



OFFICE OF HAWAIIAN AFFAIRS
Administrative Testimony

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Board of Land and Natural Resources
Agenda Item D-1
ANNUAL RENEWAL OF REVOCABLE PERMITS ON THE ISLAND OF KAUA‘I

September 27, 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-1, which proposes to renew revocable permits (RPs) for public lands, including “ceded” and public land trust lands, on the island of Kaua‘i. 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. Additional information or attention is prudent for specific RPs.

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

RP3827. RP3827, encompassing over **366 acres for a proposed annual rent of approximately \$3.60 per acre**, has been pending a staff evaluation of its potential for conversion to a lease since at least 2017. However, neither a timetable nor milestones are offered for the contemplated staff exploration of the RP’s potential conversion to a lease. As OHA has previously commented, a timetable or proposed milestones for the exploration and potential conversion of this RP to a long-term lease should be required as part of its renewal, pursuant to the recommendations of the DLNR Revocable Permit Task Force (Task Force) as adopted by the BLNR on June 24, 2016. Moreover, while OHA appreciates that conservation district use permits (CDUPs) have been identified for the permittee’s uses in some portions of the RP parcel that fall within the conservation district, the submittal notes the continued need for additional verification of compliance with conservation district rules. Insofar as conservation district compliance issues continue to persist for this RP since they were first identified in 2017, if not earlier, continued renewal of this month-to-month RP should also be contingent on such verified compliance by a date certain.

RP6842. Similarly, no timetable or milestones are provided for a staff exploration of the potential for converting RP6842 to a long-term lease. While OHA appreciates the

note that staff are waiting “for new [sic] CSF map reflecting Veteran’s Cemetery expansion and DLNR base yard,” it is unclear why such a map precludes staff from beginning their evaluation of this RP’s potential for conversion, or at minimum planning for anticipated evaluation or conversion milestones after the map is received – particularly given that the approximately 1,777 acres under this RP likely far exceed the acreage of any contemplated cemetery expansion or DLNR baseyard. Notably, given the difference between the proposed 2020 RP rent and the appraised fair market value of the parcel, **DLNR may be foregoing over \$112,000 in potential rent for every year that this RP is not converted to a market rate lease.** As with the previous RP, there also appears to be a continued lack of verification of the permittee’s compliance with conservation district regulations; compliance issues again have been raised for this RP since at least 2017 if not earlier. Accordingly, any renewal of RP6842 should be made contingent upon the provision of a timetable or proposed milestones for the exploration and potential conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7507. BLNR approval to convert RP7507 to a long-term lease was granted over two decades ago, in 1994; however, neither a timeline nor milestones are offered for such a conversion. Notably, this relatively small parcel has an appraised market rent of over \$11,000. Consistent with the Task Force’s recommendations, a timeline or milestones should therefore be required for this RP’s contemplated conversion to a lease.

RP7521. BLNR approval to convert RP7521 to a long-term lease was also granted over two decades ago, in 1991; again, neither a timeline nor milestones are offered for the conversion of this RP to a long-term lease. Notably, this seven acre parcel, used for residential and agricultural purposes, has current and proposed rents of approximately \$3,500; while there is no appraised market rent indicated for this RP, OHA notes that the annual rents for this RP are commensurate with monthly rent for much smaller residential parcels on Kaua’i. Consistent with the Task Force’s recommendations, a timeline or milestones should therefore be required for this RP’s contemplated conversion to a lease.

