

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Honolulu, Hawai'i 96813

June 24, 2016

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Statewide

Report and Recommendations from the Department of Land and Natural Resources  
Revocable Permits Task Force

**INTRODUCTION**

This report was prompted by an inquiry from the Board of Land and Natural Resources ("Board") and public interest regarding the Department of Land and Natural Resources application and management of revocable permits and leases. Chairperson Case convened this task force to revisit and evaluate the existing protocols and criteria for selecting a revocable permit or a lease for a disposition of use of State lands and to make recommendations for improvement. The goals are to best serve the needs of the people of Hawai'i, utilize public land to optimize its use in a sustainable manner, generate additional income for natural and cultural resource management, and to satisfy the fiduciary responsibility to the State of Hawai'i. The Department of Land and Natural Resources has a responsibility to implement the public trust in managing State lands and as such, it is Department of Land and Natural Resources' duty to award and steward these lands accordingly.

The vast variety of public lands under the jurisdiction of Department of Land and Natural Resources deserves a rationale and protocol for discerning the type of disposition that may be warranted. These recommendations are the result of the task force's goal to provide a more efficient, equitable, and inclusive system of public land management.

In today's world, it is critical to adapt and to learn, from the frequent updates and improvements from the way businesses are run to downloading the newest and most effective apps for computers and mobile phones. The purpose is always to improve upon a system or method. The task force applied this approach to the job at hand; i.e., to update the Department of Land and Natural Resources system and method of selecting types of dispositions to better manage the task of public land management and to deliver a more equitable process between permitors/permittees and lessors/lessees.

**LEGAL REFERENCES**

Sections 171-6, 13, 55, and 58, Hawai'i Revised Statutes, as amended, govern the revocable permit process.

## **BACKGROUND**

Members of the public and local media shined a spotlight on the Department of Land and Natural Resources' revocable permits and leases, present, past and "on the table." The task force took this complex organizational challenge and began working on what needs to be done to accomplish positive change. This called for revisiting each island and its special issues while scrutinizing the system in place. In the majority of instances, we found evidence of fair pay, equitability, and satisfaction.

Having noted that, our attention turned to the aberrations in the system. Our priority was to be mindful of our obligations to the Public Trust and stewardship overseeing these public lands. The State statutes and administrative rules were our ready reference to confirm appropriate and authorized uses. We researched opportunities to suggest and/or consider repurposing our methods to achieve the highest and best use of these lands. We examined why and how agreements can sometimes appear to be "questionable." We determined that we need to raise the bar on our level of review regarding the length of the lease or permit time, fair market rents, parcel legal specifications, and broadening the scope and style of the bidding process.

In February 2016, Chairperson Case convened the task force to review the Department of Land and Natural Resources' revocable permit process and permit status, and to make any recommended changes to the Board to ensure the process serves the public trust and provides inclusiveness and consistency.

Chairperson Case appointed the following members to the task force:

- Chris Yuen, Board Member
- Paula Harris, Real Property Professional
- Scott Glenn, Office of Environmental Quality Control Director
- Jeff Pearson, Department of Land and Natural Resources Water Deputy
- Department of Land and Natural Resources Administrators:
  - Russell Tsuji, Land Division
  - Ed Underwood, Division of Boating and Ocean Recreation
  - Curt Cottrell, Division of State Parks
  - David Smith, Division of Forestry and Wildlife

The task force's areas of focus were to examine:

- Reasons for revocable permits vs longer-term dispositions
- Notice and opportunity for competition
- Duration of revocable permit terms
- Pricing, including establishment of value and any reasons for discounted value
- Review of current longer-term revocable permits
- Recommendations on possible administrative rules

The expected outcomes were to:

- Identify best practices and articulate principles to be applied;
- Update the Board review process and submittal form;
- Propose specific revocable permits for reconsideration by the Board, to long-term lease status, as appropriate; and
- Have new practices in place at the Department of Land and Natural Resources by June 30, 2016.

