

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

December 9, 2016

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

Hawaii

**Report to the Board of Land and Natural Resources Regarding the Status of  
Revocable Permit No. S-7879 to Savio HBH Development Company, LLC.  
The Board Requested Staff to Report Back if There Was Any Interest in  
Leasing the Property and Assess Whether a Lease of the Property Should be  
Sold at Public Auction.**

**BACKGROUND:**

At its meeting of February 12, 2016 under agenda item D-3, the Board of Land and Natural Resources consented to the assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc., Assignor, to Savio HBH Development Company LLC (Savio), Assignee, and approved the issuance of a single month-to-month revocable permit to Savio upon the expiration of the leases. See Exhibit 1 attached. The assignment of leases was a result of direct negotiations between Hilo Bay Hotel, Inc. and Savio for the remaining terms of the leases.

The revocable permit was intended as an interim measure to keep the hotel in operation until such time that the recently commissioned Banyan Drive Hawaii Redevelopment Agency, organized under the supervision of the County of Hawaii, Planning Department, develops a long-term conceptual plan for the future of the Banyan Drive resort area.

At the meeting, testimony was presented by Michael Lam, counsel representing WHR LLC (WHR), Lessee of the adjacent property, the Grand Naniloa Hotel (Naniloa) asking for clarification regarding the process for leasing State lands. Mr. Lam felt his client was entitled to bid on the property and asked that the request for assignment and subsequent issuance of the revocable permit be put on hold. Chair Case clarified the assignment of lease procedure and noted that when the State is ready to issue a new lease, it would be conducted through the standard public auction process or by RFP.

The Board amended staff's submittal by including a condition that if any interest was shown from other prospective hotel operators, staff will return to the Board in twelve months or so with

a report on the various applications.

Although the Hawaii District Land Office (HDLO) has not received any formal applications for the property, a request for proposal was presented at the February 12 Land Board meeting by WHR. On August 30 2016, WHR, through its counsel, wrote to the department alleging that the operation of the Pagoda Hilo Bay Hotel by Savio as a budget hotel was unfairly impacting WHR's room revenues (Exhibit 2). On October 26, 2016, WHR, again through counsel, wrote to the department alleging that Savio was renting rooms to University of Hawaii at Hilo students in violation of its revocable permit (Exhibit 3).<sup>1</sup> Accordingly, the only entity that has expressed an interest in acquiring a revocable permit for the Pagoda Hilo Bay Hotel property (apart from the current permittee, Savio) is WHR (See Exhibit 4 attached, which includes a redacted version of the minutes of the Board's February 12, 2016 meeting).<sup>2</sup>

## **EVALUATION:**

A site evaluation performed by consultants, SSFM International was conducted to determine the Remaining Useful Life (RUL) of the improvements on the subject property. The study was based on the examination of the improvements through meetings, interviews and on-site inspections by a team of experienced professionals including mechanical, structural and electrical engineers.

Based on the results of the study conducted in March, 2014, the RUL for this property was estimated to be 5 to 10 years with continued current usage. Some of the structures comprising the hotel are considered to be in poor condition and would require extensive and costly repair work. All of the structures, exterior walkways, pool area and landscaping are dated in appearance, worn and would require extensive and costly maintenance.

Remaining Useful Life is the duration for which the facilities will be useful to the business, not how long they will actually last. It is based on many factors and can change over time depending on improvements made to the property. The facilities may remain functional past these estimated spans, however, it is expected that widespread, more costly repairs and upgrades would begin to compound and it may no longer be feasible to operate at the status quo.

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1 Staff is currently investigating this latter complaint and is waiting for a response from the Permittee. A third party web site advertising dorm-style rooms at the hotel has since deleted any reference to the availability of these rooms for students.

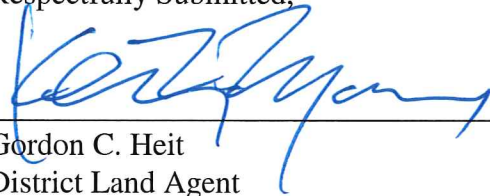
2 In the August 30, 2016 letter, WHR requested a deferment for the payment of rent under its lease for the Naniloa, General Lease No. S-5844. It is not clear why WHR would want to obtain a lease on another hotel property requiring the payment of additional rent, when it is seeking a rent deferment for Naniloa. In any event, WHR has paid the rent installment due on August 1, 2016 and the deferment request is not presently before the Board.

Staff is currently evaluating a comprehensive analysis of the property by Erskine Architects, Inc. The objective of the report was to provide DLNR with information to assist in determining the property's future by identifying areas needing minimum repair, or retrofit, to address health, safety, and welfare issues and identify other improvements areas that need to be fixed due to degradation.

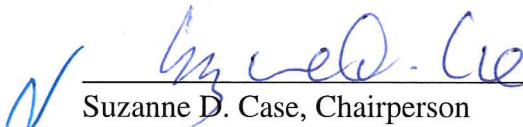
The report identified several areas of concern including unsafe stairwells, fire safety issues and advanced termite damage throughout the common areas and much of the lodging areas.<sup>3</sup> Based on the Erskine Report, the hotel improvements cannot be refurbished and should eventually be torn down. A staff inspection on November 3, 2016 revealed that several rooms on the top floors of the hotel are closed due roof leaks.

Until the Banyan Drive Hawaii Redevelopment Agency settles on a plan for the area, staff is reluctant to recommend issuing a new long-term lease for the premises. At the same time, it is in the State's best interest to keep the improvements occupied (if such occupancy can be safely maintained) until the site can be turned over to a contractor for demolition of the structures. Staff believes that a public auction lease of a revocable permit or short-term lease may be the best solution under the circumstances, and will return to the Board in early 2017 with a request for authorization to conduct such an auction.

Respectfully Submitted,

  
Gordon C. Heit  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

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3 Copies of the Erskine Report were shared with Savio and the County of Hawaii.



**AMENDED**

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

February 12, 2016

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

PSF No.: 14HD-187

Hawai'i

**Consent to Assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc. to Savio HBH Development Company LLC with the Issuance of a Month-to-Month Revocable Permit upon the Expiration of Leases, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033, 034, 035 and 045.**

APPLICANT AND REQUEST:

Hilo Bay Hotel, Inc., a Hawaii For-Profit Corporation.  
Savio HBH Development Company LLC, a Hawaii Limited Liability Company.

LEGAL REFERENCE:

Sections 171-13 and -36, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:033, 034, 035 & 045, as shown on the attached map labeled Exhibit A.

AREA:

Parcel 033 = 25,526 square feet, more or less;  
Parcel 034 = 23,130 square feet, more or less;  
Parcel 035 = 21,562 square feet, more or less;  
Parcel 045 = 9,365 square feet, more or less;  
Total area = 79,583 square feet or 1.83 acres, more or less.

