

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

June 25, 2021

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

STATEWIDE

Briefing the Board of Land and Natural Resources on Development of a Strategic Plan  
for the Long-Term Management of Public Lands and an Asset Management Plan

BACKGROUND

In June 2019, a Report to the Governor and the Legislature (Report No. 19-12) was prepared and published based on an audit of the Department of Land and Natural Resources' (DLNR or Department) Special Land and Development Fund (SLDF).

In the 2019 report, the Office of the Auditor identified several issues, including the following:

1. Lack of a strategic plan for the long-term management of its public lands. Without it, Land Division's management of leases and revocable permits defaults to maintaining status quo rather than exploring higher and better use.
2. Lack of an asset management plan to identify and fulfill its obligations and goals related to the administration of these lands. An asset management plan would address the reclassification and redevelopment of lands.
3. Lack of complete and coherent policies and procedures which prevents Land Division from adequately managing its leases and revocable permits. Further Land Division does not adequately perform two of its four core lease management functions:
  - a. It has significant difficulties collecting delinquent rent; and
  - b. It does not perform field inspections to ensure compliance with lease terms, including lessees' obligation to upkeep and maintain leased premises.

Revocable Permits also pose an issue of being extended for long periods at rents below fair market rates.

4. Lack of transparency and accountability hinders the administration of the Special Land and Development Fund.
5. Land Board is not fulfilling its duty to promote the development and utilization of Hawaii's natural resources according to principles that will assure their highest economic and social benefits to the State.

In an effort to address some of the issues raised by the 2019 audit, the Land Division is working on Strategic and Asset Management plans, which includes operational strategies to further Land Division's mission of ensuring the effective and efficient use of public lands in ways that will fulfill the DLNR's public trust obligations and promote the sustained social, environmental, and economic well-being of Hawaii's people, as well as its mission of ensuring these lands are used in accordance with the goals, policies, and plans of the State. This effort would be done while faced with the challenge of additional reductions in the Department's already limited resources.

This submittal addresses the first two recommendations regarding the need for strategic and asset management plans and seeks to update the Land Board on our progress. The Department has formally responded to the Auditor, and in many instances we strongly disagreed with the 2019 audit report's conclusions, most notably the allegations regarding a lack of transparency and the failure of the Board to fulfill its fiduciary duties.

## DISCUSSION

As the managing entity of the State's public lands, Land Division's primary objective is to ensure that its management of those lands complies with the statutory requirements in Chapter 171, Hawaii Revised Statutes (HRS), as well as other governing authorities (including authority derived from Hawaii Supreme Court decisions). Land Division has identified the following three priorities as the focus of its strategic and asset management plans:

1. Manage the State's public lands for the promotion of public health and safety, and resource management;
2. Generate revenue from the State's public lands with a focus on the development of long-term income sources; and
3. Provide services regarding acquisitions and dispositions of public land.

Land Division is already in process of implementing actions and projects that further these strategic and asset management-related priorities and hereby summarizes its progress towards developing those plans below.

**Priority 1.**      Manage the State's public lands for the prioritization of public health and safety, and resource management.

This priority is the most significant component of Land Division's operations, and will require substantial staff and monetary resources. The activities discussed below are examples of Land Division's efforts to fulfill its objectives of this priority, and will be incorporated into the strategic plan as part of Land Division's core functions. Addressing public health and safety concerns including compliance with the associated legal and regulatory obligations take precedence over discretionary actions such as maximizing revenues or converting revocable permits to long term leases. The asset management plan will reflect a more proactive stance to manage lands for public safety while looking to maximize beneficial use.

The most significant public health and safety issue currently facing the DLNR's Land Division is related to dams and reservoirs on public lands. Additional challenges include addressing hazardous conditions such as rockfalls and the unauthorized occupation of public lands.

Staff has worked, and continues to work, extensively with DLNR Engineering Division and the Department of Accounting and General Services (DAGS) to complete several dam safety projects to address outstanding regulatory issues. The Wailua reservoir on Kauai, for example, was successfully rehabilitated and the Upper Kapahi reservoir was removed and replaced with a smaller reservoir. Both of these facilities are part of the east Kauai irrigation system that was previously under the management of the East Kauai Irrigation Cooperative via revocable permit. The cooperative has since discontinued the revocable permit and the system has reverted back to Land Division's management. Land Division uses its operating funds to maintain the system to a limited extent to address public and health and safety and to keep the system operationally viable. Ultimately the goal would be either to transfer the system to the State Department of Agriculture (DOA) or other appropriate entity that could operate the system to provide water for agricultural uses. If that cannot be achieved, Land Division will seek to decommission the system, including removal of both Wailua and Upper Kapahi reservoirs. Additionally, Land Division is working with Engineering to execute a contract with an engineering consultant to assess and advise on other reservoir that pose potential hazards, regardless of whether they fall under the regulatory authority of the dam safety program.