RP7584. No timetable or milestones are provided for a staff exploration of the potential for converting RP7584 to a long-term lease; notably, the four acres encompassed by this RP has been used for pasture purposes since 1943, and the RP itself has been issued for nearly a decade. There also appears to be a continued lack of verification of the permittee’s compliance with conservation district regulations; although OHA appreciates that the permittee has allegedly “contacted OCCL to confirm if CDUP [sic] required,” OHA notes that conservation district compliance issues have been raised for this parcel since at least 2017, if not earlier. Accordingly, any renewal of RP7584 should be made contingent upon the provision of a timetable or proposed milestones for the exploration and potential conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7627. BLNR approval to convert RP7627 to a long-term lease was granted over a decade ago, in 2009; however, neither a timeline nor milestones are offered for such a

conversion. Notably, the current and proposed annual rents for this RP, which encompasses nearly 12 acres, are less than \$650, or less than \$55 per acre per year. Consistent with the Task Force's recommendations, a timeline or milestones should be required for this RP's conversion to a lease.

RP7628. BLNR approval to convert RP7628 to a long-term lease was also granted over a decade ago, in 2009; however, neither a timeline nor milestones are offered for such a conversion. The current and proposed annual rents for this RP, which encompasses over 21 acres, are approximately \$1,200, or approximately \$55 per acre per year. Consistent with the Task Force's recommendations, a timeline or milestones should be required for this RP's conversion to a lease.

RP7664. No timetable or milestones are provided for a staff exploration of the potential for converting RP7664 to a long-term lease; notably, this RP encompasses **45 acres and has current and proposed rents of less than \$13 per acre per year**. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations; an issue that has been raised since at least 2017 if not earlier. Accordingly, any renewal of RP7664 should be made contingent upon the provision of a timetable or proposed milestones for the exploration and potential conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7669. BLNR approval to convert RP7669 was also granted over two decades ago, in 1999; however, neither a timeline nor milestones are offered for such a conversion. This **287 acre parcel has a current rent of \$1,665 and a proposed rent of \$2,037, both of which are less than \$6 per acre per year**. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been raised since at least 2017, if not earlier. Accordingly, any renewal of RP7669 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7729. BLNR approval to convert RP7729 to a long-term lease was granted nearly two decades ago, in 2000; however, neither a timeline nor milestones are offered for such a conversion. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been raised since at least 2017, if not earlier. Accordingly, any renewal of RP7729 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7739. BLNR approval to convert RP7739 to a long-term lease was also granted nearly two decades ago, in 2000; however, neither a timeline nor milestones are offered for such a conversion. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been

raised since at least 2017 if not sooner. Accordingly, any renewal of RP7739 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7790. RP7790 was approved for conversion to a lease over a decade ago, in 2007; moreover, **in 2017, Chair Case specifically indicated that this RP would be brought to public auction.** However, again, neither a timeline nor milestones are offered for the conversion of this RP to a lease. Notably, both the current and proposed rents for this 30 acre RP are set at less than \$20 per acre per year. Accordingly, consistent with the Task Force's recommendations and Chair Case's assertions, any renewal of RP7790 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease.

RP7833. Similarly, RP7833 was approved for conversion to a lease over two decades ago, in 1998; **Chair Case in 2017 also specifically indicated that this RP would be brought to public auction.** However, again, neither a timeline nor milestones are offered for the conversion of this RP to a lease. Accordingly, consistent with the Task Force's recommendations and Chair Case's assertions, any renewal of RP7833 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease.

RP7842. Neither a timeline nor milestones are offered for the contemplated conversion of RP7842 to a long-term lease. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been raised since at least 2017, if not earlier. Accordingly, any renewal of RP7842 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7881. Neither a timeline nor milestones are offered for the contemplated conversion of RP7881 to a long-term lease. The current and **proposed rents for this 25 acre RP are set at less than \$25 per acre per year.** There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been raised since at least 2017, if not earlier. Accordingly, any renewal of RP7881 should be made contingent upon the provision of a timetable or proposed milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

RP7882. Neither a timeline nor milestones are offered for the contemplated conversion of RP7882 to a long-term lease. There also appears to be a continued lack of verification of the permittee's compliance with conservation district regulations, an issue which has been raised since at least 2017, if not earlier. Accordingly, any renewal of RP7882 should be made contingent upon the provision of a timetable or proposed

milestones for the conversion of this RP to a long-term lease, as well as verification of compliance with conservation district regulations by a date certain.

In addition to the above, OHA notes that the following RPs also lack timetables or proposed milestones for their contemplated conversion to a long-term lease: RP7466, RP7480, RP7498, RP7509, RP7516, RP7701, RP7710, RP7712. RP7721, RP7770, RP7785. RP7798, RP7845, RP7872, and RP7897. These RPs include parcels ranging in areas from less than an acre to over 80 acres with proposed and fair market rents ranging from the minimum rent of \$480 to \$25,000 per year. Accordingly, the BLNR may wish to also inquire as to the status of these RPs' conversion to longer term dispositions or require a timeline or milestones for such conversions.

Also in addition to the above, OHA notes that RP6511 and RP7749 continue to present conservation district compliance verification questions, which have been raised since 2017, if not earlier. Accordingly, renewal of these RPs should be made contingent upon verification of their permittees' compliance with conservation district regulations by a date certain.

Finally, OHA notes the question raised by the Water Commission regarding **RP7259**, concerning the water source used for nursery operations within this 16 acre parcel. OHA urges the BLNR to ensure that this question is addressed prior to this RP's renewal, insofar as it may pertain to the appropriate characterization of this RP as a water RP subject to additional considerations associated with the use of public trust water resources.

2. Persistent communication and meaningful consultation challenges must be addressed.

In addition to the specific issues associated with the RPs listed above, OHA expresses serious and more general concerns regarding apparent challenges in communication and meaningful consultation between the Land Division and other divisions within the Department of Land and Natural Resources (DLNR) as well as other government agencies. For example, OHA takes note of the correspondence from Samuel Lemmo, OCCL administrator, describing how

“[W]hile it was a good idea to run the RPs by OCCL prior to reissuance of the RPs we see little use in reviewing these blanket RP packages in the future because we are not being given any additional details in these packages other than what we initially said.” Exhibit 5 (emphasis added).

No response or additional details appear to have been provided to OCCL despite their concern that “the holders of these RPs do not understand that there are restrictions on the use of these lands. . . . **I am trying to avoid a situation in which RP holders believe that consulting with Land Division on new, different, or expanded lands [sic] uses is enough**

for purposes of complying with Conservation District regulations” (emphasis added). Nor does any response appear to have been provided to the Water Commission regarding the water source for RP7259. The submittal also provides no description of Land Division’s efforts to solicit review and comment by the county Planning Department – which administers the special management area law, critical to the protection of potentially sensitive, culturally and ecologically significant coastal areas and resources – or the county Department of Water Supply, apart from the county agencies’ “lack of response by suspense date.” OHA itself has not received a meaningful response from the DLNR’s Land Division to its own comment letter on the submittal as well as on other RP renewal submittals in the past. Ample time remains for Land Division to more meaningfully consult with and address the concerns of its sister divisions and other government agencies prior to the expiration of the current Kaua’i RPs at the end of this year; however, their blanket renewal is nonetheless being requested by the Land Division now.

As illustrated by the above examples, serious communication and consultation challenges apparently continue to persist in the Land Division’s administration of its RP program. **Inappropriate and unlawful land uses, the overexploitation of public resources and the public trust for private gain, the destruction of cultural sites and resources and the denial of place-based Native Hawaiian traditional and customary practices, and the erosion of public confidence in the state’s overall management of our public lands are just a few of the many potential consequences that may arise from the lack of consistent and adequate communication and consultation in the Land Division’s blanket RP renewals.** Notably, such consequences may also frustrate the BLNR’s own fulfillment of its fiduciary obligations and constitutional responsibilities.

Accordingly, OHA urges the BLNR to ensure that Land Division staff and DLNR administration address these challenges as part of any further renewal of RPs for Kaua’i or any other island.

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

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).

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**
- **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.