



Administrative Testimony
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Ka Pouhana, Chief Executive Officer

Board of Land and Natural Resources
Agenda Item D-10
ANNUAL RENEWAL OF REVOCABLE PERMITS ON THE ISLAND OF O'AHU

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9:15 a.m.

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The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on agenda item D-10, which proposes to renew revocable permits (RPs) for public lands, including “ceded” and public land trust lands, on the island of O’ahu. As described in our previous testimony on the renewal of revocable permits for the county of Maui, OHA notes that this year’s RP consultation requests were not received by its Compliance Division due to a change in the contact e-mail used. OHA staff have provided Land Division staff with its current Compliance intake e-mail address for future use. Recognizing that the consultation period has passed, OHA nonetheless offers the following comments regarding RP rent rates, notable issues for particular RPs, and additional decision making criteria for the Board of Land and Natural Resources’ (BLNR’s) consideration.

1. RP rent freezes may not be appropriate for all permittees.

As OHA previously testified, OHA appreciates that the current pandemic represents an unprecedented hardship for many individuals and entities in the public and private sectors alike, and that in some cases, rent freezes for RP renewals may be appropriate. However, a blanket freeze of all RP rents may not necessarily be warranted for all permittees and may represent a lost opportunity to capture much-needed additional revenues for the Land Division and the Department of Land and Natural Resources (DLNR) to carry out their important responsibilities in administering the public trust. For example, several RP rents have been held between \$10,000 to nearly \$20,000 under their indicated annual market rent for years, and it is unclear whether or not an even greater government subsidy of their private revenue generating activities on public lands would be warranted, in light of the DLNR’s own important responsibilities to the public. **OHA accordingly urges the BLNR to consider requiring a demonstration of extreme economic hardship, substantial contributions to the public interest or the local economy in response to the pandemic, and/or other extenuating circumstances relating to the COVID-19 pandemic, which would justify the granting of a rent freeze or a reduction in anticipated rent increases for those RPs issued to private commercial entities.**

2. Specific RPs where additional information or attention would appear warranted.

OHA recommends the examination of the following RPs, for issues identified in testimonies and comment letters submitted during previous years' renewals of RPs on O'ahu:

RP5408. OHA appreciates the progress noted for the conversion of this RP, which allows for the use and maintenance of a pier on state submerged lands, to an easement. OHA notes that this conversion is waiting, at least in part, on the submission of a legal description and map of the permitted area by the permittee. To ensure that the permittee does provide this description and map in a timely manner, any renewal of this RP should be made contingent on the submission of such information by a time certain. **OHA also reiterates its prior recommendation that continued renewal of this month-to-month RP be made contingent on verified compliance with all Special Management Area (SMA) laws, given the permitted area's location within the SMA, and potential impacts to sensitive coastal resources as well as public and practitioner access.**

RP5557. Any renewal of RP5557 should be made contingent upon the permittee's compliance with all SMA laws, given its location in the SMA and for the same reasons cited above.

RP6331. OHA notes that the conversion of this RP to an easement appears to have been delayed due to the permittee's non-responsiveness to Land Division staff inquiries since at least 2018. OHA appreciates that, per this year's submittal, the property manager was finally apprised of this issue, and that the property manager noted that she will bring this to the attention of the permittee association of apartment owners. However, given the years of permittee non-responsiveness to Land Division staff, OHA again **recommends making any renewal of this RP contingent on the timely response of its permittee 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 renewal contingent on verified compliance with all SMA laws.**

RP7561. RP7561's conversion to a direct lease has been contemplated at least since its renewal last year. Notably, delays in the conversion of this RP to a long-term disposition has been previously attributed to the permittee's non-responsiveness to Land Division staff inquiries. OHA does note that the permittee, a polo club, has last communicated with Land Division staff in May 2019, and that it is unclear whether there may be alternative long-term uses for the permitted areas more beneficial to the public trust mission of the DLNR. **OHA recommends making any continued renewal of this RP contingent on the permittee's continued and timely responsiveness to staff communications.**

RP7566. RP7566 has been pending clarification on the ownership of the improvements made by the permittee's predecessors for the past 3 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 largely exclusive use of these submerged lands and associated improvements in Waikīkī has been appropriately appraised.

RP7587. As noted in this and last year's renewal notes for this pier/dock RP, multiple attempts to make contact with this RP's permittee, including written letters and site visits by Land Division staff, have proven unsuccessful. Accordingly, OHA questions the propriety of continuing this RP and **again urges that any continued renewal to be made contingent on its permittee's timely response to staff communications and cooperation with any easement conversion process; OHA also urges any renewal to be contingent on compliance with all SMA laws, given the RP's location on state submerged lands.**

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 comments for this RP made in this year's and last year's renewal submittals note only that the permittee has declined to seek a conversion of their pier/dock RP to a long-term disposition. No reason is given as to why this RP is nonetheless being proposed for renewal yet again, 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 on state submerged lands.**

Finally, OHA appreciates that conservation district use applications and permits have been noted as "on file" with the Office of Conservation and Coastal Lands (OCCL) for those RPs involving conservation district lands (specifically **RP7242, RP7489, RP7606, and RP7714**). **OHA does reiterate its recommendation made in last year's comment letter that OCCL comments be nonetheless specifically solicited for and included in any submittal requesting the renewal of RPs that may involve the conservation district, particularly with regards to concerns or issues that may have arisen after the noted conservation district use applications and permits were filed with OCCL.**

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

OHA again 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**
- **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.**

Notably, at least one RP being considered for renewal on this same agenda but in a separate submittal, RP7570, has been recommended for amendment or cancellation due in part to the need to protect natural resources and the public interest from the permittee’s previous and anticipated future uses (i.e. motorbike and trail riding activities). **As illustrated in this case, a summary of the above explicit considerations may provide the BLNR with critical insight as whether and which other RPs may similarly warrant closer examination and protective conditions.**

Mahalo nui for the opportunity to comment on this matter.

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).