For rockfall and other hazardous conditions, staff routinely responds to complaints and determines ownership or jurisdictional responsibility, risk and potential remediation or mitigation measure, if any. In addition, staff responds to an increasing number of complaints of unauthorized occupation of public lands. Actions taken include posting notices to vacate and if necessary, commencing enforcement actions and clearing the areas. Priority is given to instances where the occupations pose a threat to public and environmental health.

In the area of resource management, Land Division has taken action to improve the disposition process of submerged lands for shoreline encroachment easements and ground and surface water use rights. In these instances, the disposition processes have become more complex in order to provide greater oversight of the private use of these public resources. The actions taken will serve as a basis to develop formal procedures to be incorporated into the asset management plan.

Given the challenges posed by sea level rise, Land Division has worked more closely with the Office of Conservation and Coastal Lands to thoroughly review easements for shoreline



encroachments, with shorter 25-year terms for easements instead of the maximum 65 years. Furthermore, Land Division now seeks temporary revocable permits for shoreline encroachments as an interim measure while the easements go through the approval process. This provides the Department with rent for the use of submerged lands and provides the Board greater oversight via the annual review and approval of revocable permits. During the past legislative session, Land Division worked with the respective chairs of the House and Senate Water and Land committees to secure passage of the administration's shoreline encroachment easement resolutions.

Land Division made progress towards the implementation of the water leasing process that is consistent with the State's public trust obligations. Land Division has added a planner to its staff that works with applicants to ensure that potential water leases comply with the environmental review process pursuant to Chapter 343, HRS. Land Division has also worked with other DLNR divisions, including the Division of Forestry and Wildlife (DOFAW) and the Commission on Water Resource Management (CWRM), to ensure that water dispositions are consistent with prudent water resource management and that lessees contribute their fair share towards watershed management to preserve the availability of sufficient water resources in the future.

Land Division has also identified areas where the water leasing process could be improved, which led to the Administration submitting proposed legislation to amend HRS 171-58 accordingly in the 2020 and 2021 Legislative sessions<sup>1</sup>. The focus of the legislation was to provide a process for awarding water leases via direct negotiation, and guidance for appraisers for the valuation of water rights. However, as the measures did not pass in either legislative session. Despite the lack of legislative support, Land Division will work to follow the existing statute, resolving the issues to the best of its ability. Land Division will continue to work to propose statutory amendments that will assist the Department in achieving the goals of the strategic and asset management plans.

**Priority 2. Revenue generation with a focus on the development of long-term income sources**

Land Division has determined that the most effective use of existing resources would be to focus on promoting the use of public lands in a manner that produces long term sources of lease rent revenue to financially support the SLDF that funds the Department's resource management and protection programs. Priority projects are the Department's East Kapolei Transit Oriented Development (TOD) project on Oahu, and the proposed industrial and business park at Pulehunui, Maui. Significantly, in addition to the anticipated potential revenue from these projects, both have significant potential for providing additional public benefits such as economic development, job creation and affordable housing. Both projects are currently in the process of seeking land use entitlements. Both projects are located adjacent to other State projects in the respective regions, providing the opportunity for the agencies to collaborate in obtaining the significant amount of funding to develop the infrastructure needed for these projects.

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<sup>1</sup> The measures were House Bill 2357 and Senate Bill 2913 introduced in the 2020 legislative session and House Bill 1015 and Senate Bill 1169 introduced in the 2021 legislative session.

In addition to the two signature development projects, proposed legislation this year that would provide incentives to both new and existing lessees to invest in the development of public lands. Although not a Department bill, House Bill 499 proposes to provide potential lease extensions for long time lessees that construct substantial improvements on the leased premises. Senate Bill 1166, a Department bill, proposes to provide a rent waiver for a period of up to 20 years to offset a new lessees costs incurred for the demolition of derelict improvements or the provision of infrastructure. The Department believes that both of these bills would result in more successful and stable developments that would help serve its revenue generation priorities. Act 149, Session Laws of Hawaii 2018, already provides for lease extensions under similar conditions as House Bill 499, but the former is limited in geographic scope to the Hilo community economic district and it sunsets on June 30, 2028.

Another project the Department is working on in the Hilo area is a request for qualifications/request for proposals for two hotel properties on Banyan Drive. The goal is to issue long-term leases for one shuttered property and one property currently on a month-to-month revocable permit. The lessees of the properties will be required to undertake significant demolition/renovations of the existing structures on the properties. The goal is to identify unused or under used properties that have revenue generation potential and to market the properties to make them attractive to potential lessees or developers.

**Priority 3. Processing acquisitions and dispositions of public land.**

Land Division staff continues to provide services to other DLNR divisions and government agencies regarding acquisitions and dispositions of public lands. Although it does not promote Land Division's priorities, it is a core function that assists the rest of the Department in achieving the goals and mission of the department and of the State.

Staff is currently assisting on several priority land acquisition projects, including Na Wai Eha and Maunawili Valley for DOFAW, the Ulupo heiau buffer parcel for State Parks, and land for the State Library System in underserved communities like Waikoloa on the Big Island. Staff also continues work on the proposed new leases for the University of Hawaii and the United States military. Another significant project is the completion of the transfer of non-agricultural park lands to DOA, pursuant to Act 90, Session Laws of Hawaii 2003. However, the Department is committed to ensuring that any transfer of pasture lands does not come at the expense of the protection and stewardship of forest resources on those lands.

Land Division also continues to assist the public in processing requests for the disposition of public lands, such as leases, easements, revocable permits, and rights of entry. As part of this ongoing effort, Land Division will reevaluate the findings of the revocable permit task force, particularly the viability of converting revocable permits to longer term dispositions, such as a lease. Land Division has already implemented procedures to appraise revocable permit rents and provide for rent increases in the annual renewals. However, given limited staff resources and other objectives previously discussed, it is questionable as to whether and to what extent the conversion of revocable permits to longer term dispositions should be a priority for Land Division.



Land Division believes that further evaluation is needed to prioritize those permits that support the Department through the Special Land and Development Fund and evaluate to what extent a long-term disposition as compared to a short-term permit would provide a financial gain or return<sup>2</sup> to the Department substantial enough to offset the administrative costs of issuing a lease and outweigh the other competing priorities of the Division. Conducting a public auction for a lease often requires a significant investment of staff time, as well as expenditures for items such as a land survey, appraisal, chap. 343 compliance, and publication costs. Therefore, Land Division believes that revocable permits, in lieu of a long-term disposition, are an appropriate and beneficial form of disposition, and should be incorporated accordingly into the asset management plan.

### Future Actions

Land Division intends to contract with a consultant to evaluate portions of its land inventory to identify whether there are any additional lands that could provide a long-term revenue stream if leased or developed, and to evaluate whether such action is feasible.

The consultant would also re-evaluate certain revocable permits to determine whether conversion to longer term dispositions would be justified, or whether to instead maintain the status quo. Once the consultant completes the assignment, Land Division staff will further develop a prospective strategic and asset management plan, based on the consultant's findings and recommendations along with the priorities identified in this submittal, and return to the Board for approval.

### CONCLUSION

Land Division believes that the priorities identified in this submittal are integral in order to fulfill its mission with its current limited staff and financial resources, a situation that is likely to extend at least into the near future. Public land management entails significant legal requirements, both in statute and case law, and Land Division must focus its resources to comply with those requirements to the greatest extent possible. One of those requirements is that the State receive fair compensation for the use of public lands. However, the Department strongly disagrees with the Auditor that it is obligated to use public lands in a manner which maximizes potential revenue. Furthermore, the Department considers the 2019 Auditor's

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<sup>2</sup> Issuing a long-term lease does not automatically result in greater financial return than a month-to-month permit. A month-to-month permit does allow the landlord greater flexibility in changing or modifying the terms or use of the land based upon economic or other changing conditions. Further, the permits that financially support the Department through the Special Land and Development fund (SLDF) represent about 6% of the SLDF's total annual revenues, and half of that amount is generated from one permit alone—the Hilton Pier, which has been determined to remain in its current disposition. Therefore, the Land Division continues to reevaluate the appropriate amount of staff time and financial resources to dedicate to the significant work involved with converting month-to-month permits to long-term leases, particularly considering the fact that the month-to-month permits contribute only 3% of the total annual revenues for the SLDF and the other competing priorities of the Division.

assertion that certain lands are not being utilized to their highest and best use to be at best overly speculative because it does not take into consideration market conditions<sup>3</sup>.

Therefore, in order to ensure that any plan is based on thorough research and analysis done by qualified experts, the Department will contract with a consultant to address this issue. However, Land Division strongly believes that revenue generation needs to be balanced with other priorities and legal and regulatory obligations in terms of allocating division resources. Additionally, the goal of revenue generation should be to ensure long term income sources to the Department. That would include the Department working with existing tenants, many of which are locally owned small businesses, to the benefit of both parties.

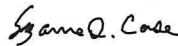
Respectfully Submitted,



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APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

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<sup>3</sup> The Auditor did not appear to conduct any formal appraisals or other economic analysis of the specific properties referenced in the report, but instead relied upon hypothetical assumptions that were superficial and anecdotal. In contrast, the determination of lease rents conducted by the Department were in compliance with the statutory requirements of Chapter 171, HRS, including independent appraisals in compliance with the appropriate professional standards, and mediation and arbitration as applicable.