lease with The Sandbar Group required the lessee to operate an ice house; the house was demolished a few years ago and fishermen were only able to get ice through scooping it from a machine. The lease required a full-fledged fuel operation; fuel availability was sporadic, diesel not available at all. It required the lessee to operate a convenience store; there was no such store, just a limited assortment of items sold on shelves and limited soft drinks in a two-door slide refrigerator. The lease also was assigned to a newly reconstituted ownership group several times without the board's prior consent. In 2016, the board waived interest owed by the lessee so Sandbar could purchase a fuel truck. No truck was purchased. The various problems at the harbor prompted "many complaints from the community," according to the March 2018 BLNR meeting minutes. With such a track record, DLNR's enforcement of this lease seemed especially lax. I'm told the board cancelled the agreement in June. (The meeting minutes are not online yet). Was the lease cancelled in June? If so, why did it take the department so long to take such action? If the lease hasn't been cancelled, what is the status of this case?

This lease did not require a full-fledged fuel operation. BLNR directed the Sandbar Group (TSG) to provide fuel to the community and subsequently a fueling provider did provide some fuel. BLNR cancelled this lease on June 22, 2018 (Item J-5) and the tenant vacated the property at the end of July 2018. DOBOR staff is currently soliciting information from the Windward community to gather input on what would be the best fit for the facility. Once this process is complete, DOBOR will prep a Request for Proposals (RFP) and conduct a public auction for a long-term lease.

12. The department seems to have a policy of granting lease extensions without getting any compensation for deferring the reversionary interests in the improvements on the property. Sometimes, the board has approved the extension just days or weeks before the lease expired. Had the lease been allowed to expire, the state typically would own the improvements on the land and often be able to command higher rents for the ground and buildings – if they are in good shape – when awarding a new lease. If the improvements are not worth keeping, the lessee could be instructed to demolish them and restore the property to its original condition. It's standard practice in the real estate world for a landowner to get compensated in some fashion for deferring reversionary interest as part of a lease extension – even if the extension is needed to help finance more improvements. Why does the department not seek compensation for deferring its reversionary interest in improvements when granting a lease extension? How is that policy in the best interest of the trust? Does the agency analyze the pros and cons of allowing the lease to expire, such as looking at the highest and best use of the property going forward, before deciding to recommend extension?

All requests for lease extensions must meet the requirements of Chapter 171, HRS, and be approved by the Board of Land and Natural Resources. Under prior law, HRS Section 171-36(b) limited lease extensions to a maximum aggregate term of 55 years, which conflicted with HRS Section 171-36(a) allowing leases to be issued up to a maximum of 65 years. As such, the Legislature in Act 207 Session Laws of Hawaii 2011 decided to allow those leases issued for 55 years to be extended another 10 years for an aggregate term of 65 years. The statute and laws required the lessees to justify the extensions by committing to construct certain

substantial improvements on the leased premises. Many industrial business lessees applied, qualified and were granted extensions by the Land Board.

The above statute and laws do not authorize the Land Board to unilaterally exact an additional fee for a speculative reversionary interest in the leasehold improvements in order to qualify for an extension. Management and certain Board members thought, had the Legislature intended to allow the Board to exact such additional fee, the Legislature would have expressly required or authorized the Board to do so in HRS Section 171-36 or other legislation.

Regarding the Kanoelehua Industrial Area (KIA) in Hilo, at least some Board members believe that there is a public interest in extending leases in areas like KIA to maintain economic stability in East Hawaii. Denying lease extensions places lessees in the difficult position of not knowing whether they will be able to continue operations at their existing locations past the termination date of their leases, and makes them reluctant to expend funds on repairs and maintenance of aging improvements.

The Legislature apparently shares the concern about the economic stability of East Hawaii. The Legislature passed SB3058 last session, which the Governor signed into law as Act 149. Act 149 allows for the extension of leases in East Hawaii beyond 65 years under some circumstances. Act 149 provides that the rent for any extension period shall be the fair market value of the land without improvements. An earlier act, Act 219 Session Laws of Hawaii 2011, authorized the extension of hotel and resort leases, again without requiring payment to the State in exchange for deferring its reversionary interest in the leasehold improvements.

Chapter 171, HRS provides various methods of disposing of lands and establishing appropriate rents. Generally, an appraisal at fair market rental value is the standard for those private for-profit entities utilizing State lands under a long term lease. However, Section 171-43.1, HRS, also allows for the leasing of lands to qualified nonprofits at gratis or nominal rents. Examples of some of the nonprofit leases that Land Division administers include the

Waianae Coast Comprehensive Health Center, the Waikiki and Waimanalo Health Centers, the Honolulu Community Action Program, and a number of Affordable Housing Projects, etc. In addition, HRS Sections 171-55 and 171-95 allow gratis dispositions to government and government agencies, and also allow the Board to determine the rent and other terms and conditions of the disposition for utilities and renewable energy entities, without necessarily performing an appraisal. Nevertheless, Land Division's practice is to perform an appraisal for dispositions to utilities and renewable energy producers.

In summary, the assertion that the public trust requires the Board to disregard the legislative enactments on lease extensions and direct that leases be allowed to expire in accordance with their terms so the land and improvements can be put out for auction with the sole objective of maximizing rents for the State is an overly narrow view of the public trust doctrine. The State's lessees are members of the public. Policy makers such as the Legislature and the Land Board are permitted to take a larger view of the public trust and determine that lease extensions are in the interest of the State and consistent with the public trust doctrine.

13. A 2014 staff analysis submitted to Land Division management estimated that DLNR was potentially forfeiting \$10 million in additional rent revenue by extending five underperforming KIAA leases on the Big Island without taking into account the department's deferred reversionary interest in the buildings. Those five leases represented less than 7% of the KIAA leases, and some other KIAA leases were subsequently extended as well. According to the analysis document, LD management rejected the staff recommendation to allow the five underperforming leases to expire and issue new ones with the improvements. Did LD management reject that recommendation? If so, why? Did management determine after evaluating the pros and cons of ending the leases that extensions were in the best interests of the trust and public?
A proper assessment of the cost of deferring the State's reversionary interest in leasehold improvements on any particular lease premises would require at a minimum: (1) a detailed

analysis by a licensed professional, such as an architect or engineer, of the structural integrity of the improvements; and (2) an independent appraisal report on the fair market rent of the land and improvements in their as-is condition.