To fulfill its mandate, the task force met February through April 2016.

## **PRINCIPLES**

The task force identified the following principles, which served as the basis for its findings, discussion, and recommendations.

1. The Department of Land and Natural Resources stewards the largest amount of state land. The Department of Land and Natural Resources has constitutional and statutory obligations to implement the public trust of stewarding resources, provide for reasonable and sustainable use of resources, and in return obtain a fair revenue for reinvestment into resource management. The method to obtain this goal is to add value and purpose to certain lands rather than leaving them vacant, thus allowing for both use and stewardship of the land. It is also a goal to provide value-added service and activity for the public by evaluating and creating opportunity on public land.
2. In many cases, it is preferable to have long-term and competitive leases than revocable permits; however, revocable permits have a useful function in helping the Department of Land and Natural Resources to administer its fiduciary responsibility by enabling the adaptation and transition to new uses over a short period of time.
3. Each revocable permit should have a specific justification. The revocable permit process is a public process that can be made more accessible to the *people* of Hawai'i, add purpose to public land in a sustainable manner, provide a fair compensation to the *State* of Hawai'i for the use of public land, and allow fair competition and certainty for the applicants seeking to use public trust resources.
4. The revocable permit process and decision making standards must be consistent and equitable across the respective Department of Land and Natural Resources Divisions.

## **DISCUSSION AND FINDINGS**

The task force held discussions and made findings as follows:

1. The numbers of revocable permits by Division as of April 2016 are as follows:
  - a. Land Division; 340
  - b. Division of Boating and Ocean Resources; 30
  - c. Division of State Parks; 29
  - d. Division of Forestry and Wildlife; 1

2. As of 2015, Land Division's Revocable Permit list consisted of 340 permits, containing about 97,650 acres, and generating about \$2,032,000 in annual rents. In contrast, Land Division also manages about 1,012 long-term leases and 1,104 easements totaling about 2,116 long-term dispositions, with annual revenues of about \$13,357,000, as of April 2016.
3. The Department of Land and Natural Resources and Board are responsible for managing approximately 1.3 million acres of public lands comprised of sensitive natural, cultural and recreational resources. Much of these lands are set aside to government agencies for public purposes such as forest reserves, state parks, commercial and small boat harbors, airports, schools, etc. The remaining lands are mainly under the management of the Land Division who issued the dispositions (leases, permits, easements, etc.) above.
4. The Division of Boating and Ocean Resources and the Division of State Parks have recently engaged in reviews of their respective revocable permit lists to determine those that qualify to be issued under a lease process and those that require further examination due to anomalies and specific circumstances.
5. Current Division report templates to the Board have a section for revocable permit discussions. However, discussions vary in depth and completeness.
6. Water-related revocable permits are administered under Section 171-58, Hawai'i Revised Statutes, which is a separate statute and process from the land-related revocable permits regulated under Section 171-55. The statute states that water-related temporary uses may be issued so long as they will best serve the interest of the State and may be issued on a month-to-month basis subject to a maximum term of one year and other restrictions under the law. To obtain a long-term lease, the statute requires applicants to comply with the environmental review provisions of Chapter 343, Hawai'i Revised Statutes, consult with the Department of Hawaiian Home Lands on water amounts and issues, perform an appraisal, and then go to auction, prior to Board approval. This process can take more than one year to complete. Section 171-58 also provides for obtaining water leases for non-consumptive uses, such as hydropower, without public auction, by direct negotiation.
7. Currently, the Land Division administers 14 water revocable permits to 10 permittees. During the 28th Legislature of the State of Hawai'i, 2016 Regular Session, House Bill 2501 was introduced to address this process for permittees in holdover status. It allows those in holdover status time to complete the process to move from revocable permits to long-term leases, while retaining the water rights under the revocable permit for up to three years. At the time of this report, House Bill 2501 passed the State Legislature and is awaiting the Governor's review.
8. 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 for their time. Costs for appraisals must be able to be recovered in a reasonable time through revocable permit fees for the appraisal to be justified.
9. A review of Division reasons for issuing revocable permits yielded common factors that could be summarized into a checklist. Factors included conditions about the lot that precluded leasing, such as the inability to subdivide, future

planned use of a parcel, and liability concerns, among others. An additional “other” reason could be added to the checklist to clarify why a lease is infeasible. Staff reports could check the applicable reasons and include supplemental information as needed to justify the revocable permit issuance.

