

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

January 12, 2024

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

PSF: 23KD-119

Kauai

Amend Prior Board Action of December 15, 2023, Item D-6 of December 7-8, 2023 Agenda, Approved, in Part, as Amended:

Issuance of Term, Non-Exclusive Easements to RP21 Coco Palms LLC, Wailua, Kawaihau, Kauai, Tax Map Keys: (4) 4-1-003:044 and (4) 4-1-005:por. 017;

Issuance of Revocable Permit to RP21 Coco Palms LLC and Sale of Lease at Public Auction for Parking and Landscaping Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017; and

Immediate Right-of-Entry for Management Purposes to RP21 Coco Palms LLC, Wailua, Kawaihau, Kauai, Tax Map Keys: (4) 4-1-003:044, (4) 4-1-003:017 and (4) 4-1-005:por. 017.

The purpose of the amendment is to allow Land Division 56 additional days, from January 26, 2024 to March 22, 2024, to return to the Board with a revised recommendation for the disposition of the subject lands.

BACKGROUND:

At its meeting of December 15, 2023, under agenda Item D-6, the Board of Land and Natural Resources (Board) approved, in part, as amended, the staff recommendations on the subject action. The Board approved the grant of one-year, non-exclusive easements to RP21 Coco Palms LLC (RP21) and I Ola Wailuanui (IOW) for access purposes over a 440 square foot portion of Parcel A, designated as Tax Map Key: (4) 4-1-003:044 portion. The Board directed staff to return to the Board in January 2024 with a submittal recommending dispositions to RP21 and/or IOW over the two remaining parcels that were the subject of the December 15, 2023, submittal: Parcel B, designated as TMK: (4) 4-1-003:017, and Parcel C, designated as TMK: (4) 4-1-005:017. The Board added that if staff were unable to return to the Board with recommendations on these items in January 2024, staff should return to the Board at the January 12, 2024 meeting with a request for additional time.

REMARKS:

Staff does not believe there is enough time to present a substantively different recommendation to the Board in January 2024 for the disposition of the parcels for several reasons.

First, the yearend holidays make it difficult to fast-track submittals through the review chain in Land Division to the Chairperson. Some of the Land Division administration staff in the review chain are in a “use or lose” position with respect to accrued vacation, meaning that if the vacation is not used by the end of the year, staff forfeits excess vacation hours over the maximum an employee is allowed to carry. As a result, these staff will be on vacation during the holiday season.

Second, on December 18, 2023, the Monday following the Board’s action of Friday, December 15, 2023, Land Division receive a Uniform Information Practices Act (UIPA) request from one of the attorneys representing IOW for the following items:

1. **Communications Between DLNR Employees and RP21 Coco Palms LLC:** All communications between Department of Land and Natural Resources (DLNR) employees, including land agents and State land division management, with RP21 Coco Palms LLC.
 - Please include all communications with representatives, agents, or employees of RP21 Coco Palms LLC, including their attorneys and/or other consultants.
2. **Easement and Revocable Permit Applications:** Any and all easement and revocable permit applications submitted for the three parcels discussed in the Board of Land and Natural Resources (BLNR) December 7, 2023, meeting, agenda item D-6, including:
 - Parcel A: TMK: (4) 4-1-003: portion of 044
 - Parcel B: TMK: (4) 4-1-003:017
 - Parcel C: TMK: (4) 4-1-005:017
3. **Internal Communications and Documents:** All internal communications, coordination, and documents within the DLNR, including any analysis relating to the Department's recommendations for agenda Item D-6 for the December 7, 2023 BLNR meeting.

A copy of the UIPA request is attached as Exhibit A.

By law, Land Division has 10 business days to respond to UIPA requests, unless it notifies the requestor that more time (up to a total response time of 20 business days) is required. The staff who are assigned to researching and preparing the submittals for the disposition of the subject lands are the same staff who need to search the communications covered by the December 18, 2023, UIPA request, including emails, and segregate any

communications covered by the attorney-client privilege. Consultation with the assigned deputy attorney general may also be required. Staff will need to take time away from submittal preparation to ensure a timely response to the UIPA request.

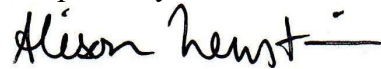
Third, the pending litigation by IOW against DLNR makes it challenging for Land Division to communicate directly with IOW about future use of the same lands that are the subject of the litigation. Consultation with the assigned deputy attorney general may also be required in the course of any such communications, which adds time to the review of IOW's application to use the land.

For these reasons, staff hereby requests an additional 56 days from January 26, 2024 to March 22, 2024, to return to the Board with a revised recommendation for disposition of the lands.

RECOMMENDATION: That the Board:

1. Amend its prior action of December 15, 2023, Item D-6, approved, in part, as amended, by granting Land Division an additional 56 days from January 26, 2024 to March 22, 2024 for staff to return to the Board with revised recommendations for disposition of the subject lands.
2. Affirm that, except as amended hereby, all terms and conditions listed in its December 15, 2023 action shall remain the same.

Respectfully Submitted,



Alison Neustein
District Land Agent

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APPROVED FOR SUBMITTAL:

RT



Dawn N.S. Chang, Chairperson

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: December 18, 2023

TO: Department of Land and Natural Resources, Land Division
Russell Tsuji (russell.y.tsuji@hawaii.gov), Alison Neustein,
(alison.neustein@hawaii.gov), Danica Swenson (danica.l.swenson@hawaii.gov),
dlnr.uipa@hawaii.gov, dlnr.land@hawaii.gov

FROM: Ryan D. Hurley, ryan@rdhlawhi.com, (808) 738-7610

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD(S):

- 1. Communications Between DLNR Employees and RP21 Coco Palms LLC:** All communications between Department of Land and Natural Resources (DLNR) employees, including land agents and State land division management, with RP21 Coco Palms LLC.
 - o Please include all communications with representatives, agents, or employees of RP21 Coco Palms LLC, including their attorneys and/or other consultants.
- 2. Easement and Revocable Permit Applications:** Any and all easement and revocable permit applications submitted for the three parcels discussed in the Board of Land and Natural Resources (BLNR) December 7, 2023, meeting, agenda item D-6, including:
 - o Parcel A: TMK: (4) 4-1-003: portion of 044
 - o Parcel B: TMK: (4) 4-1-003:017
 - o Parcel C: TMK: (4) 4-1-005:017
- 3. Internal Communications and Documents:** All internal communications, coordination, and documents within the DLNR, including any analysis relating to the Department's recommendations for agenda Item D-6 for the December 7, 2023 BLNR meeting.

I WOULD LIKE: (Please check one or more of the options below, as applicable)

- To inspect the government record
- A copy of the government record: (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

- Pick up at agency (date and time): _____
- Mail (address): _____
- E-mail (address): ryan@rdhlawhi.com
- Fax (toll free and only if available; provide fax number): _____
- Other, if available (please specify): _____

- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

Electronic Audio Other (please specify): _____

- Check this box if you are attaching a request for waiver of fees in the public interest (See waiver information on next page).

EXHIBIT A