The architect/engineer looks at the remaining useful life of the improvements, notes any regulatory non-compliance, and identifies deferred maintenance items. For an aged building near the end of a long-term lease, expensive repairs, deferred maintenance and upgrades may need to be made to safely operate the building under a new long-term lease. These expenses are typically identified in a new public auction lease package and will be passed on to the successful bidder at auction. Such expenses can therefore impact the upset rent determined by the appraiser for the auction of the premises, as well as the amount of rent bidders are willing to offer at auction.

The former staff who made the claims that DLNR was forfeiting \$10 million in additional rent revenue by extending five leases in Kanoelehua Industrial Area (KIA) did not have professional degrees in architecture or engineering, nor did they have commercial general appraiser licenses. Furthermore, no outside professionals were procured to undertake a study of the improvements on any particular premises in KIA. The claim that rent was somehow “forfeited” is therefore not properly substantiated by the staff analysis and was ultimately determined to be merely conjecture. Extending the leases was determined by both the Department and the Board to be in the best interests of the State, given that the staff analysis failed to thoroughly evaluate and address the uncertainty and risk that their recommendation entailed..

There is no evidence that KIA leases are “underperforming.” Rental amounts during re-openings were determined in compliance with the appropriate statutory requirements by independent appraisal, mediation, or arbitration. Additionally, the proposition by staff to allow current leases to expire to execute new leases at higher rent is not supported by a competent market demand analysis. The highly speculative nature of the

recommendation was deemed too risky an option to pursue.

14. Infrastructure improvements at the Sand Island Business Association park in Sand Island were completed in the 1990s. The lease requires the infrastructure to be dedicated to the city/appropriate utility after completion. It has been about two decades since the infrastructure was completed, and the roads, streetlights, sewers and storm drains still are not dedicated, according to the documents I've read. There's some question whether those facilities will even meet current city standards. Several years ago the department issued a default notice to the association for failure to dedicate that infrastructure. Failing to secure a dedication potentially could leave DLNR at risk of future liability for repair and upgrade costs. Why has the dedication requirement not been achieved yet? What is the status of the dedication? And what has the agency done to protect against DLNR and taxpayers getting stuck with the cost of maintaining that infrastructure in the future.

The Sand Island Business Association (SIBA) lease does require the dedication of certain improvements to the city. However, SIBA expressed concern that dedication of the internal roads of the industrial park would open the roads to the public at all times of the day and night leading to problems with squatting, vandalism, and theft. The industrial park is in a relatively remote area and when the workers go home for the day, the park is generally deserted. SIBA therefore controls access to the internal roads at night by means of a manned checkpoint and wants to continue that way.

Land Division will be presenting the Board with a request by SIBA to amend the lease to defer dedication of the roads until the end of the lease so that SIBA can maintain control over access.

15. Allowing this Sand Island situation to drag on doesn't seem to be in the best interests of the trust and the public and once again suggests lax enforcement of a lease. How would the department respond to such a concern?

Land Division disagrees that its enforcement of the SIBA lease has been lax or in contravention of the public trust. SIBA has identified a legitimate area of concern regarding the security of the industrial park. Land Division intends to present the proposal discussed in response to question 14 to the Board at a public, sun-

shined meeting to address SIBA's concern. It will be up to the Board whether to approve the proposal.

Given the amount of revenue the SIBA lease generates for DLNR, it is in the mutual interest of both the State and the lessee to work collaboratively to resolve issues to the best of the parties' ability, rather than in an adversarial fashion. Land Division has worked and will continue to work closely with the lessee to address issues in order to ensure the continued successful performance of this lease.

16. In 2009, the department identified 14 vacant properties as having the best potential for income generation via long-term leases to help fund the Recreation Renaissance program. (See attached list pulled from a DLNR web page). My review of property records shows that at least nine of those properties remain vacant or do not have tenants that signed leases as a result of the Recreation Renaissance campaign. What is the status of each of the 14? And if leases were signed since 2009, please provide basic information for each site: When was the lease signed, for what parcel or parcels, who is the lessee, how many years does the agreement cover and what is the annual rent?

Recreational Renaissance (RecRen) was an ambitious undertaking of the Linda Lingle Administration intended primarily to facilitate the rehabilitation of State parks and recreation areas. The RecRen plan required substantial appropriations to achieve its results, and the funding was never appropriated. As a result, RecRen has not been pursued. The program did identify certain State assets with development potential that, if leased out, could potentially help pay debt service on revenue bonds for the project.

- 1. Mill Town – See responses to questions 19-21.**
- 2. Kawaihae Harbor Commercial Lot – Lease was sold at auction as noted. General Lease No. S-5988 was thereafter signed with a commencement date of June 1, 2010 and a termination date of May 31, 2075 at an initial annual rent of \$69,000. However, after securing the lease, the lessee determined that the flood zone of the property made development impractical and requested early termination of the lease, which the Board approved at its meeting of February 24, 2012, Item D-4.**
- 3. Kanoelehua Commercial Center & Industrial Park. Lowe's responded to the RFP and was in pursuit of a**

development agreement/lease until it learned that DHHL's lease with Home Depot in the area included a non-compete clause that prevented Lowe's from building and operating a home improvement center on the site. Lowe's thereafter withdrew from the project.

4. Former Ewa Feedlot. The Board approved a development agreement for a renewable energy project on the parcel. However, the developer was unable to secure a power purchase agreement with HECO. The development agreement expired without the developer satisfying the conditions for a lease. The Department of Agriculture has now requested that the land be set-aside to it as a feedlot, as it was formerly used.

5. Komohana Avenue Commercial Lot – This parcel was put out for auction in March 2008 and March 2010. There were no interested bidders at either auction.

6. Kekaha Town Commercial Lot – No action taken.

7. Mana Industrial Park – Planning consultants procured by Land Division determined that the cost of creating a subdivision with infrastructure in this region of Hilo could be as much as \$100 million. Pursuing the project would require a legislative appropriation that is unlikely to be approved. The project might have also required condemnation of private property for off-site road improvements, which would have been controversial in the community.

8. East Kapolei Lots – Land Division has procured a planning consultant who is working with staff on a development plan for the area. The Board has approved a rail station parking lot on one parcel.

9. Kanoelehua Industrial-Commercial Lot – The Department of Transportation, Airports Division (DOT-A) opposes any development of this parcel due to its location within the approach to Hilo International Airport. Land Division has been negotiating with DOT-A for a possible land exchange, including a potential site in Kahului that could be used for the much needed expansion of the Division of Forestry and Wildlife's base yard.

10. Ualena Street Industrial Properties. After the change in administrations from Linda Lingle to Neil Abercrombie, DOT-A decided not to release these parcels under its jurisdiction. As a result, the Department is not able to develop them.

11. Kona Airport Industrial Land – DOT-A’s position is that it cannot release airport lands to another State agency without receiving fair market value in exchange, even if the lands are surplus to DOT-A’s needs. DLNR will not pay fair market value as DOT-A requires. As a result, there is little development potential remaining for these lands as a DLNR project.

12. Hart Street Industrial – These parcels were leased to 4 Wheels Auto, LLC by public auction under General Lease No. S-6011. The lease commencement date is May 1, 2011, and the termination date is April 30, 2076. The annual rent is currently \$110,000.

13. Pohukaina Lot – At its meeting of March 10, 2017, Item D-2, the Board approved the set-aside of this parcel to the Hawaii Housing Finance and Development Corporation (HHFDC) for development as a mixed market/affordable residential tower to include 13,000 square feet of commercial floor area, as well as a possible vertical school. DLNR will be paid by the prospective developer of this project the appraised value of the DLNR land as restricted by the affordable housing requirement. The land was set aside to HHFDC by Governor’s Executive Order No. 4533 signed May 26, 2017.

14. Kapaa Town Lot – No action taken.

17. Why are the majority of these properties still without general leases? What factors have contributed to the department’s inability to lease them?

See explanations provided in response to question 16.

18. The fact that many remain un-leased underscores the department’s ineffective marketing efforts, especially given that Hawaii has experienced a real estate boom since 2009, according to some real estate experts I’ve spoken to. Even DLNR employees have questioned the land division’s marketing efforts, according to internal complaint documents I’ve reviewed. One complaint characterized the LD effort as little more than pounding a lease sign into the ground, running an ad or two and essentially sitting back to wait for the phones to ring. How would the department respond to such claims that its marketing efforts are ineffective?

Land Division disagrees that its marketing efforts are ineffective. Most notices of public auction advertised in the various districts

generate competitive bidding at auction. However, there are certain assets where traditional approaches have not yielded the desired results. Land Division is exploring alternative marketing techniques.

19. Among the 14 properties I intend to mention is the vacant Mill Town Business Park lots in Waipahu. Those six industrial lots have been ready to be developed since DLNR acquired them in the early 2000s. The lots have infrastructure, the requisite zoning, easy access to the freeway and other attributes. Yet they have been vacant for the entire time DLNR has owned them. Why has it been so difficult for the department to lease those lots?

Former staff (who also believed the KIA leases were underperforming) advised that the six Mill Town lots only be auctioned off in two groups each consisting of three contiguous lots and received Land Board approval to that effect. This approach excluded prospective bidders that may have been interested in leasing individual lots. Upon further analysis, Land Division determined that the auctioning of leases for individual lots would likely generate more interest among prospective bidders. The Land Board approval has since been amended to allow for the auction of the lots individually.

20. What steps specifically has DLNR undertaken to get tenants on those Mill Town lots?

The Department previously advertised the lots in the Loopnet but have since stopped the subscription. In addition, when the Department receives inquiries from realtors or business owners wanting to lease land from the State, staff explains the process of leasing State land.

The Department conducted a public auction in 2006, grouping Lots 1 to 3 as one item, and the remaining Lots 24 to 26 as another. The upset rents established by appraisal for Item 1 [Lots 1 to 3] and item 2 [Lots 24 to 26] were \$182,560 and \$146,020, respectively. The proposed leases required the construction of improvement worth not less than \$3 million on each item within three years from the commencement of the leases. There were no bidders on these items.

In 2010, the Department conducted another auction. The lots were again offered in the same grouping for the six lots, and the upset bid was reduced to \$166,840 and \$135,280 Item 1 and Item 2, respectively. The reduction represented an about 8% drop from the 2006 upset rents. The requirement for construction of improvements of a specified value was also eliminated. The Department even allowed a rent waiver for the first 12 months, upon completion of improvements. Again, there were no interested bidders at auction.

Around 2016, the Department procured another appraisal in anticipation for another offering at auction. All six lots were appraised separately for upset rent determination purposes, in case we had interest for smaller individual lots. However, public interest in the parcels waned, and the auction process was put on hold.

21. The brokerage firm that manages the industrial park says DLNR is delinquent in paying Mill Town association and late fees. Is that accurate? And if so, how much does DLNR owe?

In order to pay vendors under the State procurement code, the vendor must be cleared with Hawaii Compliance Express (HCE). The management company for Mill Town was not HCE compliant, which prevented the Department from processing the check for payment. The Department has been waiting for the management company to become compliant with the HCE so that our Fiscal Office can cut the check. The Department is ready, willing and able to pay, but needs to follow the procurement rules. The Department does not believe it is responsible for late fees since it is not the cause of the delay in payment.

22. One suggestion that has been raised repeatedly by some staffers in recent years was for the department to work with a real estate broker to market its available properties. Has that been considered?

It is problematic for DLNR to retain a broker because brokerage services are not one of the professional services identified under the procurement code. That means procurement would need to be conducted under one of the other available categories, such as small purchases. Small purchase procurement requires selection of the lowest bidder. Additionally, brokers are typically paid a

commission and it is not clear DLNR has authority to pay a commission as opposed to a negotiated rate. However, Land Division continues to explore the option of procuring a broker.

23. Several former DLNR workers I've spoken to say the land inventory database used by the department – first SLIMS and now PLTIS – is so incomplete and unreliable that some staffers created their own internal systems to fill pukas. They told me that basic but essential information that other major landowners routinely have in their inventory database to make informed decisions are missing from the department's PLTIS data. Information detailing land value, county zoning, easement encumbrances, whether the parcel is in a special management area, what improvements are on the land and their values, potential environmental issues and other such data are missing from the department's inventory database, making it difficult to determine how best to proceed with its core and non-core assets. What database showing all DLNR properties does the department currently use and what are the information fields in the database? If the database does not include the type of information listed above, why is that?

Land Division currently uses SLIMS and PLTIS. SLIMS includes numerous data fields including trust land status, land use designation, encumbrances (including easements), and appraised values for rent reopenings. PLTIS does include a layer for county zoning.

Land Division notes that the various agencies are responsible for providing current data for properties under their management for the PLTIS. Ensuring a completely accurate system is not within Land Division's control, although Land Division staff provides assistance as feasible to ensure property data is current. Furthermore, Land Division has dedicated its own operating funds to upgrading the PLTIS and opening the system for public use (see attached press release). This was not required by the legislative act authorizing the PLTIS, but was done as a public service to improve transparency regarding ownership and use of public lands.