10. Some parcels, by their nature, have limited to no competition for their use. Encouraging competition may not be practical due to administrative costs and limited market response, such as parcels where only an adjoining landowner owns legal access. In other cases, lands are provided to organizations that provide benefits to the State and it does not make sense to charge a fee.
11. Some activities on a specific parcel are new or experimental in nature and require a one-year temporal process to determine if the disposition yields a sufficient return.
12. Exhibit 1 summarizes task force review of certain revocable permits that have received scrutiny recently. The task force, with the help of the Land Division, took a fresh look at a selected group of revocable permits. This practice will continue with other revocable permits going forward.

## **RECOMMENDATIONS**

The task force offers the following recommendations to the Board:


1. Land Division’s revocable permits should be reviewed at four meetings a year, by county. Other divisions should present all of their own revocable permits at one Board meeting.
2. Given the strong public interest in the revocable permit/long-term lease process, continue to ask the Legislature to create and fund additional staff positions, including increased management-level staff, at the Land Division and other Divisions to implement the process so that the desired higher level of service can be better achieved.
3. Standardize the Divisions’ submittal template to the Board to include a checklist for revocable permits and supporting details for their review (See Exhibit 2).
4. Develop policy guidance for all Divisions on the revocable permit process and standards consistent with this report.
5. Develop a timeline for follow up for revocable permit reviews in accordance with the policy.
6. List revocable permits online with key information and a contact point for questions or interest. The current revocable permit list can be found at <http://dlnr.hawaii.gov/ld/revocable-permits-land-division/>.
7. Require each Division to track market interest in parcels currently used under revocable permits and determine a threshold for when enough interest is present that the parcel is put out for competitive bidding, either as a revocable permit or a lease.
8. Develop an internal calendaring system for each Division to track a parcel’s movement toward a long-term disposition, as appropriate.
9. Review and update, as appropriate, revocable permit rental amounts and provide justification for rental amount.

10. Develop procedures for competition over revocable permits when there is reason to think market interest exists and it is not feasible to put it out to public auction.
11. Work with holders of water revocable permits to initiate the process to convert to water leases.

Based on the details noted in this report, we recognize that in addition to implementing these recommendations, additional staffing is of utmost importance to make a successful shift from the way Department of Land and Natural Resources conducts this process to a revised model that honors accountability.

Respectfully Submitted,  
The Revocable Permit Task Force

APPROVED FOR SUBMITTAL:



\_\_\_\_\_

Suzanne D. Case

## **EXHIBIT 1: REVOCABLE PERMIT “FRESH LOOK” FOR RECENTLY HIGHLIGHTED PERMITEES**

Below is a fresh look at a sample of recently discussed revocable permits. Task force members did a review and report the following. **Staff will bring recommendations to the Board as appropriate.**