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
February 12, 2016

D-3

**EXHIBIT 1**



ZONING:

State Land Use District: Urban  
County of Hawaii CZO: Hotel and Resort

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the issuance of a revocable permit upon expiration of the lease is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. Refer to attached Exhibit B.

DCCA VERIFICATION:

Assignor: **Hilo Bay Hotel, Inc.**

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

\*\*DCCA reports their annual filing is pending.

Assignee: **Savio HBH Development Company LLC**

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

CURRENT USE STATUS:

Each parcel is encumbered by a general lease to Hilo Bay Hotel, Inc. for resort-hotel purposes. All four leases expire on March 14, 2016.

LEASE CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas.

TERM OF LEASES:

For General Lease Nos. 3265, 3266 & 3267, the original term was 21 years, commencing

in June and August of 1949. All three of the leases were extended to March 14, 2015.

General Lease No. S-4252 commenced on August 14, 1969 with an expiration date of March 14, 2015.

The Board authorized a one-year holdover of all four leases and the issuance of a month-to-month revocable permit upon expiration.

LEASE ANNUAL RENTAL:

General Lease No. 3265	\$ 11,460.00
General Lease No. 3266	10,380.00
General Lease No. 3267	9,660.00
General Lease No. S-4252	<u>4,300.00</u>
Total Annual Lease Rent	\$ 35,800.00

RENTAL REOPENINGS:

Reopenings established by the agreement for extension of General Lease Nos. 3265, 3266 & 3267, were at the end of the 20<sup>th</sup> and 40<sup>th</sup> years of the extension.

General Lease No. S-4252 provided for rental reopenings in January 1985 and 2005 to run concurrently with the three other leases.

The last rental reopenings occurred in January and April of 2005. The four leased properties are currently the subject of an appraisal assignment that will determine market rent value for the properties.

CONSIDERATION:

\$150,000.00

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

REVOCABLE PERMIT COMMENCEMENT DATE:

March 15, 2016. All four of the leased properties will be consolidated under one permit.

REVOCABLE PERMIT CHARACTER OF USE:

Resort-hotel purposes and uses accessory or incidental thereto and customarily conducted within resort-hotel areas. Subletting of portions of the property for resort-hotel related purposes is to be allowed.

REVOCABLE PERMIT RENT:

Initially, \$2,984.00 per month, which represents the current combined annual land lease rent amount divided by 12. After one year, the rent payable under the revocable permit may be revisited and adjusted by the Board. The performance bond will be twice the monthly rental under the permit.

BACKGROUND:

General Lease Nos. 3265 & 3266 (GL3265 & GL3266) were initially sold at public auction on June 15, 1948 to Bernard K. Chock for residential purposes. The initial terms were for twenty-one (21) years; commencing in 1949 and terminating in 1970. General Lease No. 3267 (GL3267) was sold at public auction on June 15, 1948 to Frank M. Carr and Alice Carr for residential purposes. The initial term was for twenty-one (21) years; commencing in 1949 and terminating in 1970.

In 1962, the lessees qualified as disaster victims under Section 87 of Act 32, Session Laws of Hawaii 1962, by the Board of Land and Natural Resources and the leases were subsequently extended for a period of fifty-three (53) years, terminating on March 14, 2015. The extension agreement for GL3267 included an assignment of lease from Frank M. Carr and Alice Carr, as Assignors, to Mark Norman Olds and Norma B. Olds, as Assignees.

At its meeting of January 8, 1965, the Board consented to the assignment of GL3265 & GL3266 from Rose Haena Chock, widow of Bernard K. Chock (by Probate No. 2246 in Third Circuit Court), as Assignor, to William J. Kimi, Jr., as Assignee.

At its meeting of April 23, 1965, the Board consented to the assignment of GL3267 from Mark Norman Olds and Norma B. Olds, as Assignors, to William J. Kimi, Jr., as Assignee.

Under the terms of the extension agreements, when a use other than the original intended residential use is contemplated, an immediate renegotiation of the rent for the ensuing 20-year period is required. Since Mr. Kimi intended to construct a hotel on the parcels, an appraisal was conducted and the rent was established at \$8,949.00 per annum.

The hotel was operated as a sole proprietorship until October 1967 when Mr. Kimi incorporated the business as Hilo Bay Hotel, Inc. As a result of this action, the Board, at its meeting of June 27, 1969 (supplemental agenda), consented to the assignment of lease from William J. Kimi, Jr., as Assignor, to Hilo Bay Hotel, Inc., as Assignee.

On August 14, 1969, General Lease No. S-4252 was sold at public auction to Hilo Bay Hotel, Inc. for parking and landscaping purposes. The lease was devised to run concurrently with the other three leases; all sharing the expiration date of March 14,



2015.

At its meeting of February 27, 2015, item D-3, the Board authorized a one-year holdover of the 4 leases to be immediately followed by the issuance of a month-to-month revocable permit.

REQUEST:

For the past forty-five years the lessee, Hilo Bay Hotel, Inc. (Uncle Billy's), has operated a hotel business, known locally as "Uncle Billy's Hilo Bay Hotel", on the properties. There are five buildings connected by covered hallways. Three of the buildings are four stories in height and house the 145 available hotel rooms. These three buildings are connected by an open-air lobby building with an abutting restaurant building. The layout includes a small swimming pool located between two of the structures at the ocean end of the properties, retail shop space and a large meeting/banquet room.

An engineering report completed in June 2014 determined the remaining useful life of the buildings to be 5-10 years at the current usage. The report noted termite damage, concrete spalling, an outdated electrical system and fire escape stairways in need of maintenance and repair; all of which indicates the buildings are approaching their maximum useful life.

On January 4, 2016, Uncle Billy's announced it would be closing its doors on January 31, 2016, which would allow time to shut down operations, liquidate assets and vacate the premises by the end of the lease on March 14, 2016.

Savio HBH Development Company LLC (Savio) approached Uncle Billy's with a proposal to step into the lease effective February 1, 2016, assume all the assets, keep the hotel operating, and retain all the current employees. Savio will enter into the revocable permit to continue operations into the future. The agreement forged between Uncle Billy's and Savio is the subject of this submittal.

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until a redevelopment plan can be implemented for the Banyan Drive area.

The leases stipulate that at the end of the lease term, all improvements shall become the property of the Lessor. As a result, the improvements become property of the State on March 15, 2016, and the Board has authority to charge rent based on land and improvements from that date forward. However, staff is recommending that rent payable under the revocable permit for the first year remain at the current annual rent, which is based on land value only ( $\$35,800/12 = 2,984$ ). After the first year, the Board may review and adjust the rent.

In general, subleasing is not allowed under the terms of a month-to-month revocable

permit. However, the nature of hotel-resort operations requires accessory/incidental subletting of portions of the property for transient accommodations, souvenir, sundry, food, and entertainment uses. Therefore, staff is recommending that subletting of portions of the property for resort-hotel related purposes are to be allowed.

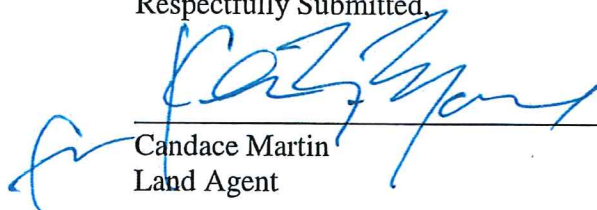
The proposed use has continued since the late 1960's and will continue until the property is vacated or redeveloped. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions 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. Consent to Assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc. to Savio HBH Development Company LLC, 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 consent to assignment 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.
3. Authorize the issuance of a revocable permit effective March 15, 2016 to Savio HBH Development Company LLC covering the subject area of the four previous leases for resort and hotel 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, except that:
    - i. Savio HBH Development Company LLC may enter into subletting or subleasing agreements on portions of the property for resort-hotel related purposes, such as transient accommodations, souvenir, sundry, food, and entertainment uses. No subletting or subleasing agreement term may exceed a month-to-month tenancy.

- b. The initial monthly rental amount for the first year will be \$2,984.00. After the first year, the Board may review and adjust the rent based on any other factors available to it at that time. The performance bond shall be equal to twice the monthly rent;
- c. Review and approval by the Department of the Attorney General; and
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Candace Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

Land Board Meeting: February 12, 2016; D-3: Approved as amended.

See attached page.



Land Board Meeting: February 12, 2016; D-3: Approved as amended.

**Approved as amended.** The Board added the following conditions to its approval of the request for the consent to assignment of the subject general leases and the issuance of the revocable permit to Savio HBH Development Company LLC:

4. *The Lessee/Permittee shall submit to staff satisfactory evidence of its ability to relocate guests to another hotel in the event the revocable permit is terminated upon 30-days written notice<sup>2</sup>;*

5. *The Lessee/Permittee shall continuously operate the leased area as a hotel at the approximately the same staffing levels under the current management;*

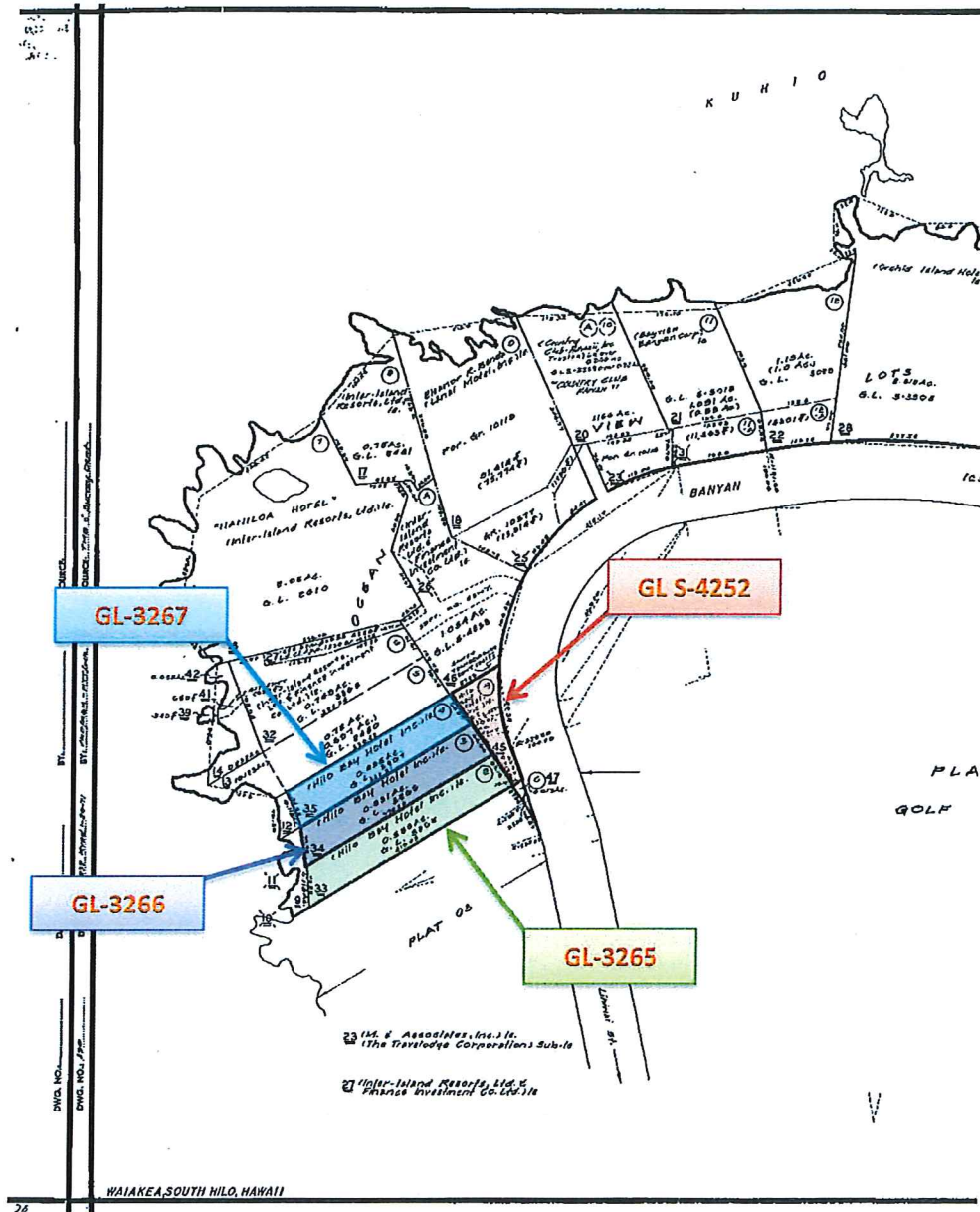
6. *In nine (9) months or so, if staff receives proposals requesting to be issued revocable permits from other prospective hotel operators, then staff shall report back to the Board the on various applications and proposals it receives for the subject property in twelve (12) months or so.*

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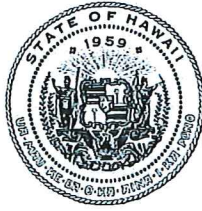
<sup>2</sup> Board member Yuen clarified that when he asked for assurances for relocation of guests, he meant those with future reservations to also be included; but also clarified when he mentioned sufficient evidence, he did not intend that to mean a firm written agreement with another hotel. A gentlemen agreement could suffice.

TMK: 3<sup>rd</sup>/2-1-05:33

EXHIBIT A



DAVID Y. IGE  
GOVERNOR OF HAWAII



## EXHIBIT B

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIIOOLAWA ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

January 27, 2016

#### EXEMPTION NOTIFICATION

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

Project Title: Issuance of a Revocable Permit to Savio HBH Development Company LLC, for Hotel/Resort Purposes

Project / Reference No.: PSF 14HD-187/ GL-3265, GL-3266, GL-3267 & GL S-4252

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:033, 034, 035 & 045.

Project Description: On February 27, 2015, the Board of Land and Natural Resources approved a one-year holdover of four leases held by Hilo Bay Hotel, Inc. covering the above referenced properties, to be immediately followed by a month-to-month revocable permit. Hilo Bay Hotel, Inc. has assigned its interest in the leases to Savio HBH Development Company LLC.

Savio HBH Development Company LLC is requesting the issuance of a month-to-month revocable permit upon the expiration of the leases on March 14, 2016. The revocable permit will allow for continued use of the property for hotel operations until such time as a redevelopment plan for the Banyan Drive area is implemented.

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until a Banyan Drive redevelopment plan can be implemented or at least as long as practical.

The proposed use has continued since the late 1960's and will continue until the property is vacated or redeveloped. 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.

Chap. 343 Trigger(s):

Use of State Land

Exemption Class No.:


In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the issuance of a revocable permit upon expiration of the leases is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", and Item No. 51, which further states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

Consulted Parties

Not applicable

Recommendation:

That the Board find the issuance of a revocable permit for the continued hotel/resort operations use of the property will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
Suzanne D. Case, Chairperson

  
Date

1/28/16

## CASE LOMBARDI & PETTIT

A LAW CORPORATION

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David G. Brittin  
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Michael L. Lam  
Dennis M. Lombardi†

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August 30, 2016

Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Hand Delivery

Re: WHR, LLC ("Lessee") General Lease No. S-5844  
Naniloa Hotel (the "Lease"), Waiakea, South Hilo, Hawaii  
TMKS: 3-2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46

Dear Ms. Case:

As you recall, this firm represents WHR, LLC ("WHR"), the ground lessee to the above-referenced Lease.

Our client requests that the following matters be placed on the agenda for the Board's first meeting in September:

- A. Deferral of one year's lease rent.
  - B. Approval of bond.
  - C. Approval of roof space sublease to Neighborhood GP, LLC for the placement of a solar panel system.
- A. Deferral of Lease Rent.

The deferral of the lease rent payments due for August 2016 and February 2016 is requested due to (1) unanticipated delays in obtaining the approvals necessary to obtain the redevelopment loan which in turn have delayed the completion of the renovation of the Hotel, and (2) the loss of revenues to the Naniloa resulting from the operation of Uncle Billy's Hotel as a below market rate "budget" property due to:

1. Extended development time without revenues (Loa and Kilauea Tower have not been in service in 2014, 2015 or 2016) and thus ground lease payments should not be based on the total rooms during development;

2. Developer has spent over \$11M rather than the \$5M required by the Lease; and
3. The overall understanding that three (3) projects would be redeveloped by DLNR and out for open bid has not occurred and has lowered the market revitalization perception (we request immediate attention to putting all month-to-month out to open bid).

The deferral of one year's lease rent in the total amount of \$580,270.44 is requested with one-tenth of that amount being \$58,027.04 to be paid with the regular semi-annual rent payments during the subsequent five years. The obligation would be evidenced by a promissory note, a copy of which is attached. The spreadsheet reflecting the payment of the deferred rent is also attached herewith for review and consideration.

B. Approval of the Bond.

The replacement bond, as increased from \$1,000,000 to \$1,160,000 as per the request of DLNR, is being separately delivered to Russell Tsuji.

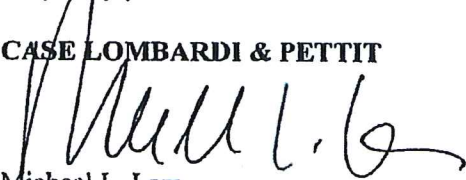
C. Approval of the Roof Space Sublease.

The Request for Consent to Sublease of the Naniloa roof space for the placement of a solar panel system is being separately delivered to Russell Tsuji.

I will contact you shortly to discuss the request. And, if appropriate, we request that the rent deferral issue be discussed before the Board during the September 2016 hearings. In the meantime, please contact me if you have any questions. Thank you for your anticipated cooperation.

Very truly yours,

CASE LOMBARDI & PETTIT

  
Michael L. Lam

MLL/bmp  
Enclosures  
cc: Client (w/encls.)



RP 7879

CASE LOMBARDI & PETTIT  
A LAW CORPORATION

Lissa H. Andrews  
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Daniel H. Case (Retired 2012)

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John R. Dwyer, Jr.  
Gregory M. Hansen  
Frederick W. Rohlfing III

October 26, 2016

Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Hand Delivery

RECEIVED  
LAND DIVISION  
2016 OCT 27 AM 11:53  
DEPT OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Re: Uncle Billy's Default

Dear Ms. Case:

On behalf of WHR, LLC ("WHR"), we request that DLNR investigate the current use of Uncle Billy's Hotel, operated by Savio HBH Development Company LLC, an entity controlled by Peter Savio ("Savio").

WHR believes that Savio is operating Uncle Billy's in violation of the conditions imposed on it by the Board of Land and Natural Resources (the "Board") in connection with the assignment of the lease rights. Specifically, it is WHR's understanding that Savio is operating Uncle Billy's as student housing for University of Hawaii students, instead of a hotel as required by the Board. Clearly, such use violates the Board's mandate that Savio "shall continuously operate the leased area as a hotel". See Minutes for the Meeting of the Board of Land and Natural Resources, dated February 12, 2016 (the "Minutes") at p. 12. A copy of the Minutes is enclosed herewith for your reference.

WHR is therefore requesting that DLNR investigate Savio's use of Uncle Billy's and, if found to be in violation of the Board's conditions, that the month-to-month revocable permit be immediately terminated

10.27.16 cy: HDLO w/att.

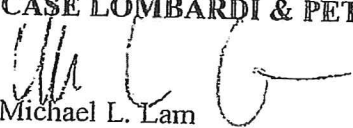
RECEIVED  
OCT 27 2016  
STATE OF HAWAII  
DEPT OF LAND & NATURAL RESOURCES

Suzanne D. Case  
October 26, 2016  
Page 2

We look forward to hearing from you on this matter. In the meantime, please contact me if you have any questions. Thank you.

Very truly yours,

CASE LOMBARDI & PETTIT

  
Michael L. Lam

MLL/bmp  
Enclosure  
cc: Client (w/encl.)