24. According to the internal documents I've reviewed, Land Division staffers recommended as far back as 2012 to LD management that the division's revocable permit rents be increased on an interim basis –

moving them closer to fair market values – while an appraisal was done. A contract for up to \$95,000 was signed with an appraisal firm, and the firm’s preliminary assessment suggested that some RP rents were as much as 1,000 to 4,000% below market value, according to the documents and BLNR minutes. Yet LD administrator Russell Tsuji rejected the recommendation to raise RP rents and allowed the contract to lapse without the appraisal being done, the documents say. Why was the recommendation to raise rents on an interim basis not implemented in 2012 or 2013 when it was clear even back then that the rates were substantially below fair market value – a fact that was underscored several years later by the RP task force?

The statute that authorizes the Land Board to issue revocable permits, HRS Section 171-55, gives the Board authority to issue revocable permits “under conditions and rent which will best serve the interests of the State” The statute does not require fair market rent, and there are many permits to governmental and non-profit entities where no rent or a nominal rent is charged. In its June 24, 2016 report, the RP Task Force articulated the principle that the State should receive a fair compensation for the use of public land.

Land Division Administrator Russell Tsuji never rejected a staff proposal to raise permit rents. Land Division administration believed the appraiser should be able to use his or her professional judgment to determine whether the tenancy and use restrictions impacted value. As it turned out, in the contract for appraisal consulting services completed in 2017-18, the appraisers did determine that tenancy and use restriction were relevant to the valuation of rent. Accordingly, the cancellation or lapsing of the 2013 contract was appropriate because performance of the contract would have resulted in the rental determinations that that the Department could not use (at significant expense to the State).

The Department disagrees that the RP Task Force “underscored” that revocable permit rents were substantially below fair market value. What the Task Force recommended with regard to rent is that the Department: “Review and update, as appropriate, revocable permit rental amounts and provide justification for

rental amount.” See Board action of June 24, 2016, Item D-7. The Department is following this recommendation.

25. The department took action only several years later following the Star-Advertiser’s front-page RP coverage in 2016. How was such a delayed response in the best interests of the trust and the public?
The RP Task Force stated it succinctly in its report: “Appraising parcels and issuing leases are resource-intensive activities for Divisions. These activities require funds and staff time. They are sometimes delayed if funds are not available or staff have other issues that take precedent. Costs for appraisals must be able to be recovered in a reasonable time through revocable permit fees for the appraisal to be justified.”

26. What is the status of the RP program? Are all the changes the department intended for that program put in place? If not, which ones still are to be made?

The RP program continues. Land Division has been working to move revocable permits to other dispositions, where possible. The Department continues to implement the intended changes to the program. DOBOR has conducted appraisals on all of the revocable permits under its jurisdiction.

In response to the Revocable Permits Task Force Report presented at the Board meeting of June 24, 2016, Item D-7, the Department has implemented the following recommendations of the Task Force:

- a. Land Division’s land RPs are presented to the Board for annual renewal at four separate meetings by county (and water permits are presented separately from the land permits since the water permits involve complex water leasing issues).**
- b. Land Division has devoted additional positions to RPs, including a new Project Development Specialist position the Legislature created specifically for water leasing through Act 123 SLH 2016. Additionally, during the 2017 legislative session, Land Division succeeded in obtaining approval for a new Land Agent position in the Maui District Land Office. The position was authorized by Act 49 SLH 2017.**

- c. Land Division standardized the Board submittal template for new RPs to include a checklist and supporting details for the Board's review.
 - d. Land Division continually reviews its revocable permits to determine which ones should be presented to the Board for an alternate disposition, such as sale of a remnant, sale of a lease at public auction, direct lease where allowed by statute, easement or set-aside to a government agency. The annual RP renewal submittals now include a list of RPs cancelled or converted in the preceding year.
 - e. Lists of Revocable Permits are posted on the Department's website for each annual renewal.
 - f. In 2017-18, Land Division procured an appraisal firm to determine the fair market rent for a large percentage of Land Division's total RPs. Information on the new rents is being presented to the Land Board at the annual renewal this year.
 - g. Land Division is working with holders of water RPs to convert them to long-term leases. As part of this process, a request to accept a Final Environmental Assessment for Hawaii Electric Light Co., Inc.'s Wailuku River hydroelectric project is anticipated to go before the Board at its September 28, 2018 meeting.
 - h. Any non-compliance issues are now presented to the Board at the time staff submits the annual renewal request to the Board for consideration.
 - i. Any pending litigation involving an existing RP is now presented to the Board at the time staff submits the annual renewal request to the Board for consideration.
27. One permit I'll be mentioning is the one that GKM had for 9-acres for a boat storage facility at Honokohau Small Boat Harbor on the Big Island. The department's original plan was to roll that RP into a long-term lease with GKM through direct negotiations. But the AG advised against that, saying negotiating directly with GKM wouldn't further competition, according to BLNR minutes from 2017. Why was the original plan to negotiate with GKM rather than go to public auction? That could once again fuel concerns about preferential treatment or favoritism in the RP program.
- The month-to-month revocable permit with GKM permitted the possibility of direct-negotiation rather than going to public**

auction, based on GKM's leasing of adjacent properties at Honokohau. All DLNR Divisions, including DOBOR, consult regularly with the Dept. of the Attorney General on legal matters and once the AG directed that the division should take this to public auction, that is precisely what occurred (Please see news release, board submittals, and West Hawaii Today story from 9-15-18).

28. According to the 2017 board submittals showing a breakdown of the boating division RPs, GKM was paying substantially less per square-foot in rent than other Honokohau RP holders, including nonprofits. The company, for instance, was paying 1.8 cents per square foot, compared with 11 cents per square foot for the Hawaii Island Paddle Sports Association, according to the data in the board submittal. Why was GKM, a for-profit company, paying such a deeply discounted rent on its RP compared with other Honokohau tenants?

All revocable permits in small boat harbors are now set by appraisal as recommended by the RP Taskforce and codified by the BLNR. RP review is done in priority order and not all are reviewed and brought before the board at one time. Again, we suggest you review board submittals on RP reviews for more detail.

29. A June 2018 advertisement for public auction of the 9-acre site indicated that the minimum base annual rent would be \$423,000 or a percentage of the gross revenue, whichever is greater. Under the RP, GKM was paying about \$87,700 annually – or nearly four times less than the projected minimum rent. The company had been paying that low rate for years. If I cite the two numbers in a story, what factors should I mention to provide proper context for explaining such a spread?

The minimum base annual rent under the new 10-year lease is \$423,000 (Please see news release, board submittals, and West Hawaii Today story from 9-15-18).

30. What is the status of the 9-acre Honokohau site? Did the department pick a successful bidder and has a long-term lease been signed for that parcel?

(Please see news release, board submittals, and West Hawaii Today story from 9-15-18).