- **Antone Carrillo/previous permit to Annitta Perreira/\$600 per month**  
Generally, Land Division does not issue long-term leases for residential properties to allow flexibility for changing tenants. In addition, the Department of Land and Natural Resources is not organized to function effectively as a residential manager. This area is not in high demand and a reasonable rent is charged.
- **Diamond Head Papaya Co. Ltd./agricultural lands 125 acres/\$709 per month**  
Lands have been under revocable permit since 1983 to Diamond Head Papaya. It has been under Revocable Permit 7656 since 2011. Other revocable permits were started in 1989 (80 acres at \$400/month) and 2003 (125 acres at \$700/month). There was a review done on monthly rent with comparable lands nearby. A question was raised about Mr. Renton Nip’s involvement with obtaining the revocable permits but no reference to him was found in any of the permit documents dating back to 1983. Staff should review for long-term lease potential.
- **Donna Nunes-Hoopii/request to cancel**  
Staff is not aware of non-compliance issues of the permit terms at this time. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Francis Madrid/rental rates/\$386 per month**  
Rent is based on unimproved land. Tenant has resided there for more than 50 years. In 1992, Hurricane ‘Iniki devastated the home. The permittee cleaned the property and rebuilt the home. The last appraisal was in 1999 at \$514 per month with a 25% discount for tenancy to \$386 per month. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Hazel Higgins/rental rates/\$262 per month**  
Rent was at \$435/month, appraised in 1999, and lowered to \$262/month. Lands are not subdivided. There may be interest in a land purchase as a remnant parcel. Staff should confirm the current fair market value.
- **Jacob Kaleo Hines/rental rates/\$500 per month**  
Surrounding lands are permitted for agricultural use. The Board approved the revocable permit with conditions to demolish the main dwelling and consolidate the two smaller dwellings. This is a residential revocable permit and not intended for lease (see above regarding residential properties).
- **Junedale Hashimoto/rental rates/\$454 per month**  
This is a unique situation that the Board approved on June 13, 2012 after extensive review based on staff recommendation for a revocable permit.

**EXHIBIT 1: REVOCABLE PERMIT “FRESH LOOK” FOR RECENTLY HIGHLIGHTED PERMITEES**

- **Peter Kunstadter/pier dock/\$19 per month**

A non-commercial pier for which the owner refused a long-term easement. Mr. Kunstadter’s pier qualified under Act 261, Session Laws of Hawai’i 2000 for a 55-year non-exclusive easement. He failed to act timely before the sunset date and remained under a revocable permit. Staff wrote to Mr. Kunstadter recently to determine whether to proceed with a long-term easement or terminate the revocable permit.

- **Wanda Nakoa of Waianae/deceased/permit renewed**

Staff was not informed of the permittee’s death and has no mechanism for receiving this information automatically. Meanwhile, the permit remained in full compliance. At times, permits may be covered by a family member and the Board may re-issue the permit to a family member who applies for it. This is a residential revocable permit and not intended for lease (see above regarding residential properties).



**EXHIBIT 2: REVISED BOARD SUBMITTAL TEMPLATE**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
\_\_\_\_\_ Division  
Honolulu, Hawaii 96813  
(Date of Board Meeting)

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

PSF No.: \_\_\_\_\_  
  
(Island)

Issuance of Revocable Permit to (Name), (Town), (District), (Island), Tax Map Key: \_\_\_\_\_.

**APPLICANT:**

(Name of Applicant), marital status, Tenants in \_\_\_\_\_, OR a \_\_\_\_\_ corporation/partnership, (as applicable).

**LEGAL REFERENCE:**

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of \_\_\_\_\_ situated at (Town), (District), (Island), identified by Tax Map Key: \_\_\_\_\_, as shown on the attached map labeled Exhibit A.

**AREA:**

\_\_\_ acres, more or less.

**ZONING:**

State Land Use District: \_\_\_\_\_

County of \_\_\_\_\_ CZO: \_\_\_\_\_

**TRUST LAND STATUS:**

Section 5( ) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

Or

Encumbered by General Lease No. S-\_\_\_\_, (*Lessee Name*), Lessee, for (*character of use*) purposes. Lease to expire on (*Date*).

CHARACTER OF USE:

\_\_\_\_\_ purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$\_\_\_\_\_ per month, based on staff appraisal dated (*Date*), attached as Exhibit B.