# CASE LOMBARDI & PETTIT

A LAW CORPORATION

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David G. Brittin  
James M. Cribley  
Stacey W.E. Foy  
Adelbert Green  
Michael L. Lam  
Dennis M. Lombardi†

Michael R. Marsh  
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Of Counsel  
John R. Dwyer, Jr.  
Gregory M. Hansen  
Frederick W. Rohlfing III

† A Law Corporation  
Daniel H. Case (1925-2016)

November 22, 2016

Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Via Hand Delivery

Re: Revocable Permit No. S-7879 Located at Waiakea, South Hilo,  
Island of Hawaii; Tax Map Key: (3)-2-1-005:033, 034, 035 and 045;  
Property Formerly Known as Uncle Billy's Hilo Bay Hotel, Hilo, Hawaii

Dear Chairperson Case and Members of the Board:

As clarification, at the February 12, 2016 meeting of the Board of Land and Natural Resources (the "Board" or "BLNR") the Board considered two proposals for "hotel uses" for the Uncle Billy's parcel. WHR, LLC ("WHR") submitted a Letter of Intent, but it was rejected in favor of Savio HABH Development Company LLC ("Savio"), but said approval was conditioned upon hotel uses as defined in the approval of the assignment. Thus, the condition is in addition to the lease terms. Otherwise the consideration of the two alternatives of WHR versus Savio is being circumvented by Savio's violation of the condition imposed by the BLNR. See BLNR Minutes dated February 12, 2016 ("the Minutes") at p. 12, a copy of which is enclosed herewith for your reference.

Also, enclosed is the proposal we previously submitted and resubmitted to the BLNR. The BLNR had stated it would put the lease at issue to bid project. Our proposal remains in effect and we request an immediate public bid process to commence no later than 12 months as referenced in the BLNR Minutes.

**EXHIBIT 4**




Suzanne D. Case  
November 22, 2016  
Page 2

Thank you.

Very truly yours,

**CASE LOMBARDI & PETTIT**



Michael L. Lam

MLL/bmp  
Enclosures  
cc: Land Board Members (w/encls.)  
Client (w/encls.)



February 8, 2016

Suzanne Case, Chairperson  
Russell Tsuji, Land Administrator  
Gordon C. Heit, Compliance Officer  
Members, Board of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

*Via Hand Delivery and email*

**Re: DLNR Request for Assignment and Revocable Permit**

Aloha Madam Case and Messer's Tsuji and Heit, and Board Members:

Tower Development Inc. ("Tower") and WHR, LLC, current owner of the Naniloa Hotel (being developed under a franchise agreement for Hilton Doubletree ("WHR")), hereby submit this letter of terms to insure Uncle Billy's continues in operations, with the best amenities for Hilo visitors that only Tower may offer, by advancing an Assignment and/or Revocable Permit commencing immediately and no later than March 15, 2016 on a Month-to-Month basis to lease and/or continue the operations of Uncle Billy's Hilo Bay Hotel ("Uncle Billy's"):

**REQUEST:** TOWER HEREBY REQUESTS A FEBRUARY 26, 2016 DECISION FOR FAIR AND IMPARTIAL PUBLIC COMMENT AND OPPORTUNITY TO REVIEW ALL PROPOSALS FROM ALL PARTIES AND TO INSURE AN OPEN FORUM FOR ALL TO HAVE EQUAL INFORMATION AND RIGHT TO COMPETE FOR THE OPERATIONS. TOWER AND THE ENTIRE HILO COMMUNITY INCLUDING INTERESTED HOTEL OWNERS AND DEVELOPERS WERE ADVISED PUBLICALLY THAT UNCLE BILLY'S LEASE WAS EXPIRING LEADING ALL TO AWAIT THE PUBLIC BID PROCESS AND FAIR OPPORTUNITY TO BID ON ANY FUTURE OPERATIONS AND/OR DEVELOPMENT. TOWER RESPECTFULLY REQUESTS THAT ALL PARTIES IN THE HILO COMMUNITY SHOULD BE GIVEN A FAIR AND IMPARTIAL OPPORTUNITY TO PRESENT THE BEST OFFERS AND OPTIONS FOR A OPERATIONAL REVOCABLE PERMIT TO BEST SERVE THE HILO COMMUNITY, DLNR AND HILO. SHOULD DLNR ELECT TO VOTE IN FAVOR OF A REVOCABLE PERMIT, IT SHOULD DO SO AFTER ALL PUBLIC IS NOTIFIED IN THIS HEARING THAT A DECISIONS WILL BE MADE AFTER DLNR WEIGHS ALL OPTIONS AND ASSESSES ALL OFFERS FOR A REVOCABLE PERMIT FOR FEBRUARY 26, 2016 BOARD MEETING THAT WOULD INSURE NO CLOSED DOOR DEAL OR PROCESS BEHIND THE SCENES FOR A REVOCABLE PERMIT IS ISSUED WITHOUT FAIR AND PUBLIC OPPORTUNITY TO ASSESS AND COMMENT ON THE BEST SOLUTION FOR UNCLE BILLY'S. ONLY WITH THIS PROCESS WILL DLNR PROVIDE A "FAIR" OUTCOME TO HILO AND ALL INTERESTED PARTIES AND RESULT IN HILO RECEIVING THE BEST OPTIONS AND COMPETITIVENESS. TO ISSUE A REVOCABLE PERMIT WITHOUT THIS PROCESS WOULD TO FAVOR ONE PARTICIPANT AHEAD OF ALL INTERSTED PARTIES AND WOULD NOT SERVE THE PUBLIC'S BEST INTEREST.

A. **PROPOSAL BENEFITS OF TOWER:** Tower's Benefits outweigh any other offer:

1. **"24/7 Fire Watch" at Uncle Billy's.** Note, Safety must be priority of guests - Tower will provide 24/7 Fire Watch during operation (County existing requirement for projects without fire, life and safety system, which matches the Naniloa 24/7 Fire Watch). This is a major risk our guests at Uncle Billy's due to no fire sprinklers or code compliant fire, life and safety system. This should be a condition to any Revocable Permit at Uncle Billy's. Tower will provide this.
2. **24-Hour Security at Uncle Billy's.** The lack of security guards at Uncle Billy's is a major problem. Tower will include Uncle Billy's with 24/7 security guard. This should be a condition to any Revocable Permit issued at Uncle Billy's.
3. **Honor All Uncle Billy's Reservations in Place.** Whether or not Uncle Billy's is open, Tower will honor all reservations and quoted rates equally at the Naniloa.
4. **Upgrade Room Option to Naniloa For All Guests.** Uncle Billy's reservations will have the option to upgrade their rooms to new rooms at Grand Naniloa Hotel, in order that all Hilo visitors will have choice to stay at Uncle Billy's or upgrade to Naniloa with Hilton standards such as Hilton approved beds and other amenities and comfort without any additional cost. This will insure a happy Hilo visitor but more importantly, insure safety to Hilo guests with hotel rooms fit with fire sprinklers and alarm system, if they choose to upgrade at no cost.
5. **Roll Back Pricing - Honor Uncle Billy's 2015 Rates for new stays at Uncle Billy's**
6. **Free Golf For All Guests of Uncle Billy's.** Tower shall provide free unlimited golf and free golf club use during any stay at Uncle Billy's. This way, the existing condition of the property will at least have the opportunity to provide a benefit to the guests.
7. **Uncle Billy's Employees Continue for both Uncle Billy's and Naniloa.**
8. **Aqua-Aston Hospitality 49 Hotel Portfolio in Hawaii.** Aqua-Aston will also contribute a special for Uncle Billy's guests of 10% off Aqua-Aston's best daily rate, which for locals would be the Kama'aina rates. Aqua-Aston has 49 hotels in Hawaii.
9. **Honor Late Gil Kahele with "Kahele Banyan Drive Improvement Fund** with \$5/room night for any Uncle Billy reservation, which monies contributed to improvement fund in Gil's name for completion of his goal of improving Banyan Drive, such as improving sidewalks, open space, recreation areas, parks, creating "Banyan Drive District" signage, for "clean up" programs and any other programs adopted by County, DLNR or redevelopment area. Ex: \$5 X 70 rooms/night = \$350/night X 30 days = \$10,050 X 12 mos. = \$120,600.



**B. OFFER & PROPOSAL TO KEEP UNCLE BILLY'S OPEN:**

1. **Grant Assignment to Tower Immediately Based on Fair Public Right to Operate as New Lessee if DLNR will approve a New Lessee to Be Selected and/or Issue Revocable Permit to Tower commencing immediately but no later than March 15, 2016 in order to be open for Merrie Monarch:** Tower has a \$20M vested interest to insure redevelopment of Banyan Drive and benefits to Hilo. Tower is very concerned that an emergency two-week decision without public disclosure is neither authorized nor in the best interest of County, DLNR or Hilo.

A February 26, 2016 decision by DLNR is a minimum and only prudent option given the need to confirm conditions DLNR must impose on any Revocable Permit. This will still allow Tower or any other bidder to operate Uncle Billy's during Merrie Monarch. However, a full assessment of needs to operate safely is necessary regarding both security and procedures regarding fire, life and safety at Uncle Billy's because it is an unsafe environment. Thus, our proposal/benefits solves these two risks.

2. **Month-to-Month Operations of Uncle Billy's:** Tower shall immediately commence the operations of Uncle Billy's on a month-to-month basis on the same terms proposed by DLNR with any other bidder or interested party, which shall be revocable by County and/or DLNR in accordance with the terms and conditions to be set forth in the revocable permit to be entered into.
3. **6 -Month Advance Rent:** The Rent per month rent shall be \$5,000 per month, paid \$30,000 in advance for the first six (6) months and the first check is delivered with this offer and made payable to DLNR. Rent shall be payable on the same terms of \$5,000 per month for the duration of the hotel operations of Uncle Billy's on the same terms and conditions as set forth in the existing lease with Uncle Billy's and on such additional terms as the parties agree on or before approval by DLNR and County of the new operations. However, in the event there is a fair bid process implemented, and additional bids are received, Tower agrees to consider making further additional bids at such time to increase the offer.
4. **Public Bid Process Request.** We respectfully request all offers for future development be submitted and delivered within six (6) months and the Revocable Permit have an outside date as Banyan Drive will benefit if there is an end date in this process.
5. **Existing Employees:** Tower agrees to have the existing employees processed for employment with Aqua-Aston.
6. **Agreed Upon Improvements To Be Mandated Fairly:** Tower agrees to contribute \$20,000 in front curbside improvements for paint and obligations to give Uncle Billy's an immediate upgraded appearance. Tower also agrees to contribute "as needed improvements" to be agreed upon during a walk through with the County on or before issuance of the Revocable Permit to any third party.

February 8, 2016

Page 4

7. **Uncle Billy's Hilton Garden Inn Development Plan:** On or before June 1, 2016, Tower shall propose a complete redevelopment of Uncle Billy's under a Hilton campus and provide a written proposal/plan to County and DLNR to create a redeveloped Uncle Billy's Hilton Garden Inn. In the alternative, Tower shall present other potential uses based on the County and DLNR preferred uses in the event it is not feasible to renovate the hotel structures in a feasible and safe manner after a thorough review of third party investigations including without limitation structural reports and physical condition reports, all paid for at Tower's expense but copies delivered to County and DLNR.
8. **Hilton Garden Inn Support for Hilton Campus on Banyan Drive.** Attached is a letter of support form Hilton for commencing the development of Hilton Garden Inn by Tower Development Inc. This evidences our ability to continue to assist in the revitalization of Banyan Drive.
9. **Honor Benefits Submitted Herewith Above.** Tower agrees to honor all the Benefits proposed above. No other bidder or Revocable Permit party could come close to the Benefits that are offered by Tower.

Mahalo and warm regards,



Ed Bushor  
President  
Tower Development, Inc.  
WHR, LLC

cc:

Mayor Billy Kenoi  
Kevin E. Moore, Department of Land and Natural Resources  
Michael L. Lam, Esq., Case, Lombardi and Pettit  
Paul Alston, Esq., Alston, Hunt, Floyd and Ing

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND OF NATURAL RESOURCES**

DATE: FRIDAY, FEBRUARY 12, 2016  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Suzanne D. Case called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS**

Suzanne D. Case  
Stanley Roehrig  
Ulalia Woodside

James Gomes  
Christopher Yuen  
Keone Downing

**STAFF**

Russell Tsuji-LAND  
Guy Chang/DOCARE  
David Sisco-DOFAW  
Kevin Moore-LAND  
Carty Chang-ENG

Sam Lemmo-OCCL  
Sheri Mann-DOFAW  
Afsheen Siddiqi-DOFAW  
Curt Cottell-PARKS

**OTHERS**

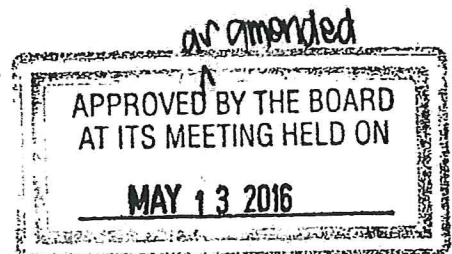
Colin Lau/Deputy AG  
Mark Fridovich/M-1  
David Bettencourt/ M-11  
Duane Kurisu/D-9  
Peter Young/K-2  
Peter Savio/D-3  
Steven Lim/D-3  
Michael Lam/D-3  
Tim Irons/D-3  
Randy Kurohara/D-3  
Dan T./D-3  
Brutus Albrat/D-10  
Jojo Tanimoto/K-1  
Francine Frost/ D-7

Linda Chow/Deputy AG  
Abby Lareau/M-3-M-11  
Calvert Chun/M-2  
Gordon Furitani/D-9  
Wayne Congawa/K-2  
Danton Wong/D-3  
Arthur Lessing/D-3  
Ed Brushour/D-3  
Don Inouye/D-3  
Mr. Applegate/D-3  
Patricia Inouye-Hidenfield/D-3  
Cal Miyahara/D-10  
Bill Spencer/ K-1  
James K. Manaku/C-2

Member Tommy Oi was excused and Member Ulalia Woodside was running late.

