



OFFICE OF HAWAIIAN AFFAIRS
Administrative Testimony

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Board of Land and Natural Resources
Agenda Item D-5

ANNUAL RENEWAL OF REVOCABLE PERMITS ON THE ISLAND OF OAHU

August 23, 2019

9:15 a.m.

Conference Room 132

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on agenda item D-5, which proposes to renew various revocable permits (RPs) for public lands, including “ceded” and public land trust lands, on the island of O’ahu. OHA appreciates the opportunity it was provided to comment on an earlier draft of the instant submittal, and appreciates the steps taken to resolve some of our previous concerns. OHA offers the following comments on its remaining concerns and recommendations for the Board of Land and Natural Resources’ (BLNR’s) consideration.

1. Specific RPs where additional information or attention would appear prudent.

First, OHA recommends the examination of the following particular RPs, for issues identified in our previous comments on this submittal, and in testimonies and comment letters submitted on previous years’ renewals of RPs on O’ahu:

RP5408. RP5408 continues to lack a timetable for its pending conversion to an easement, as required by the DLNR Revocable Permit Task Force (Task Force) recommendations adopted by the BLNR on June 24, 2016; OHA first identified the need for a timetable in August 2016. Continued renewal of this month-to-month RP should also be contingent on compliance with all Special Management Area (SMA) laws, given its location within the SMA, and potential impacts to sensitive coastal resources as well as public and practitioner access. Finally, OHA notes that the TMK number listed for this RP is different than that listed in previous years.

RP5557. Any renewal of RP5557 should be made contingent upon the permittee’s compliance with all SMA laws, given its location in the SMA.

RP6331. RP6331 similarly lacks a timetable for its anticipated conversion to an easement. Moreover, OHA notes that the conversion of this RP appears to have been delayed due to the permittee’s continued nonresponsiveness to Land Division staff inquiries. OHA questions the propriety of continuing this month-to-month RP for another year, without making such continuance contingent on the timely response of its permittee, a sophisticated party, to staff communications as well as the permittee’s full cooperation

with the easement conversion process. Should the BLNR choose to renew this RP, OHA also again urges making such continued renewal contingent on compliance with all SMA laws for the same reasons cited above.

RP7561. RP7561 lacks a timetable for its anticipated conversion to a direct lease. Notably, delays in the conversion of this RP to a long-term disposition has been attributed in previous years to the permittee's nonresponsiveness to Land Division staff inquiries. Accordingly, OHA recommends making any continued renewal of this RP contingent on the permittee's continued and timely responsiveness to staff communications and cooperation with the lease conversion process.

RP7566. RP7566 has been pending clarification on the ownership of the improvements made by the permittee's predecessors for the past 2 years. Given the substantial indications that such improvements should be conclusively considered state property, resolution of any "questions over the ownership of improvements" should be made in a timely manner so that the BLNR can evaluate whether the permittee's highly lucrative and relatively exclusive use of these submerged lands in Waikīkī has been appropriately appraised.

RP7587. RP7587 lacks a timetable for conversion to a direct lease, and multiple attempts to contact its permittee, including site visits by Land Division staff, have proven unsuccessful. Accordingly, OHA questions the propriety of continuing this RP and urges any continued renewal to be made contingent on its permittee's timely response to staff communications and cooperation with the easement conversion process; OHA also urges any renewal to be contingent on compliance with all SMA laws given the RP's location in the SMA.

RP7590. OHA notes that until recently, the permittee for RP7590 appears to have continuously failed to respond to DLNR Land Division staff inquiries regarding conversion of the RP to an easement or other long-term disposition. The updated comments to this RP now note only that Land Division staff have finally established contact with the permittee, who has declined to seek a conversion of their RP to a long-term disposition. No reason is given as to why this RP is nonetheless proposed for renewal, and OHA questions the propriety of continuing this RP given the past unresponsiveness and current uncooperativeness of its permittee. OHA urges any renewal of this RP to be made contingent on its permittee's willingness to pursue a long-term disposition, the permittee's continued responsiveness to staff communications in this regard, and on compliance with all SMA laws given its location in the SMA.

RP7242, RP7517, RP7748, RP7782, RP7883. OHA notes that the proposed fair market rents for these RPs, three of which are on public land trust lands, each exceed their respective proposed 2020 rents by over \$10,000. **RP7907's** fair market rent also exceeds its proposed 2020 rent by over \$9,000. While OHA appreciates that certain circumstances may justify the imposition of less than fair market rent, it is unclear as to why the proposed 2020 rents for these RPs fall so far short of their respective appraised

fair market rents. Accordingly, the BLNR may wish to request further clarification as to why there appears to be such relatively significant rent disparities for these parcels.

On a related note, OHA again recommends that the BLNR ensure that the proposed rent increases for 2020 be actually implemented, rather than delegating to the Chairperson the authority to make such rent adjustments.

2. No correspondence is provided regarding compliance with Conservation District rules.

OHA notes that, unlike in previous years, no correspondence is provided from the Office of Conservation and Coastal Lands (OCCL) regarding their review of the RP list for compliance with conservation district rules, which serve to protect our most sensitive resources and areas from inappropriate uses. While OHA notes that the RPs previously identified as occurring in the conservation district now have notes suggesting some form of filing with OCCL, there is no correspondence or other details provided to describe the significance of these filings, or RP permittees' verified compliance with conservation district rules. OHA accordingly urges the BLNR to require such information prior to the renewal of any RPs known to be or that may be located in the conservation district.

3. RP recommendations should include additional explicit considerations relevant to the BLNR's responsibilities and obligations under the public trust

Finally, OHA reiterates its request that RP renewal recommendations include explicit, substantive considerations relevant to the BLNR's primary, public trust duties to conserve and protect Hawai'i's natural and cultural resources. Such duties include the fulfillment of the constitutional mandate that the state "conserve and protect Hawai'i's . . . natural resources . . . and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the state. All public natural resources are held in trust by the state for the benefit of the people."¹ The BLNR also holds a constitutional duty to protect cultural resources, as well as the practices which rely upon them.² Accordingly, OHA urges the inclusion of additional express considerations in all RP renewal recommendations, which would assist the BLNR in better upholding these duties. Examples of such considerations for any given RP may include:

- **An indication as to when the last affirmative review of a permittee's compliance with previously-issued RP terms and conditions occurred, if any;**
- **An indication as to the existence of any known culturally or environmentally significant or sensitive areas or resources within or adjacent to the subject parcel; and**

¹ HAW. CONST. ART. XI SEC. 1.

² HAW. CONST. ART. XII SEC. 7; Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31 (2000).

- **An indication of any previous or planned future uses of the parcel or on areas adjacent to the parcel, which may result in cumulative impacts to natural and cultural resources.**

Mahalo nui for the opportunity to comment on this matter.