



Administrative Testimony  
Testimony of Sylvia M. Hussey, Ed.D.  
Ka Pouhana, Chief Executive Officer

Board of Land and Natural Resources  
Agenda Item D-2

ANNUAL RENEWAL OF REVOCABLE PERMITS ON THE ISLAND OF KAUA'I

November 13, 2020

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-2, which proposes to renew revocable permits (RPs) for public lands, including “ceded” and public land trust lands, on the island of Kaua’i. As described in our previous testimony on the renewal of revocable permits for O’ahu and Maui County, 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’ (Board’s) consideration.

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

As OHA has previously testified, it is unclear whether a blanket freeze of all RP rents is warranted for all permittees; a blanket freeze of all RP rents may instead 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, certain RP rents on this year’s renewal list have been held between \$9,000 to **over \$110,000** 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 is warranted, in light of the DLNR’s own important responsibilities to the public. **OHA accordingly urges the Board 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 Kaua'i:

**RP3827 (Gay & Robinson).** RP3827 has been continuously re-issued for the past 55 years, and has been pending a staff evaluation of its potential for conversion to a lease since at least 2017. Notably, this RP covers over **366 acres, for a proposed annual rent of approximately \$3.60 per acre.** Neither a timetable nor milestones are offered for the contemplated staff exploration of the RP's potential conversion to a lease, as would be required under the recommendations of the DLNR Revocable Permit Task Force (Task Force) adopted by the Board 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 takes note, as it did last year, of the continued need for additional verification of the permittee's 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 RP should also be contingent on such verified compliance by a date certain.

**RP6511 (Gay & Robinson).** **RP6511 continues to present conservation district compliance verification questions, which have been raised since 2017, if not earlier.** Accordingly, renewal of this RP should be made contingent upon verification of the permittee's compliance with conservation district regulations by a date certain.

**RP6842 (Gay & Robinson).** Notably, given the difference between the proposed 2021 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 1,777-acre RP is not converted to a market rate lease.** However, no timetable or milestones are provided for a staff exploration of the potential for converting RP6842 to a long-term lease. The note that staff are "waiting for new [sic] CSF map reflecting Veteran's Cemetery expansion and DLNR base yard" is the same as that provided last year, and it still remains unclear as to why the lack of such a map precludes the Land Division from beginning its evaluation of this RP's potential for a lease conversion, or at minimum establishing milestones for a lease conversion 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. **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.

**RP7259 (Frank and Abigail Santos).** OHA notes that last year, there was a question raised by the Water Commission regarding RP7259, concerning the water source used for nursery operations within this 16-acre parcel. It is unclear whether this question has been addressed. OHA urges the Board to ensure that this question has in fact been 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.

**RP7584 (Gay & Robinson).** 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 have 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," this is the same comment that was made for this RP during its renewal last year, with no update.** OHA again 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.

**RP7664 (Adam P. Killerman).** 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 a current rent 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 (Tony Brun).** Board approval to convert RP7669 to a lease 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 \$2,037, or 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.

**RP7749 (Jurassic Kahili Ranch LLC).** **RP7749 continues to present conservation district compliance questions, which have been raised since 2017, if not earlier.** Accordingly, renewal

of this RP should be made contingent upon verification of the permittee's compliance with conservation district regulations by a date certain.

**RP7790 (Lincoln Y.T. Ching).** 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, the current rent for this 30-acre RP is 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 (Lorrin J. Aiwohi).** 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 (Vernon and Charlette Souza).** 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 (Michael Fernandes).** Neither a timeline nor milestones are offered for the contemplated conversion of RP7881 to a long-term lease. The current rent **for this 25-acre RP is 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 (Michael Fernandes).** 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.

**RP7920 (Lance Laney).** This RP replaced RP7739, to exclude a particular parcel from the RP area. While the “character of use” column for this RP indicates that it does include conservation district lands, there are no notes regarding whether or not the permittee’s compliance with conservation district regulations has been verified. **Notably, the need to verify the permittee’s compliance with conservation district regulations under the prior RP7739 was raised since at least 2017, if not earlier.** Accordingly, any renewal of RP7920 should be made contingent verification of compliance with conservation district regulations by a date certain.

**3. RP recommendations should include additional explicit considerations relevant to the Board’s responsibilities and obligations under the public trust**

Finally, OHA reiterates its request that RP renewal recommendations include explicit, substantive considerations relevant to the Board’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.”<sup>1</sup> The Board also holds a constitutional duty to protect cultural resources, as well as the practices which rely upon them.<sup>2</sup> Accordingly, OHA urges the inclusion of additional express considerations in all RP renewal recommendations, which would assist the Board 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.

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<sup>1</sup> HAW. CONST. ART. XI SEC. 1.

<sup>2</sup> HAW. CONST. ART. XII SEC. 7; *Ka Pa’akai o ka ‘Āina v. Land Use Comm’n*, 94 Hawai’i 31 (2000).