

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

January 13, 2017

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

Statewide

Pursuant to Section 171-6(8), Hawaii Revised Statutes, Delegate to the Chairperson Authority to Approve Settlements Mediated under Section 171-17, Hawaii Revised Statutes, in Disputes Relating to the Sale Price or Lease Rental of Lands to be Disposed of by Drawing or Negotiation, Repurchase of Land, or Reopening of Rent.

APPLICANTS:

Land Division, Department of Land and Natural Resources.

LEGAL REFERENCE:

Sections 171-6(8) and 171-17, Hawaii Revised Statutes, as amended.

LOCATION:

Statewide

REMARKS:

Section 171-17, Hawaii Revised Statutes (attached as Exhibit "A"), addresses appraisals of public lands. In the statute, the process of non-binding mediation is provided as a means of resolving a dispute over the fair market sale price or lease rental of lands to be disposed of by drawing or negotiation under subsection (b), the repurchase of land under subsection (c), and the reopening of rent under subsection (d). (Note that subsection (a) of the statute deals with determination of the upset price or rent for the sale or lease of public lands at a public auction, for which mediation is not provided or appropriate.)

Staff, often with representation by a deputy attorney general, participate in the mediation. When mediation is successful,¹ the mediated settlement must be approved by the Board in

¹ / If mediation is not successful, the dispute is resolved by an arbitrator or arbitration panel in binding arbitration.

whose behalf staff has acted. It is made clear at mediation that any mediated settlement is subject to the Board's approval.

Staff believe that the delegation of authority to the Chairperson to give final approval of settlements mediated under Section 171-17 is authorized by Section 171-6(8), Hawaii Revised Statutes.² The appraisals of fair market value are done after the Board has made a disposition decision, such as the issuance of a lease or easement, or sale of a remnant parcel, so the determination of fair market value is a part of the day-to-day management of such dispositions by Land Division and is procedurally governed by the requirements of Section 171-17. A delegation of authority to the Chairperson would help to lessen the number of items on the Board's busy agenda, enable a faster implementation of the mediated value, and eliminate the affected parties' or their attorneys' time spent on testimony at a board meeting.

RECOMMENDATION:

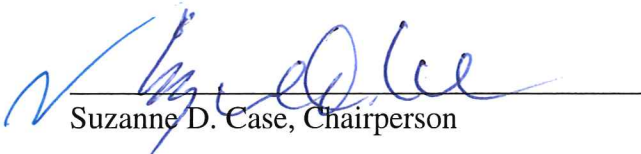
That the Board delegate to the Chairperson the authority to give final approval to settlements mediated under Section 171-17, Hawaii Revised Statutes.

Respectfully Submitted,



Russell Y. Tsuji
Land Division Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

2_/ Section 171-6(b) states in relevant part as follows:

§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

* * *

(8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;

* * *

EXHIBIT "A"

§171-17 Appraisals. (a) The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested appraisal whenever prudent management so dictates. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value set by an employee of the board and the land may be sold or leased at that price. The board shall be reimbursed by the purchaser or lessee for the cost of any appraisal required to be made by a disinterested appraiser or appraisers contracted for by the board.

(b) The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by:

- (1) An employee of the board qualified to appraise lands; or
- (2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and the appraisal, and any further appraisal with the approval of the board, shall be at the cost of the purchaser;

provided that the sale price or lease rental shall be determined by disinterested appraisal whenever prudent management so dictates; provided further that if the purchaser does not agree upon the sale price or lease rental, the purchaser may appoint an appraiser who shall conduct an appraisal on behalf of the purchaser. If, after the purchaser's appraisal, the board and the purchaser do not agree on the sale price or lease rental, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the dispute, the purchaser's appraiser together with the board's appraiser shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658A, which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

(c) In the repurchase of any land by the board, the board shall have the option to repurchase the land for the original sale price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be determined by a qualified appraiser whose services shall be contracted for by the board; provided that if the owner does not agree upon the value, the owner may appoint the owner's own appraiser who shall conduct an appraisal on behalf of the owner. If, after the owner's appraisal, the board and the owner do not agree on the sale price, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If

mediation does not resolve the dispute, the owner's appraiser together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 658A. The owner shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the owner and the board.

(d) If a reopening of the rental to be paid on a lease occurs, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

(1) An employee of the department qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the board;

and the lessee shall be promptly notified of the determination and provided with the complete appraisal prepared by the board or the board's appraiser; provided that if the lessee does not agree upon the fair market rental, the lessee may appoint the lessee's own appraiser and the lessee shall provide the board with the complete appraisal prepared by the lessee's appraiser. Each party shall pay for its own appraiser. If the board's and the lessee's appraisers do not agree upon the lease rental, the lessee and the board shall in good faith attempt to resolve the dispute by nonbinding mediation by a single mediator mutually agreed upon by the parties. If the dispute is not resolved by the mediation, the fair market rental shall be determined by arbitration as provided in chapter 658A, which shall be final and binding. Either the board or the lessee may initiate arbitration by a written demand to the other party. The arbitration shall be conducted by a single arbitrator, who shall be an attorney licensed in the State, a person with experience in contracts and real estate valuation, or another qualified person, who shall be mutually agreed upon by the parties. If an arbitrator is not selected within fifteen days of the demand for arbitration, appointment of an arbitrator may be requested by either party by motion made to the circuit court in the circuit in which the land is located. The cost of mediation or arbitration shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996.

(e) Complete appraisal reports, including all comparables relied upon in the appraisal reports, shall be available for study by the public. All complete appraisal reports shall be provided to the opposing party prior to the commencement of mediation or arbitration, if applicable, of the valuation dispute.