31. Another revocable permit (RP S-7489) at the Kahala Hotel has been in the news lately. This permit also raises enforcement questions. As written testimony to the board recently has pointed out, a portion of the DLNR land is being used to support a restaurant operation at the hotel and that fact becomes readily apparent with only a cursory check. The permit restricts use of the land to recreational and maintenance. How has the permit holder been able to operate a commercial restaurant – clearly not a recreational or maintenance use – on this land?

Land Division has been working with the various permittees over the years (as hotel ownership changed) to resolve discrepancies. At one point, the permittee sought an easement over the premises to reconcile its actual land uses, and undertook an environmental assessment to this end. However, there was stiff opposition to an easement by the neighborhood board and others in the community, so the permittee abandoned the easement approach and instead sought a revised/updated revocable permit. The matter was presented to the Land Board at its meeting of September 14, 2018, Item D-13, which you covered and reported.

32. When did the department become aware that the permit holder was operating a restaurant on a portion of the RP land? And why wasn't anything done about it at that time?

Please refer to response to question 31, the Board submittal of September 14, 2018, Item D-13, and the action the Board took on this item.

33. One of the employees who recommended in 2012 that the department address the problems with LD's revocable permits was Keith Chun, who joined DLNR in 2001 and years later helped the boating division revise its RPs. Chun also raised questions and made recommendations about other LD practices that he believed needed to be changed, according to the internal documents. Yet in 2016 his annual contract was not renewed – the only exempt LD worker among a dozen or so to lose his or her job that year. At around the same time, the department sought to hire a mid-level manager – similar to Mr.

Chun's position – to help with the review of the LD's RP program. Why was Mr. Chun, who had expertise in reviewing RPs, let go at about the same time the department was seeking to hire someone to help with its RP review?

This is a personnel matter and the Department declines to comment. When staff make proposals we carefully analyze them to determine if they are in the best public trust interests of the State. We have received suggestions from people who claim to have professional expertise in reviewing revocable permits. We then assess their credentials and qualifications to determine, in our judgment, whether the person has the stated expertise. We have a duty to the people of Hawaii to recruit and retain staff with the right kind of experience at the right price.

34. In reviewing the various documents and information gleaned from interviews, one common thread seemed to emerge: LD management in recent years often has been resistant to recommendations by staff that would bring the agency more in line with standard industry practices. How would you respond to such a contention?

The goal of all DLNR divisions is to manage all lands and assets under their charge in the most responsible, fair, and transparent manner possible to serve the public trust. Divisions report regularly to the BLNR about their activities, including RPs and those that are deemed appropriate for transfer into long-term leases are handled in priority fashion.

Sept. 26, 2018

Star-Advertiser Questions and Responses

- 1. Regarding the Honokohau structures, how many are at the harbor, how many of those have use agreements and how many do not? Your prior response indicated that “some” have use agreements.**

There are approximately twenty-five various structures throughout the harbor. The use arrangements would have been done by DOT prior to 1991.

- 2. Who erected the structures? Were they built by holders of the mooring permits for the boats docked next to each of the structures?**

The structures, for the most part, were in place when the Legislature passed legislation under which DOT transferred the small boat harbors to DOBOR in 1991. All of the structures were built by the mooring permittees. None were built by the State.

The State Department of Transportation built Honokohau harbor in the 1980s. No individual docks were built on the outer basin where the big boats are. On the inner side of the harbor DOT built floating docks. DOT did not build any associated facilities in either the outer basin or the inner basin to facilitate maintenance and operation of the boats or to shelter operators from the hot sun at Honokohau.

On the outer basin there is roughly is a 20-foot drop to get to the water’s edge so the boat owners had to build stairways and facilities in order to access and maintain their boats. Some of these structures have a roof that extends down to the boat.

On the inner side some people have built a pavilion next to their dock because DOT did not build out the docks; it was up to the boaters to build it out.

To the best of DOBOR’s knowledge the structures next to docked boats with mooring permits were built by the holders of the mooring permits.

- 3. The agency response said the structures in question were authorized by Hawaii District DOBOR staff.**

DOBOR’s understanding is that many of the structures were authorized by DOT prior to 1991. The structures were built during the time DOT-Harbors managed the facility. We do not know if prior authorization was given prior to construction separate from the DOT mooring permits.

What year did staff start authorizing these structures?

It is DOBOR’s understanding that many of these structures were built prior to 1991 when DOBOR took the small boat harbors over from DOT. In subsequent years, direction from the highest levels of State government directed staff to not aggressively address this issue. DOBOR has inventoried all structures in the harbor and is now determining what

is the best disposition for continued use: RP, lease, etc.

And were the authorizations granted prior to construction in all cases?

DOBOR has no knowledge about DOT authorizations prior to DOBOR taking over the small boat harbors in 1991.

4. **Under what authority is DOBOR staff allowed to authorize someone to erect a permanent structure on DLNR land without compensating the department for such use and, in some cases, without an agreement governing use of the property?**

The authorization was given by DOT-Harbors. DOBOR staff allowed people to make repairs. We are not aware of what the DOT statutory authority was to construct structures prior to 1991.

DOBOR hasn't allowed anything new without approving plans. Some years back one of the boaters wanted to rebuild their dock. Harbor agent Nancy Murphy reviewed the plans with DOBOR. The plans called for a very large-looking structure so DOBOR denied the request. The boater went ahead and started to build it anyway. DOBOR ordered a stop to it. So even though concrete blocks were poured it has been unfinished for several years. A similar situation happened adjacent to it.

5. **Did the BLNR approve all the authorizations for these structures? No. If so, please refer me to the board submittal seeking such approval. And if board approval was not sought, why was that?**

They were pre-existing structures when DOBOR was created in 1991 to manage small boat harbors.

6. **Are the owners/users of the structures required to have insurance?**

All harbor permittees are required to have liability insurance.

What happens if someone is injured while people are using the structures, particularly in cases in which there is no use agreement for that land? Is the state liable for injuries occurring at those structures?

The state's position is that the dock permittee is liable.

7. **Please provide a copy of the first use agreement that was signed between the user/owner and DLNR. Would that agreement be identical to the other use agreements?**

We could not locate any pre-1991 DOT-Harbors use agreements. It appears that these facilities were part of the mooring agreements since they were built in order for people to access their vessels.

8. **Some of the structures are wired for electricity and have ceiling lights. One or two have a ceiling fan. Who pays for that electricity?**

The permittees pay directly to the electric company for the electricity. The permittees paid to have power installed to their slips, as DOT did not install power throughout the harbor.

If it's the users, how is the electricity consumption measured?

Check with the users.

Are there meters for each structure?

Check with the users.

9. **Why did staff authorize these structures in the first place?**

DLNR didn't authorize the construction of these structures.

And why wasn't it done using one of DLNR's standard land-use tools, such as a revocable permit?

DLNR didn't authorize the construction of these structures.

10. **How is allowing someone to build a permanent structure on DLNR land without a use agreement and without paying the department for that use fulfilling the department's fiduciary duty to the public?**

The structures were built prior to the Department taking over management of the harbor. The majority of structures were built because there was no infrastructure installed at the outer basin at the time the harbor was completed. On the outer basin there is roughly a 20-foot drop to get to the water's edge so the boat owners had to build stairways and facilities in order to access and maintain their boats. Some of these structures have a roof that extends down to the boat.

Again, DOBOR is in the process of determining the appropriate dispositions for each of these structures.

11. **I've attached a photo of a blue enclosed structure with marine life painted on the sides. I took the photo during a recent visit to Honokohau. Is this one of the structures in question? Is there a use agreement for this one? Who owns or uses it?**

The Hawaii Big Game Fishing Club, INC. is the owner. We believe this was built during DOT-Harbors management.



- 12. Are these unique cases or are there are examples on DLNR land elsewhere where people have been allowed to erect permanent structures on that land without paying the department for use of the land?**

This is a unique situation because most of the structures were built when the facility was under DOT-Harbors management. When DLNR assumed management of the harbor, it carried on with whatever the management scheme was at the time. DLNR has been looking into the issue to determine how to standardize what should be allowed in the harbor, whether to assess rent, require insurance, building permits, etc.

DLNR does not knowingly allow people to erect permanent structures on DLNR land without permission and compensation.

- 13. What is the current monthly rent paid by Landscape Hawaii under GL-5708 for the roughly 20 acres of Waimanalo land? At the start of the lease, the company was paying about \$3,041 monthly. But I can't find in my documents what the current rent is.**

The current annual rent for General Lease No. S-5708 to Landscape Hawaii, Inc. is \$40,900. The lessee is billed in two semi-annual installments of \$20,450. The lessee is not billed monthly.

- 14. Regarding lease extensions, is the board prohibited by law from seeking compensation from lessees for deferred reversionary interest in the improvements? Or is that option not considered because Hawaii statutes do not specifically permit the board to seek such compensation? I'm trying to understand why the department doesn't seek additional compensation (beyond the ground rent) for lease extensions in cases in which the lessee is renting space in a building to sub-tenants. If the lessee is generating income from the improvements on the property, why isn't the department getting some form of compensation during the extension period to reflect the additional income the lessee is**

earning off of the improvements? Is it because the law doesn't allow DLNR to seek such compensation?

Whenever the Department presents a recommendation on a land disposition to the Board of Land and Natural Resources, the staff submittal cites the legal authority for the Board to take the recommended action. The Board will not make a decision that lacks a sound justification in statute or administrative rule, especially where opposition to the decision is anticipated either from the public or the Department's lessees. None of the statutory provisions or legislative acts on lease extensions has required a lessee to pay the State for deferral of the State's reversionary interest in the improvements. In order for the Board to successfully charge lessees money for deferral of the reversionary interest, the Department and Board believe a statutory basis to seek such compensation ought to be in place, similar to premiums and additional rent provided for in 171-36 when consenting to assignments and subleasing.¹

The Legislature knows how to craft a law to expressly require that fair market rent under a public land lease be based on land and improvements. In the 2017 legislative session, the Legislature passed Act 215, which was later codified as Section 171-41.6, Hawaii Revised Statutes. The purpose of Act 215 is to allow lessees of public lands being used for commercial or industrial purposes, and who are in the last ten years of their lease (and therefore no longer eligible for extensions pursuant to Section 171-36, Hawaii Revised Statutes), to initiate a request for interest (RFI) process for new leases of the properties of up to 65 years. If the current lessee is the only one to express interest in a new lease, then Act 215 authorizes the Board to directly negotiate the new lease with the lessee. If multiple parties express interest in a lease of the premises, then the Board sells the new lease at public auction. In either event, Act 215 provides that the rent for the new lease be the greater of the rent under the existing lease or the fair market rent based upon the appraised value of the land and any improvements to the land. See Section 171-41.6(f)(2).

Although the Board has granted a number of lease extensions up to aggregate terms of 65 years under Section 171-36(b), Hawaii Revised Statutes, no lessee has to date initiated the RFI process under Act 215. But Act 215 does provide a vehicle for lessees whose lease terms are at the statutory maximum of 65 years to continue their tenancy. If the Legislature had wanted lease extensions under Section 171-36(b) to require the lessee to pay rent for the improvements on the land, it could have crafted language similar to that in Act 215.

¹ Attempting to place a value on older buildings and structures ten (10) or more years into the future would be speculative, and would require relying on the "extraordinary assumption" the building will be in good condition at the end of the 65-year term of the lease. That is not always the case, as in Uncle Billy's on Banyan Drive.

Also, it is important to distinguish lease extensions from consents to sublease. There is a statute authorizing the Board to review sublease rents to determine whether additional rent should be charged to the lessee. See Section 171-36(a)(6), Hawaii Revised Statutes. The Board can and does assess additional rent for subleases when circumstances warrant.

15. Regarding the SIBA infrastructure, what happened to the notice of default that DLNR issued several years ago to the lessee over the infrastructure issue? How was that resolved? Did the department withdraw it?

Our files show a Notice of Default (NOD) issued on April 26, 2013 for SIBA's failure to dedicate infrastructure improvements. The NOD allowed 60 days for cure. SIBA's counsel responded by letter dated July 1, 2013, stating that SIBA was not in default because the lease provision regarding dedication sets forth no deadline by which dedication must be completed. Thereafter, SIBA and the State worked together to resolve the dedication issue. Although the file does not contain a letter expressly withdrawing the NOD, it may have impliedly been withdrawn by a letter dated January 14, 2015 from Acting Chairperson Carty Chang to SIBA requesting in part that SIBA "Update the Department on discussions between SIBA and the City regarding the dedication of infrastructure to the City." When the Department presents the dedication issue to the Land Board, the Department will include the NOD as background information, but will also set forth a solution for resolving the matter short of such drastic action as lease termination.

16. If the Land Division requests the board to amend the SIBA lease to defer the road dedication until the end of the lease in 2047, who will pay for the cost of repairing or upgrading the roads if such work is required before the city will accept that infrastructure?

The Department will recommend to the Board that all such costs be borne by SIBA and that sufficient bonding/deposit account be maintained to ensure the State does not become liable for the expense.