**ITEM A-1 Approval of July 10, 2015 Minutes**

Member Roehrig asked to add "on unrelated matters" on page 6 Item L-5.





Member Roehrig commented that when this came before the Board last September the Board grilled them and they have gone through the process that the rules provide and didn't have a problem with it.

Member Downing said that his problem with this was if someone has the right to build on someone's property, be slapped on the hand then be told well, you already built it so you can leave some of it up that's not sending a good message. To him this project looks gigantic.

Member Yuen asked if the question about the easement has already been taken care of. Young said they had discussions with State Parks about this and anticipate with an approval today, they would then come before the Board for a right of entry to do the work as well as an easement for the area.

Member Yuen asked if that was one of the conditions of the permit. Young said that was the process and should come to the Board. Lemmo said it was listed as condition #3.

Member Roehrig made a motion to approve, Member Yuen seconded.

All were in favor except Member Downing who was opposed.

6:1 Vote.

**Approved as submitted (Roehrig, Yuen)**

**ITEM D-3     Consent to Assignment of General Lease Nos. 3265, 3266, 3267 and S-4252, Hilo Bay Hotel, Inc. to Savio HBH Development Company LLC with the Issuance of a Month-to-Month Revocable Permit upon the Expiration of Leases, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-005:033, 034, 035 and 045.**

*Written testimony was submitted by Timothy H. Irons, Michael L. Lam*

Tsuji-LAND refreshed everyone's recollection; about a year ago the Board granted Uncle Billy's a right to a 1 year holdover which runs until March 16<sup>th</sup>, in addition they granted a revocable permit to be issued to Uncle Billy's until the Department and the Board have considered the redevelopment of that area considering the expired leases. About a month ago there was notice in the paper that Uncle Billy's would be closing. Mr. Savio is now interested in acquiring any rights Uncle Billy's had in its lease. This week the department was contacted by Ed Bushor expressing his interest in this hotel.

Chair Case confirmed that it would be helpful to put in land submittals for revocable permits the reason why a revocable permit-RP is the preferred way of going. Tsuji said that was fine, it was in the original submittal back in 2015.

Chair Case said that the RP in this case was to provide flexibility and not lock in a long term disposition. The terms are continuing on the same rent basis.

Member Yuen disclosed that he has a second cousin who has a business who has a contract to work with the Naniloa; he had no interest in that business or any financial interest.

Chair Case commented that there has been an expression of interest by Peter Savio and Tower Development.

Peter Savio, owner of the Pagoda Hotel testified that he was interested in expanding to Hilo and taking over Uncle Billy's Resort. They reached an agreement to take over his hotel, purchase his inventory and fund all his employees. They want to keep the hotel operating; the structure has about 5-10 years of life. He explained Pagoda is a strong local brand and want to expand to Hilo. They think it's a mistake to limit hotels in Hilo to the two big operators; they can bring a different view, and a different market.

Danton Wong, counsel for Peter Savio re-emphasized what Tsuji spoke about; 1 year ago, the Board approved the 1 year revocable permit-RP and the month to month. This was approved to give the State time to decide what they wanted to do with the area. He also noted that Uncle Billy's was going to close February 1<sup>st</sup>, when Savio found out, he approached them and the agreement was to buy their FF&E for \$150,000. The agreement is conditioned on the consent of the Board to the assignment of the lease, but also to the issuance of the RP. Wong clarified that at the end of the term, the permittee does not have the obligation to remove or demolish the improvements.

Steven Lim representing Hilo Bay Hotel introduced Arthur Lessing representative of the current lessee.

Arthur Lessing disclosed that Uncle Billy and his family asked him to be present to represent their interest in this process. They wanted him to convey their affirmation/ support of the Savio team and Castle Resorts coming in to manage the property. Uncle Billy has had an interest in the local community from as far back as when he dug the holes and planted the trees on Banyan Drive. The family didn't want to carry this on any further because their emotional reserves have been exhausted. The family appreciated Savio's commitment to the local community. Uncle Billy is concern about other interested parties that have no interest in the local community. They believe Savio's interest and hiring Uncle Billy's current employees is sincere.

Member Roehrig disclosed he knew both Uncle Billy and Richard but had no financial interest in this.

Chair Case asked who Castle was. Lessing explained that they are a local administrator that Savio brought to manage Hilo Bay. They currently manage the Hilo Hawaiian; they don't own it, just manage it.

Michael Lam attorney for WHR the ground lessee to an adjacent property asked to clarify a few things. 1) Ed Bushor submitted a proposal a day prior to the meeting -- extra copies were available 2) a letter was transmitted of legal issues of what they consider to be the expired lease.



Lam asked to address comments that were made by Tsuji and Savio. 1) This area has been the subject of the redevelopment. They are concerned that the process be open so that whoever the bidder is can present their plans for the area. Only a few showed interest in the property because they weren't asked. Proper notice/obligations/ bids should be made available. 2) What Wong said that was concerning was that their agreement to purchase the FF&E was subject to several conditions; one being a guarantee that they can pay back the money to Uncle Billy's. Lam didn't think it was appropriate that Savio was the only one given the opportunity to negotiate on an open bid process. Lam asked for either deference or the option to negotiate for an open bid process.

Chair Case clarified that the lease expires on March 14<sup>th</sup>, so the lease is not yet terminated. Also the prior approval was for a holdover and a RP. Once the State is ready to do a new lease, that would go out to public process; bid or RFP.

Member Woodside asked what the assignment terms were under the terms of agreement. Tsuji responded that it would have to be under the Board's consent, and the Board's consent cannot be unreasonable.

Member Woodside asked if the current lessee usually seeks out who they would the assignee would be; not usually through a public process. Tsuji confirmed that's an assignment not involving the State.

She asked what would happen if the submittal is not approved. Tsuji explained that they would then have the prior approval. Chair Case indicated that the prior approval was the holdover lease expires March 14<sup>th</sup>, and then it converts to a revocable permit to which the land owner could revoke.

Member Yuen needed more explanation. Chair Case explained that there was a public announcement of closure, but no technical termination.

Member Roehrig asked Savio what agreement was made with Uncle Billy's if the Board did not pass this item today. Savio said the Uncle Billy made it clear that if the motion does not pass then all the employees have been terminated as of today, Savio is supposed to take over tomorrow. The hotel will close. Savio made it clear that this was not a profitable hotel.

Member Roehrig was concerned about the 27 employees; he didn't see anyone standing up for them. Savio disagreed, he said he took over the property, he took a risk, and he's trying to save those jobs. He cares about the employees and is going to work with them. He had to pay the losses because for those employees. Savio was offended by some of the comments made.

Lessing made it known that Savio's compassion is why Uncle Billy wants Savio to take over.

Ed Bushor president of Tower Development testified in the capacity as owner of Naniloa and in the capacity of a developer. He explained that he was relying on Uncle Billy's going out to bid on March 14<sup>th</sup>. Bushor said he had the same interest in Hilo as Savio.



