

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

September 10, 2021

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

Ref: 20OD-078

OAHU

Approve and Delegate to Chairperson Authority to Execute Settlement Agreement with The Trash Man, LLC & John T. Guinan, Jr. Relating to Use of State Lands at Mapunapuna, Honolulu, Oahu, Under Board Action November 13, 2020, Item #D-1; 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

APPLICANT: The Trash Man, LLC (“TTM”) and John T. Guinan, Jr. (“Mr. Guinan”). Together with the Department of Land and Natural Resources, State of Hawaii (“DLNR”), TTM and Mr. Guinan are collectively referred to as the “Parties.”

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

LOCATION: The subject parcel, identified as Tax Map Key: (1) 1-1-064:006¹ 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.

AREA: 9,005 square feet, more or less.²

ZONING: State Land Use District: Urban
City and County of Honolulu LUO: I-2

CURRENT USE STATUS: Undeveloped land.

¹ See Exhibit A to the Staff Submittal for Item #D-1 (“Staff Submittal”) on the Agenda for the November 13, 2020 Meeting of the Board of Land and Natural Resources (“Board”), available at: <https://dlnr.hawaii.gov/wp-content/uploads/2020/11/D-1.pdf>.

² *Id.*

BACKGROUND:

At the meeting on September 25, 2020 (under agenda item D-5), the submittal was deferred to the next available meeting (on October 9, 2020) at the verbal request of Mr. Guinan and TTM.

At the meeting on October 29, 2020 (under agenda item D-4), Counsel for Mr. Guinan and TTM requested a contested case, and therefore no further action was taken.

On November 13, 2020 (under agenda item D-1), the matter was resubmitted for the Board's consideration due to the withdrawal of the request for a contested hearing by Respondent's Counsel. *See* Staff Submittal, *supra* n.1

The Board approved, *as amended*, the Staff Submittal by assessing a total fine, reimbursement costs and administrative costs against The Trash Man LLC and John T. Guinan, Jr., in the amount of **\$62,536.54**, broken down as follows:

1. Pursuant to HAR 13-221-30 and 13-221-3, a total fine of **\$57,500.00**
12-17-19 to 02-10-20 (56 days) \$500 per day equaling \$28,000.
1/3rd 02-11-20 to 08-05-20 (177 days) \$500 per day equaling \$29,500.
2. Reimbursement costs associated with the removal and disposal of the trash and damaged bin in the amount of **\$3,278.00**, HRS § 171-6(15).
3. Administrative costs in the amount of **\$1,758.54** (District Land Agent and maintenance crew), HRS § 171-6(15).³

There was no request for a contested case as to the imposition of the fines and costs assessed on November 13, 2020.

Despite demands, Mr. Guinan and TTM failed to pay the above-referenced fines and costs. On February 19, 2021 DLNR filed *State of Hawai'i v. The Trash Man, LLC & John T. Guinan, Jr.*, 1CCV-21-0000197 (BIA) (the "Lawsuit") in the Circuit Court of the First Circuit, State of Hawaii, requesting judgment against the aforementioned Defendants, jointly and severally, in the amount of \$62,536.54 plus the 10% legal rate of interest.

The Parties have engaged in settlement discussions to attempt to resolve the matter without the need for time consuming and expensive litigation. Based on the following considerations, DLNR Land Division staff recommends settlement of the case with TTM and Mr. Guinan under the proposed terms and conditions that follow.

³ *See* Audio Recording of the Meeting of the Board of Land and Natural Resources at 02:48:01 (Nov. 13, 2020), *available at* <https://files.hawaii.gov/dlnr/meeting/audio/Audio-LNR-201113.m4a>.

LEGAL AUTHORITY FOR SETTLEMENT:

Section 171-6(15), HRS, as amended, states that the Board may:

Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

Section 13-221-30 (Sanitation and litter), HAR, states, in relevant part:

- (g) 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.

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.

SETTLEMENT CONSIDERATIONS:

A. Original Fines and Costs

On November 13, 2020, the Board of Land and Natural Resources (“Board”) imposed a total fine against The Trash Man LLC and John T. Guinan, Jr., in the amount of **\$62,536.54**, broken down as follows:

4. Pursuant to HAR 13-221-30 and 13-221-3, a total fine of **\$57,500.00**
12-17-19 to 02-10-20 (56 days) \$500 per day equaling \$28,000.
1/3rd 02-11-20 to 08-05-20 (177 days) \$500 per day equaling \$29,500.
5. Reimbursement costs associated with the removal and disposal of the trash and damaged bin in the amount of **\$3,278.00**, HRS § 171-6(15).
6. Administrative costs in the amount of **\$1,758.54** (District Land Agent and maintenance crew), HRS § 171-6(15).⁴

As noted, there was no request for a contested case as to the imposition of the fines and costs assessed on November 13, 2020. Absent this and any other appeal or challenge, the Board’s action approving the above fines and costs is final.

The DLNR initiated the Lawsuit on February 19, 2021, requesting \$62,536.54 in damages, plus the 10% legal rate of interest.

B. Considerations Favoring Settlement

The Parties, on their own initiative, engaged in settlement discussions which culminated in the proposed settlement submitted for the Board’s approval. The Parties believe the settlement agreed to by the Parties provides a certain result in an expeditious and cost-effective manner that is fair, reasonable, and fiscally prudent, under the totality of circumstances.

⁴ See n.3, *supra*.

PROPOSED SETTLEMENT OF CLAIMS:

Based on the foregoing considerations, the Parties request that the Board delegate authority to the Chairperson to approve a Proposed Stipulated Judgment and Settlement Agreement with terms substantially similar to the following:

1. *Stipulated Judgment Against TTM Pursuant to Settlement Agreement*
The parties agree that Department of Land and Natural Resources (“DLNR”) will file a stipulated judgment against The Trash Man LLC (“TTM”) in the principal amount of \$62,536.54 (as of November 13, 2020), plus 10% interest, to be paid according to the schedule outlined in paragraph 3, below.
 - a. In full and complete satisfaction of the stipulated judgment; and
 - b. As consideration for the settlement agreed to by the Parties.
2. *Dismissal with Prejudice of John T. Guinan, Jr. from the Lawsuit*
On filing of the stipulated judgment against TTM, the State of Hawai‘i agrees to move for dismissal with prejudice of John T. Guinan, Jr. from the lawsuit, 1CCV-21-0000197.
3. *Amount of Payment(s)*
TTM agrees—pursuant to stipulated judgment described in paragraphs 1–2, above—to pay to the DLNR, the stipulated judgment in a principal amount of \$62,536.54 (Nov. 13, 2020), *with 10% legal interest rate* applied for the duration of the 36-month payment plan. The Parties have negotiated a 36-month payment plan with graduated, monthly payments, the details for which will be substantially similar to the following:

DUE DATE	AMOUNT DUE	BALANCE	INTEREST
November 13, 2020		62,536.54	
September 15, 2021	1,500.00	66,440.52	572.17
October 15, 2021	1,500.00	65,486.61	546.09
November 15, 2021	1,500.00	64,542.80	556.19
December 15, 2021	1,500.00	63,573.28	530.49
January 15, 2022	1,750.00	62,363.22	539.94
February 15, 2022	1,750.00	61,142.88	529.66
March 15, 2022	1,750.00	59,861.92	469.04
April 15, 2022	2,000.00	58,370.34	508.42
May 15, 2022	2,000.00	56,850.10	479.76
June 15, 2022	2,250.00	55,082.93	482.84
July 15, 2022	2,250.00	53,285.67	452.74
August 15, 2022	2,250.00	51,488.23	452.56
September 15, 2022	2,250.00	49,675.53	437.30
October 15, 2022	2,250.00	47,833.82	408.29

DUE DATE	AMOUNT DUE	BALANCE	INTEREST
November 15, 2022	2,250.00	45,990.08	406.26
December 15, 2022	2,250.00	44,118.08	378.00
January 15, 2023	2,250.00	42,242.78	374.70
February 15, 2023	2,250.00	40,351.56	358.77
March 15, 2023	2,250.00	38,411.10	309.55
April 15, 2023	2,250.00	36,487.34	326.23
May 15, 2023	2,250.00	34,537.23	299.90
June 15, 2023	2,500.00	32,330.56	293.33
July 15, 2023	2,500.00	30,096.29	265.73
August 15, 2023	2,500.00	27,851.90	255.61
September 15, 2023	2,500.00	25,588.45	236.55
October 15, 2023	2,500.00	23,298.77	210.32
November 15, 2023	2,500.00	20,996.65	197.88
December 15, 2023	2,500.00	18,669.23	172.58
January 15, 2024	2,500.00	16,327.79	158.56
February 15, 2024	2,500.00	13,966.46	138.67
March 15, 2024	2,500.00	11,577.43	110.97
April 15, 2024	2,500.00	9,175.76	98.33
May 15, 2024	2,500.00	6,751.17	75.42
June 15, 2024	2,500.00	4,404.52	153.35
July 15, 2024	2,338.14	2,179.21	112.83
August 15, 2024	2,252.82	0.00	73.61

The DLNR will provide the Trash Man, LLC, with a satisfaction of judgment, the form and content of which is mutually agreed to by the Parties once funds have been paid.

4. *Final Authority of the Board of Land and Natural Resources*

All parties fully understand and agree that the settlement agreement is subject to approval by the Board of Land and Natural Resources. The Board is not required to follow the staff's recommendation and, in fact, may alter them in any way permitted by law prior to execution of any settlement agreement.

The Settlement Agreement will also release any/all claims by the State against TTM and Mr. Guinan for any and all claims, fines or assessments of any kind or nature arising out of the sanitation violation occurring on or about December 17, 2019 through August 5, 2020, regarding unencumbered State Lands at Mapunapuna, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006.

COMMENCEMENT DATE:

Upon Board approval and delegation, the Parties expect to execute the Settlement Agreement immediately, with TTM's first monthly payment coming due on September 15, 2021.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

Not applicable.

REMARKS:

The Settlement points summarized above have already been agreed to by legal counsel for TTM and Mr. Guinan and has been reviewed and agreed as to form by the Department of the Attorney General.

Land Division is of the opinion that the Settlement Agreement will satisfactorily accomplish its main objectives of fully remediating the property and providing significant compensation to the State in light of what is otherwise a situation with obvious historical and legal complexities.

RECOMMENDATION: That the Board:

1. Approve and delegate authority to the Chairperson to execute a Proposed Stipulated Judgment and Settlement Agreement that incorporates the settlement terms discussed above, subject to such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State, and final review and approval by the Department of the Attorney General;
2. Delegate authority to the Chairperson to administer the Proposed Stipulated Judgment and Settlement Agreement, including the authority to issue the satisfaction of judgment in accordance with the Settlement Agreement's terms; and
3. Authorize the Chairperson to take all action and execute any documents necessary for the dismissal of the Lawsuit, pursuant to the Settlement Agreement.

Respectfully Submitted,

Russell Tsuji

Russell Y. Tsuji
Land Division Administrator

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson