

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

November 13, 2020

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

Ref: 20OD-078

OAHU

RESUBMITTAL: Enforcement of Sanitation Violation under Unencumbered Public Lands Rules, Hawaii Administrative Rules Chapter 13-221, and Section 171-6, Hawaii Revised Statutes, by The Trash Man, LLC, on State Lands at Mapunapuna, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006

PURPOSE:

Enforcement of sanitation violation of Hawaii Administrative Rules relating to unencumbered public lands, Sanitation, by The Trash Man, LLC, Mapunapuna, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006.

LEGAL REFERENCE:

Section 171-6(15), Hawaii Revised Statutes (HRS), Sections 13-221-2, -3, and -30, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

The subject submittal was originally scheduled for October 9, 2020, under agenda item D-5. Before the start of the meeting, Mr. Thomas Zizzi, who is the counsel representing The Trash Man, LLC, verbally requested a contested case hearing. Therefore, the Board took no further action at that time.

By an email dated October 16, 2020, Mr. Zizzi advised the Department of the Attorney General that his client decided to withdraw its request for a contested case hearing and return the matter to the Chapter 92 Sunshine hearing forum. A copy of the email exchange is attached as **Exhibit 1-A**. As a result, The Trash Man, LLC did not file a written petition for contested case hearing under Section 13-1-29(a), HAR.

Posting of Notice

The subject parcel, identified as Tax Map Key: (1) 1-1-064:006 (**Exhibit A**) was originally encumbered by General Lease No. 5590, a 35-year lease for industrial purposes, until the Board approved the mutual termination in 2012. Subsequently,

Land Division has tried three (3) times, in 2013, 2017, and 2019 to sell a lease for the parcel via public auction. However, no applications were received for any of the auctions. Meanwhile, we also installed signs prohibiting any dumping on the subject parcel. (**Exhibit B**)

In late 2019, it was brought to staff's attention that a roll-off containing rubbish was placed on the subject site, which is unencumbered public land. Subsequently, notice was posted by the maintenance crew on the roll-off on December 17, 2019, regarding the violation.<sup>1</sup>

Around January 2, 2020, another roll-off was placed on the subject site, next to the first one. Another notice was posted on January 2, 2020 (**Exhibits C1 and C2**) regarding the violations. A copy of the notice template is attached as **Exhibit C3** for better legibility purposes.

Subsequently, the maintenance crew became aware that the owner of the roll-offs was The Trash Man, LLC. According to the Department of Commerce and Consumer Affairs website, The Trashman, LLC is registered to do business for the purpose of refuse collection. Mr. John Guinan, Jr. of The Trash Man, LLC was contacted by phone by the maintenance crew regarding the removal of the items. Mr. Guinan indicated in his email dated February 6, 2020 that his equipment broke down and the insurance for his equipment also expired. In addition, the weight of the bin would exceed the Department of Transportation load limit on the highway. In short, he could not remove the roll-off.

Staff would expect an experienced operator in the industry to be able to find alternatives to remove the roll-offs and comply with the law, i.e. no dumping as indicated in our posted signs. The subject site was accessible from the public roads, and there was nothing to stop Mr. Guinan from removing the roll-offs from the site. Therefore, staff decided to seek enforcement remedies for the situation as signage was posted (see Exhibit B). Staff noted that one roll-off was removed from the site sometime in February 2020, but there was no information regarding identity of the party who removed this roll-off.

#### Latest Condition

On August 3, 2020, the department received an email from a legislator enclosing photos of the roll-off and the rubbish dumped on the surrounding ground. Photos attached as **Exhibits D1 and D2**.

Staff inspected the property on August 3, 2020 in the morning and immediately arranged to have the crew remove the rubbish on the ground. Meanwhile, Land Division considered hiring a vendor to remove the remaining roll-off from the site. Later the same morning, Mr. Guinan called the district land agent indicating that he

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<sup>1</sup> No photos were taken of the postings until January 2, 2020.

could come in and remove the roll-off and clear the area. He said he would be able to complete the job within 48 hours.

It is undeniable that the conditions shown on Exhibit D1 and D2 were posing imminent concerns to public health due to the unsanitary conditions. As mentioned above, physical access to the site was not impeded during the past nine (9) months. The Department did not prohibit the owner from removing the roll-off from the subject site if he had acted to do so.

The lack of proper equipment and insurance, as mentioned above by the owner, were responsibilities of the owner of the roll-off(s) to address. He decided to comply with the Department of Transportation rules about load limits on public highways and did not take the loaded roll-off onto the public highway. Nevertheless, he chose to ignore our posted notice prohibiting dumping on State lands by bringing in the roll-off containing rubbish onto our site without any authorization.

#### Clean-up by DLNR

The pressing sanitary concerns and the lack of any positive action on Mr. Guinan's part in the past nine (9) months, which is more than enough time, were factored in the Land Division's final decision to retain a private vendor immediately to remove the roll-off from the site at the earliest possible time.

On August 5, 2020, the contractor procured by Land Division removed the roll-off and rubbish as confirmed by a site visit. However due to flooding of the premises and adjacent intersection, no photos were taken. The total cleanup cost was \$3,278 as shown on the contractor's invoice attached as **Exhibit E**. A follow-up site visit conducted by a land agent on August 6, 2020 found that some rubbish/dirt was left on the ground as shown on the photos attached as **Exhibit F**. Our maintenance crew assisted in removing the rubbish/dirt on August 7, 2020 as shown on the photos attached as **Exhibit G**.

#### Violation of HAR

Section 13-221-30(g), HAR, states:

No person shall bring, carry or transport garbage, trash, rubbish, refuse, or waste from a place outside the premises onto the premises or deposit or dump the same in refuse containers or other receptacles on the premises.

Exhibit C1 shows the roll-offs were full of rubbish and items at the time the notice was posted. Staff recommends the Board find The Trash Man, LLC violated Section 13-221-30(g) HAR.



For the Board's information, after the roll-offs were placed on the premises, they served as an attraction for other people in the vicinity to treat the land as a dump site. So, rubbish started to accumulate very quickly though there is no evidence at this time as to the identity of other persons responsible for dumping rubbish on the State land.

To deter future illegal dumping, staff has requested the assistance of our maintenance crew to erect fencing around the perimeter of the premises.

Section 13-221-3, HAR, provides:

Any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day and shall be liable for administrative costs and damages incurred by the department.

Resolution

The HAR cited above allows a \$500 fine per day. In this case, the fine for the period December 17, 2019 to August 5, 2020 would be \$116,500 (\$500 x 233 days).

Looking back at the timeline of this situation, when the Land Division staff noted the roll-offs in December 2019, no further enforcement action was conducted (though notices were posted<sup>2</sup>) until early August 2020. Due to the lack of timely response to this situation, Land Division acknowledges that it may not be equitable to impose the full amount of the fine against The Trash Man, LLC. Land Division is therefore amenable to accepting the payment of back rent for use of State lands together with the reimbursement of the clean-up cost and administrative charges and a fine of \$5,000.

At its meeting of August 12, 2016, under agenda item D-5, the Board approved the minimum upset rent for a public auction of a 20-year lease of the land for open storage and parking purposes at \$27,351 per annum, or \$2,279.25, say \$2,280 per month. The rental amount for the usage of the site for the period December 17, 2019 to August 5, 2020 will be \$17,430.97, which is a reasonable resolution as compared to the 6-digit potential fine. Therefore, staff recommends the Board authorize the collection of \$17,430.97 from The Trash Man, LLC as the back rent for the use of the site in the circumstances described above.

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<sup>2</sup> Oahu Land Division staff will have to conduct more programmed patrol or inspection of the parcels under the jurisdiction of Land Division in the future before any unauthorized uses of State lands become escalated. More immediate actions are needed to enforce any applicable statutes or rules governing the orderly management of State lands.

In addition to retaining a private vendor to remove the remaining roll-off from the site, Land Division staff and maintenance crew have also spent considerable time in addressing the situation. Staff recommends the Board authorize the reimbursement of staff costs and the clean-up cost in addition to the back rent and fine imposed on The Trash Man, LLC.

RECOMMENDATION: That the Board:

1. Impose a fine against The Trash Man, LLC in the amount of **\$5,000** pursuant to Section 13-221-30 and -3, HAR;
2. Find The Trash Man, LLC liable for back rent in the amount of \$17,430.97 covering the period December 17, 2019 to August 5, 2020 for the use of the subject site pursuant to Section 171-6, HRS;
3. Find The Trash Man, LLC liable to reimburse the Department of Land and Natural Resources for the costs incurred for the removal of the roll-off and contents in the amount of **\$3,278** pursuant to Section 171-6(15), HRS;
3. Find The Trash Man, LLC liable for the administrative costs associated with the cleanup and other administrative work related to this enforcement action described above, pursuant to Section 171-6(15), HRS, as itemized below and as shown on attached **Exhibit H**:

District Land Agent: \$ 225.60  
Maintenance Crew: \$1,532.94  
Total Costs: \$1,758.54

4. Order that The Trash Man, LLC shall pay administrative costs (\$1,758.54) and reimburse other costs (\$3,278) incurred for removal and pay the back rent (\$17,430.97) and the fine (\$5,000) in the total amount of **\$27,467.51** within thirty (30) days of the date of the Board's action; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Patti E. Miyashiro

Patti E. Miyashiro  
Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson



**From:** Wynhoff, Bill J  
**Sent:** Friday, October 16, 2020 11:01 AM  
**To:** Thomas Zizzi [REDACTED]  
**Cc:** Chun, Lauren K [REDACTED]  
**Subject:** RE: 200D-078

Tom

Thank you very much for taking the time to talk to me and Lauren and for your thoughtful review. We recognize there are pluses and minuses as discussed. Just so the record is clear, we mentioned that waiving the right to a contested case means the board will decide this matter at an open, chapter 92 sunshine meeting. Nobody will be sworn, the public will be present and may testify if desired. Perhaps most importantly, there will be no right of appeal. Whatever the board decides will be final.

You and your client will have an opportunity to explain the situation to the board and to present written and oral argument. You can provide documents. No one on the board will have prejudged the matter or discussed it with other board members. The submittal represents staff's position, not (yet anyway) that of the board.

I'm not sure when the meeting will be. November 13 at the earliest and maybe not until January. I'll let you know as soon as I find out. If you want to present something in writing to the board for it to consider, then it's probably a good idea for you to start working on it.

Bill

**From:** Thomas Zizzi [REDACTED]  
**Sent:** Friday, October 16, 2020 10:40 AM  
**To:** Wynhoff, Bill J [REDACTED]  
**Cc:** Chun, Lauren K [REDACTED]  
**Subject:** [EXTERNAL] RE: 200D-078

Aloha Bill,  
After due consideration my client, The Trash Man LLC, would like to withdraw its request that the 200D-078 be converted to a contested hearing and return the matter to the Chapter 92 Sunshine hearing forum.

Mahalo,  
Thomas C. Zizzi, Esq.



TAX MAP KEY: (1) 1-1-064:006

EXHIBIT A









**EXHIBIT C1**





## EXHIBIT C2



**INFORMATION REGARDING ILLEGAL ACTIVITIES ON STATE LAND**

**You are in violation of one or more of the following laws:**

**HAR 13-221-15 Camping**

No person shall camp or use recreational trailers or other camper units on the premises, except with the prior written authorization of the board or its authorized representative. [Eff FEB 06 1988] (Auth: HRS §171-6) (Imp: HRS §171-6)

**HAR13-221-20 Fires**

No fires allowed in this area, except with a permit.

**HAR 13-221-11 Animals**

All animals in this area must be on a leash or in a crate.

**HAR 13-221-14 Boating**

Vessels are not allowed in this area, including but not limited to:  
Houseboats, rowboats, fishing boats, floating cabanas, rafts or any device capable of free flotation.

**HAR 13-221-30 Sanitation and litter**

Pollution of this area is prohibited, including but not limited to:  
Garbage, papers, trash, refuse, waste matter, and body waste. No person shall pollute or contaminate in any manner any watershed, water supplies, or water used for drinking purposes

**HAR 13-221-09 Abandoned and unattended property**

No person shall abandon motor vehicles  
or other property within the premises

**The Department of Land and Natural Resources will be doing maintenance and clean-up of this area. Please remove yourself and your personal possessions from this government property. Anything left behind will be discarded.**

**EXHIBIT C3**





August 3, 2020 Photos Received from Legislator

**EXHIBIT D1**





**EXHIBIT D2**



**HTM Contractors, Inc**

160B Ahui St.  
Honolulu, HI 96813

INVOICE	#9650
SERVICE DATE	Aug 05, 2020
INVOICE DATE	Aug 06, 2020
DUE	upon receipt
AMOUNT DUE	<b>\$3,278.00</b>

DLNR  
729 Kakoi St  
Honolulu, HI 96819

SERVICE ADDRESS

2722 Kilihau St  
Honolulu, HI 96819

CONTACT US



INVOICE

Services	qty	unit price	amount
Junk Removal Services (Island Wide) - JRG#1	1.0	\$3,278.00	\$3,278.00
HTM PO NO.: HTM-20-157			

Provided labor and equipment necessary to remove, haul, and dispose of (1) old 30yd roll-off container with contents inside from DLNR property, nearing U-haul Nimitz viaduct.

FYI: The customer roll-off bin is severely damaged (see attached photos) and will need to be dumped on-site to make it safe for our driver to pick up this bin. We will provide our own 40yd bin(s) and equipment/ labor to reload the load from the customer's damaged bin (same day)

\*Price includes:

- Labor
- Equipment
- Haul/ dump fee

\*\*Note: DLNR will remove all trash/ items surrounding or blocking the bin.

Materials	qty	unit price	amount
S/E			
40yd bin(s), large excavator.			



Subtotal	\$3,278.00
Tax (Oahu Tax Rate 4.712%)	\$0.00
<b>Total</b>	<b>\$3,278.00</b>

"TERMS AS AGREED" WE WILL EITHER MEET OR BEAT ANY COMPETITORS PRICE!!! \*some restrictions may apply\*

H.T.M. Contractors, Inc. will not be responsible for any damages to property not visible where not specifically mentioned herein...



PHOTOS ATTACHED TO INVOICE FROM HTM CONTRACTORS, INC.

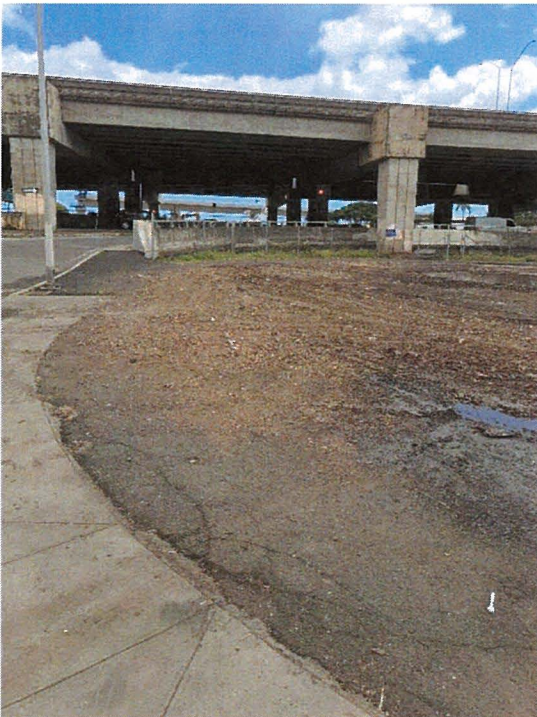




**August 6, 2020 - Photos After Removal  
of Roll-Off**

**EXHIBIT F**





**August 7, 2020 - Photos  
after final clean-up by  
maintenance crew.**

## **EXHIBIT G**

**ADMINISTRATIVE COSTS**  
(Clean-Up and Administrative Work)

	Hourly Rate	August 3, 2020 3 hours	Fringe Benefits @ 68.03%	August 7, 2020 1/2 hour	Fringe Benefits @ 68.03%	Total Per Staff
District Land Agent	\$ 38.36	\$ 115.08	\$ 78.29	\$ 19.18	\$ 13.05	\$ 225.60
<b>TOTAL COST:</b>						<b>\$ 225.60</b>

	Hourly Rate	August 3, 2020 6 hours	Fringe Benefits @ 68.03%	August 7, 2020 3 hours	Fringe Benefits @ 68.03%	Total Per Staff
Maintenance Crew						
Equipment Operator III	\$ 28.21	\$ 169.26	\$ 115.15			\$ 284.41
Equipment Operator II	\$ 25.32	\$ 151.92	\$ 103.35	\$ 75.96	\$ 51.68	\$ 382.91
Tractor Operator	\$ 22.50	\$ 135.00	\$ 91.84	\$ 67.50	\$ 45.92	\$ 340.26
General Laborer II	\$ 21.63	\$ 129.78	\$ 88.29			\$ 218.07
General Laborer II	\$ 30.48	\$ 182.88	\$ 124.41			\$ 307.29
<b>TOTAL COSTS:</b>						<b>\$ 1,532.94</b>

<b>DISTRICT LAND AGENT:</b>	<b>\$ 225.60</b>
<b>MAINTENANCE CREW:</b>	<b>\$ 1,532.94</b>
<b>TOTAL ADMINISTRATIVE COSTS:</b>	<b><u>\$ 1,758.54</u></b>

**EXHIBIT H**