17. Your SIBA infrastructure response didn't mention the sewer lines and street lights. Will those also be part of the deferral request to the board?

SIBA sent the Department a letter dated June 30, 2016 stating that the Board of Water (BWS) Supply had agreed to accept responsibility for the water and sewer system at SIBA. A grant of easement from the Land Board to BWS for the water system is presently circulating for review and signature. While the dedication of the water system will be resolved upon full execution of the easement, we will need to further research whether the sewer system can be dedicated separately from the roads.

18. What were the "substantial appropriations" that were needed to achieve the goals under the Recreational Renaissance program? In your listing of the individual properties, only one (Mana Industrial Park) mentioned the need for a substantial appropriation. Did the lack of substantial appropriations prevent DLNR from obtaining general leases on any of the other properties?

Substantial appropriations will also likely be required to develop the East Kapolei lots (Item 8 in your earlier list of properties). These parcels will require significant infrastructure improvements, including drainage and connection to sewer and water, to facilitate economic use. In addition, the cost of complying with the requirements of Chapter 343, Hawaii Revised Statutes, may require the Department to seek appropriations or at least an increase in the spending ceiling of some of the Department's special funds. The Land Board used to approve dispositions "in concept" or "in principle" prior to compliance with Chapter 343. Under this approach, the applicant would complete the Chapter 343 process at its own expense and return to the Board later for final approval for the issuance of a lease, including a lease by public auction.

In recent years, in response to case law, the Department of the Attorney General has taken a more conservative view of Chapter 343 as it applies to new leases issued by the Department and the "in concept" or "in principle" approach is no longer allowed. The result of this is that the Department must bear the costs of Chapter 343 compliance before it can take a request to the Board for the issuance of a lease. The exception to this requirement is a lease for a previously existing use, such as where a pasture lease expires and the Department sells a new pasture lease at auction. But the properties identified in your list have not been previously developed for the most part. While the Department may be able to pay for some environmental assessments for key projects out of current budgets, a legislative appropriation or ceiling increase may be required to conduct environmental assessments on a larger scale.

19. Regarding the revocable permits, the agency's response did not address the issue of why the department did not adjust Land Division RP rents after staffers recommended doing so as far back as 2012. Many of the rents had not been changed since at least 1999. Clearly, there was a need to raise LD rents virtually across the board, and the board acknowledged that in 2017, increasing rates for nearly all the RPs (the increases ranged from 1.5 percent to 27 percent). After my DLNR RP series was published in February 2016, Chair Case formed a task force to recommend changes to the program, and by the end of 2017, rents were raised for most of the revocable permits. It took about a year-and-a-half to complete that process. If the department knew back in 2012 that many rents had not been adjusted for years and that staffers were recommending interim rate hikes, why did it take four to five years before rents were adjusted virtually across the board? By quoting a passage from the task force report, is the department saying that it didn't have the adequate funds or staff time to review the RP program back in 2012 and 2013 and was only able to do so in 2016? Again, I'm trying to understand why it took so long for the department to adjust RP rates even though staffers were recommending such action four or five years earlier.

In 2013, the staff working on the contract for revocable permit appraisal consulting services wanted to direct the appraiser to value the Department's assets without regard to the month-to-month tenancy of the permit, and without regard to the use restriction set forth in the permit. That kind of instruction is known as an "extraordinary assumption" in the appraisal industry. Land Division administration believed the appraiser should be

able to use his or her professional judgment to determine whether the tenancy and use restrictions impacted value. As it turned out, in the contract for appraisal consulting services completed in 2017-18, the appraisers did determine that tenancy and use restriction were relevant to the valuation of rent. Accordingly, the cancellation or lapsing of the 2013 contract was appropriate because performance of the contract would have resulted in the rental determinations that the Department could not use (at significant expense to the State). It took time to re-task the revocable permit appraisal project to other staff and develop an appropriate scope of work, while the Department performed all of the other land management functions for which it is responsible.

20. Your response to Question 28 doesn't explain why GKM, a for-profit company, for years was paying such a low RP rate compared with other Honokohau tenants, including non-profit ones. I understand that all RPs in small boat harbors are now set by appraisal as recommended by the task force. But that doesn't explain why GKM was paying such a low rate for years prior to the task force even being formed. Why was there such a significant disparity?

The RP rent was a carryover from the lease on the property. When the lease expired, it was carried over into an RP. The initial lease was for six acres and that remained the same when the lease expired and the property was put on an RP. Later, the RP acreage increased by three acres in conjunction with the implementation of a parking plan and the RP holders need for additional space to accommodate customer's parking needs. As recommended by the Revocable Permits Task Force all RP rents were established by appraisal. The current rent for the 9 acres leased by Pacific Marine Partners LLC is \$415,000 per year. All RPs at Honokohau Small Boat Harbor have now been appraised and are paying market-value rent.

21. I included the follow-up question (after No. 34 on my prior list) about the revocable permits mainly to give the department an opportunity to dispute what I quoted from one of the internal complaints. I recounted the narrative in case the department wanted to dispute the accuracy of what was mentioned. I am NOT asking the department to comment on personnel matters. If DLNR disputes the accuracy of what I quoted from the complaint, please let me know what is inaccurate so I can include that in the story.

See response to question 19 above.

ROB PEREZ FOLLOW-UP QUESTIONS

- When I asked for a copy of a use agreement between the owner of a Honokohau structure and DLNR, the department indicated that the structures were built before 1991, and DOT, not DLNR, authorized those structures. The department also said that it could not locate any pre-1991 DOT-Harbors use agreements. Does that mean that none of the owners/users of the approximately 25 structures at Honokohau currently have use agreements in place with DLNR? **We have entered into a Revocable Permit for Atlantis Submarines. DLNR does not have any use agreements regarding other structures at this time.**

- In another response, the department said its understanding was that “many of these structures were built prior to 1991.” That suggests some were built after 1991. Most of the structures along the southern edge that I saw during my recent visit to the harbor did not appear to be more than 25 years old. Were some of the harbor structures built after DLNR took over in 1991? If so, roughly how many? And did those users/owners erect the structures without getting DLNR authorization? **Nearly all structures were built when DOT managed the facility. We believe one structure was erected under DLNR jurisdiction, but no permission or use permit was granted. We have not done an inventory of structures built under DOT jurisdiction.**

- In the department’s first set of responses, it said the people who built the structures are not paying rent to DLNR for use of that land. Does that mean no rent is being paid for the approximately 25 structures at the harbor? **That is correct. Many of the structures are necessary for access to boats and we feel it would be unfair to charge permittees for access to their vessels.**

- The department said it “appears that these facilities were part of the mooring agreements since they were built in order for people to access their vessels.” Please provide a copy of a signed mooring agreement so I can see what is mentioned about construction of access facilities. **Many structures were apparently approved by DOT as a way to access boats. Individual owners constructed these structures at their own expense. We do not have copies of any agreements between permittees and DOT.**

- When I visited the harbor recently, none of the structures I saw along the southern-most side of the harbor were necessary to gain access to the boats. The boats were on one side of the concrete walkway and the structures were on the opposite side, so it wasn’t necessary to go through the structures to get to the boats. Has the harbor been re-configured over the years in such a way that the structures no longer are necessary for boat access? **No**

- Once DLNR took over management of the harbors, the department’s response said: “In subsequent years, direction from the highest levels of state government directed staff to not aggressively address this issue.” What does that mean? Did someone from the governor’s office or the Legislature advise the department not to pursue use

agreements for these structures? Please specify who or what office directed DLNR not to aggressively address this issue and what year that instruction was given. **This occurred over several administrations that expressed concerns regarding changes at Honokohau Small Boat Harbor. Priorities have changed and the current administration is looking for ways to develop and improve facilities and to increase capacity. At that time the State will determine what, if any rents should be charged to permittees who have structures. The Honokohau Working Group formed recently will help guide future decision making and activities at the small boat harbor.**

- Regarding the response to Question 16, has the department had discussions with the SIBA lessee about the cost issue and has the lessee indicated a willingness to shoulder the potential upgrade/repair costs if such work is needed before the city accepts the infrastructure? **Yes, the Department has been in discussions with SIBA about the cost issue and SIBA has proposed setting up a deposit account to ensure the infrastructure is maintained in a condition acceptable to the City for dedication. Discussions are ongoing.**

- On Question 19, why didn't the Land Division administration make sure that the appraiser in 2013 use his or her professional judgement to determine whether tenancy and use restrictions impacted value? Doesn't the administration, rather than subordinate staffers, have final say on the scope of work for a contract before it is awarded? **The dollar amount of the 2013 contract was limited to \$95,000, and was insufficient for the magnitude of the appraisal consulting services required to evaluate 300+ revocable permits (all permits need to be evaluated to determine which ones will be further appraised for market value). The contract amount for the portfolio appraisal report conducted by CBRE, Inc. in 2016-18 was \$521,000, of which \$424,180 was spent. Additionally, the appraisal firm selected for the 2013 contract likely did not have the capacity to provide the necessary consulting services within the time allowed under a purchase order because only a single appraiser was assigned to the task. By contrast, the appraisal firm procured for the 2016-2018 contract had at least four appraisers working on the project for a large part of 2017 and into 2018, with the appraisers divvying up the site inspections across the four counties. The administration therefore determined it was best to allow the 2013 contract to lapse and start the process anew.**

Among the examples I intend to cite and which I have sought DLNR comment for in my prior emails:

- A state judge rules the department breached its fiduciary duty by failing to enforce the Pohakuloa lease. **As previously explained, the Department disagrees with the Court's ruling and has filed an appeal. Refer to the Department's opening brief filed in the Intermediate Court of Appeals on September 26, 2018.**

- A landscape company fails to pay rent for more than a decade before a settlement over a lease dispute is reached. “Why are we still limping around this?” one board member says prior to the board directing staff last year to try again to reach a settlement. **As previously explained, the Department sought the termination of the lease on July 13, 2012, but the Board of Land and Natural Resources deferred the matter, requesting staff to try to resolve it with lessee. Lessee retained counsel and sent demand letters to the Department alleging damages for repair costs and legal fees in the amount of \$1.5 million. Lessee also claimed to have incurred business losses in the amount of \$1.78 million. A deputy attorney general was assigned to the matter. Lessee’s claims were evaluated, staff inspected the premises, and the decision was ultimately made to return to the Board for lease termination. However, the Board allowed 60 days for the Department and lessee to negotiate a settlement of the outstanding rent and interest, and if no settlement was reached, the Department could terminate the lease. The Board action appears to have sufficiently motivated the lessee as a settlement was reached within the time allowed. All amounts that were due have been paid outright or via an established payment plan.**
- A lessee fails to dedicate infrastructure roughly two decades after the infrastructure is completed and despite a lease provision requiring dedication. **As previously explained, the Lessee desires to maintain control over the roads for security reasons. The Department will present a request to the Land Board for a lease amendment regarding delayed dedication of infrastructure to the City. The proposal will require the lessee to bear the expense of dedication at lease expiration.**
- Staff complaints against Land Division management allege a variety of problems, including lack of lease enforcement and not operating in the best interests of the state. **For the reasons above and in written responses to prior questions, the Department does not view any of the examples cited as evidence of a systemic land management or lease enforcement problem at the Department.**
- RP rents are not broadly raised until 2017 despite staff recommendations to do so four to five years earlier. The staff recommendations noted that rents were as much as 4,000 percent below market. **As previously explained, Land Division administration did not agree with the scope of work staff drafted in 2013 for revocable permit appraisal consulting. Additionally, the dollar amount of the 2013 contract was limited to \$95,000, and was insufficient for the magnitude of the appraisal consulting services required to evaluate 300+ revocable permits (all permits need to be evaluated to determine which ones will be further appraised for market value). The contract amount for the portfolio appraisal report conducted by CBRE, Inc. in 2016-18 was \$521,000, of which \$424,180 was spent. Also, the appraisal firm selected for the 2013 contract likely did not have the capacity to timely provide the necessary consulting services because only a single appraiser was assigned to the task. The appraisal firm procured for the 2016-2018 contract had at least four appraisers working on the project for a large part**

of 2017 and into 2018, with the appraisers divvying up the site inspections across the four counties.

Finally, revocable permits are only a small portion of the land management and acquisition work the Department handles, and rent re-determinations were secondary to other matters that were deemed administrative priorities. Some of the projects that Land Division staff focused on in the period 2013-2017 include the acquisition of the Turtle Bay conservation easement and fee simple lands, acquisition of Lipoa Point on Maui, completion of a land acquisition for the expansion of the Maui Veterans' Cemetery, acquisition of land for the Central Maui Regional Sports Complex, development of the proposed DLNR Industrial and Business Park at Pulehunui, Maui, planning for the use of DLNR East Kapolei lands adjacent to the UH West Oahu rail station, valuation and due diligence of a possible legislatively mandated acquisition of Alii Place, the negotiation of the lease for the Kahuku wind power facility, and the ongoing conversion of revocable permits for water rights to long term leases pursuant to Act 126, Session Laws of Hawaii 2016 and Section 171-58, HRS.