OR

[Optional] To be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

**Explain why the rent charged is fair under the circumstances.**

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. \_\_, Item No. \_\_. See exemption declaration attached as Exhibit \_\_.

OR

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on (*date*) with a finding of no significant impact (FONSI).

OR

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on (*date*).

OR

EXHIBIT 2: Revised Board Submittal Template

*If subject lands are in Conservation District, check with Applicant and OCCL if CDUP required.*

DCCA VERIFICATION:

Place of business registration confirmed: YES \_ NO

Registered business name confirmed: YES \_ NO

Applicant in good standing confirmed: YES \_ NO

**(If not applicable, state as such and explain why. E.g.: 1) Applicant is not operating a business and, as such, is not required to register with DCCA, 2) Applicant is sole proprietorship and, as such, is not required to register with DCCA, etc.)**

JUSTIFICATION FOR REVOCABLE PERMIT (IF APPLICABLE):

**Explain why month-to-month tenancy is more appropriate than long-term disposition in this case. [E.g., does the parcel have legal access? Is it a legally subdivided lot? Is it a substandard lot size? Is it pending transfer to another division or agency? Are there issues with squatters or dumping? Is it a remnant? Has anyone from the public expressed interest in acquiring a long-term disposition of the parcel?]**

- A. Site issues make property unsuitable for public auction lease (RP typically goes to adjacent owner):
  - 1. No legal access
  - 2. Substandard lot size or irregular shape
  - 3. Only interest is for a portion of a lot; subdivision difficult (example, landscaping)
  - 4. Pasture property difficult to use except in conjunction with adjacent property (adjacent owner may have water system, fencing, ability to move cattle)
  - 5. Property cannot be leased without major infrastructure improvements (Hoonee Place)
- B. Truly short-term use (examples, construction staging area)
- C. Interim arrangements pending lease disposition
  - 1. Could be leased at public auction, staff needs time to prepare (staff will give timetable)
  - 2. Awaiting long-term decisions to be decided in planning process (example, Banyan Dr.)
- D. Testing market and operational issues, plan to go to lease later (example, parking at State Parks)

EXHIBIT 2: Revised Board Submittal Template

E. Government uses

1. Pending E.O. or other long-term disposition (provide timetable)
2. Only short-term transfer needed

F. Non-profits

1. Pending direct lease (provide timetable)
2. Trial period while nonprofit gets funding, proves capacity to use site, etc.

G. Staff unaware of interest in long-term disposition

H. Other unusual circumstances (provide explanation)

Discussion:

REMARKS:

*Discuss the history of the parcel.*

*Discuss whether proposed use is allowable in the county zoning, including, where necessary, comments from county planning or land utilization departments on such compliance.*

*Make a statement that Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.*

*Discuss the applicant's qualifications to be using land. For ag/pasture permits, comment on whether applicant would qualify as a bona fide farmer pursuant to §171-14.5, HRS. Discuss special circumstances which would exempt Applicant from this.*

*Discuss whether there were other applicants requesting the same parcel, and if so, indicate dates requests made.*

*Discuss any agency or community comments, including a statement on what agencies were solicited for comments and a statement that no comments were received, where applicable.*

EXHIBIT 2: Revised Board Submittal Template

*Discuss any other pertinent issues or concerns, including but not limited to, those for which a special condition was made in the Recommendation section.*

*Whenever recommending an action that qualifies for an exemption from the preparation of an environmental assessment, you need to include a short statement why the action should be exempt. The proposed use has continued since xxxx and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.*

**RECOMMENDATION:** That the Board:

***ONLY IF APPLICABLE (if EA/EIS done, delete):***

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to (Name) covering the subject area for \_\_\_\_\_ purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General;  
and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

*(Any other special conditions not included in the current document form.)*

Respectfully Submitted,

EXHIBIT 2: Revised Board Submittal Template

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*(Name of Agent)*

*(Title)*

APPROVED FOR SUBMITTAL:

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Suzanne D. Case, Chairperson