Member Roehrig expressed his concern about wanting Naniloa complete before Bushor starts working on another project. Bushor said they are on schedule, that's not an issue.

Bushor indicated that there should be a joint security guard for the hotels in that area because of all the crime. He asked the Board to consider safety and life conditions for Uncle Billy's.

Tim Irons an attorney that spoke on behalf of Ed Olson testified that Olson requests that the consent that the Board is being asked to give be withheld and that the permit be rejected. He asked that this be considered to be opened up to a competitive bid process. Olson has developed a lot of businesses in the Hilo area and has a passion for this area. Olson also has an interest in the Naniloa. His interest is to see the Banyan Drive area be redeveloped. Olson feels this process is being rushed.

Don Inouye president of Reed's Bay Hotel Ltd. testified that the most important thing is to keep Uncle Billy's open. Inouye supported Uncle Billy's decision and felt it should stay the way it is.

Randy Kurohara, Managing Director for the County testified in support of the transfer of the lease to ensure that the employees keep their jobs and so that the availability of the rooms are there. Their main concern is that Uncle Billy's stays open and the workers keep their jobs. He suggested looking at the language in the lease, if allows the lessee to hand it over to who they choose, then that should play a role in the Board's decision.

Chair Case urged the County to try to get as far along on the master planning side as possible. Kurohara said that was their intent.

Bushor explained that the proposal that Tower wanted to put forth.

Mr. Applegate commended Uncle Billy and offered his comments.

Patricia Inouye-Hidenfield testified on behalf of Reed's Bay. She asked if within the year they will be expected to vacate or if they will still have time there. Chair Case suggested she asked Tsuji, she wanted to keep the discussion to testimony.

Dan T. (with Savio) testified that it seemed there was nothing before the Board to open this up to open bidding. If the idea really was to open it up, then staff would need to prepare. Seems like the earliest to get anything out would be sometime in March, then to get anything back would be after that. They understand the risk, things can change, but from the Savio and Uncle Billy's perspective, it's important to make the decision now so they know how to move forward. If this doesn't get approved today, then Uncle Billy's is going to close tomorrow, it will then be in the Department's hands to figure out what to do with the lease.

Member Yuen asked if the employees and Uncle Billy's are unionized. Lessing said no.

Member Woodside asked Tsuji to clarify receiving notice of the termination of Uncle Billy's lease. Tsuji said that Hawaii district was informed, it may have been verbally.

Member Woodside asked what he thought about the timing. Tsuji explained that they are trying to avoid a shutdown situation. A full blown auction for a lease can take a long time.

Member Woodside asked if there were situations where there was more than one applicant. He said very rarely. The competition for this came in this week; two weeks ago no one was interested, now there are a few.

Chair Case clarified that the formal process to go out to full public bid was not required for a RP.

Member Yuen ask Bushor if the Board were to give him a RP starting March 15, how would he furnish the property. Bushor asked what the conditions of the assignment were. He thought the Board should put out their reasonable conditions and then the people that want the assignment will determine if they want it.

Savio clarified that Uncle Billy closed the hotel February 1<sup>st</sup> and Pagoda hotel is paying to keep it open; they are guaranteeing any losses he suffered.

Tsuji explained that if Uncle Billy's closes, it will cost the department lots of money and staff time to secure the site.

Member Roehrig made a motion to go into Executive Session pursuant to Section 92-5(a) (4), Hawai'i Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gomes seconded.

Everyone voted in favor.

12:32 PM      EXECUTIVE SECESSION

2:05 PM      RECONVENE

AG Linda Chow replaced AG Colin Lau.

Member Yuen asked Savio if he had a commitment on hiring Uncle Billy's current employees. Savio said they have already hired them. The employees are under Castle, under their personnel department.

Member Yuen asked if there was an agreement with Hilo Hawaiian in the event that the lease is terminated that the people booked at Uncle Billy's will go to Hilo Hawaiian. Savio didn't think there was an agreement. Lessing said there were discussions with Hilo Hawaiian, no agreement.

Member Yuen made a motion to approve this item as submitted adding the following conditions to its approval of the request for the consent to assignment of the subject general leases and the issuance of the revocable permit to Savio HBH Development Company LLC:

4.      *The Lessee/Permittee shall submit to staff satisfactory evidence of its ability to relocate guests to another hotel in the event the revocable permit is terminated upon 30-days written notice;*



5. *The Lessee/Permittee shall continuously operate the leased area as a hotel at the approximately the same staffing levels under the current management;*
6. *In nine (9) months or so, if staff receives proposals requesting to be issued revocable permits from other prospective hotel operators, then staff shall report back to the Board the on various applications and proposals it receives for the subject property in twelve (12) months or so.*

Member Roehrig seconded the motion.

Savio said this was unacceptable to him; he was going to have to invest close to \$300,000 in the next 3 days and commit, but he only has 9-12 months to recover that. The hotel doesn't generate that kind of income. 12 months is too short.

Member Yuen said RPs are normally brought back to the board in a year, they are month to month and staff could bring a proposal to substitute someone for him. An RP is always competitive.

Chair Case explained that they wanted to keep an eye on the County process.

Member Roehrig withdrew his second.

Member Downing seconded the motion.

Member Roehrig was not in favor.

6:1 Vote.

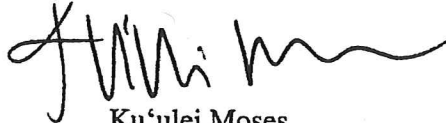
2:42PM Chair Case left the meeting; Member Gomes takes over as Chair.

**ITEM D-14** Amend prior Board of Land and Natural Resources action of January 27, 2012, under agenda item D-14: *Memorandums of Agreement Between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR) for Construction and Maintenance of Certain Roads by DHHL in East Kapolei, and Subsequent Dedication of the Roads to the City and County of Honolulu (CCH) by DLNR, Tax Map Keys: (1) 9-1-16: Por. of 141, and (1) 9-1-17: Por. of 110.* The purpose of the amendment is to (1) amend tax map key references from (1) 9-1-16: Por. of 141 to (1) 9-1-16:155; (2) amend Recommendation 3 to an approval of and recommendation to the Governor the issuance of an executive order setting aside the subject lands to the City and County of Honolulu for the construction, maintenance, repair, management and operation of public improvements and ancillary purposes, and (3) amend the terms of applicable Memorandums of Agreement between DHHL and DLNR.



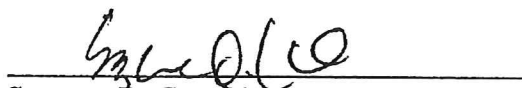
There being no further business, Chairperson Suzanne D. Case adjourned the meeting at 5:22p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ku'ulei Moses', written over a horizontal line.

Ku'ulei Moses  
Land Board Secretary

Approved for submittal:

A handwritten signature in black ink, appearing to read 'Suzanne D. Case', written over a horizontal line.

Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources