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BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA  
LAND DIVISION

P.O. BOX 621  
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January 22, 2025

TESTIMONY OF LAND DIVISION

Via Email: [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Board of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, HI 96813

Dear Mr. Board Members:

Subject: Item D-7 on the January 24, 2025 Land Board Agenda:

A. Surrender of Revocable Permit No. S-7955, Banyan Drive Management LLC (BDM), Permittee; Waiver of Phase I Environmental Site Assessment; Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-005:020.

B. Discussion of whether the Board should consider the issuance of a development agreement and long-term lease for improved lands in Waiakea, South, Hilo, Hawaii, identified as Tax Map Key: (3) 2-1-005:020 to BDM, at a future meeting.

Land Division submits this testimony to provide additional background on the subject submittal and explain the reasons for bringing it to the Board with the unusual title it has.

In accordance with the Board's action of April 28, 2023, under agenda Item D-3, staff prepared a draft submittal recommending the approval of a development agreement and long-term lease to Banyan Drive Management LLC (BDM), who was the selected developer under the Board-approved Request for Qualifications/Request for Proposals (RFQ/RFP) published for the renovation of the former Country Club Condominium Hotel (Country Club) property on Banyan Drive. Staff set the submittal up for the Chairperson's signature on November 27, 2024, but the Chairperson declined to sign it, explaining that a bill would likely be introduced in the 2025 legislative session directing the transfer of the Banyan Drive area from the Department of Land

and Natural Resources (DLNR) to the Hawaii Community Development Authority (HCDA).<sup>1</sup> The Chairperson wanted to allow time for HCDA and the Department of Business, Economic Development and Tourism (DBEDT) to review the submittal before bringing it to the Board.

Land Division advised the Chairperson in a November 29, 2024 email that BDM was losing money operating the Country Club under RP7955 and that if the development agreement and long-term lease were not approved soon, BDM would likely give up the permit leaving another abandoned building on Banyan Drive with potential for the kinds of problems experienced with the former Uncle Billy's Hilo Hotel in the same area.

On December 23, 2024, Land Division apprised BDM that the recommendation for the issuance of a development agreement and long-term lease would not be placed on the January 10, 2025 agenda. After considering its options, by email dated January 9, 2025 sent at 4:41PM, BDM gave Land Division 25 days' notice of its intent to surrender RP7955. BDM stated the last day of its tenancy would be February 2, 2025. Land Division advised the Chairperson of BDM's notice on January 10, 2025.

Staff then prepared a draft submittal regarding BDM's surrender of RP7955 and sent it to the Chairperson on January 14, 2025 requesting approval for its late placement on the January 24 agenda. The Chairperson responded that she wanted to review answers provided by Land Division to her questions on RP7955 and the status of two Notices of Violation (NOV) the County of Hawaii, Department of Public Works had issued for the property as well as meeting with the Division of Conservation and Resources Enforcement (DOCARE) regarding the challenges of securing the soon-to-be abandoned property.

Two days later, by email dated January 16, 2025 sent at 6:07PM, the Chairperson requested Land Division to present the following issues to the Board at the January 24, 2025 meeting:

1. Whether the Board should issue Mr. Lee [principal of BDM] a long term lease,
2. Whether the Board should waive the RP conditions upon Mr. Lee's surrender,
3. What is the Board's comments on whether the Banyan Drive Properties, including the Banyan Drive County Club Apartment should be transferred to HCDA to manage and own,
4. Provide the Board a status update If Mr. Lee surrenders the property, knowing that there is public health and safety considerations similar to Uncle Billy's, and what actions LD and DOCARE will need to take.

Because the meeting agenda had to be finalized and submitted to the Lieutenant Governor's Office no later than January 17, staff had to hastily assemble a submittal the night of January 16

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<sup>1</sup> See companion measures House Bill 818 and Senate Bill 1078 introduced on January 21, 2025. Based on Land Division's preliminary review, the bills provide HCDA the discretion to accept or reject any of the land and/or leases on Waiakea Peninsula. Also, there is no means to require HCDA to assume the debt service for the Uncle Billy's demolition.

to make the January 24 meeting. As a basis for the submittal, staff used the draft of the surrender submittal sent to the Chairperson on January 14. Staff revised that submittal to include additional information the Chairperson requested in her email of January 16. As an exhibit, staff included the draft submittal for the approval of the development agreement and long-term lease to BDM that staff had initially requested Chairperson approve to be placed on the December 13, 2024 agenda. See Item D-7, Exhibit I. Exhibit I is included only for informational and discussion purposes – at the present time it is unknown whether BDM would proceed with the development agreement and long-term lease even if given the opportunity.

The recommendation for the selection of BDM under the RFQ/RFP came from a committee appointed by former Chairperson Suzanne Case. On August 8, 2022, Chair Case appointed the following persons to the committee to review qualifications and proposals and recommend the selection of an applicant to the Board:

Mike McCartney, Former Director, DBEDT  
Robert K. Masuda, Former First Deputy, DLNR  
Nate Gaddis, Former Chair of the Banyan Drive Hawaii Redevelopment Agency (BDHRA)  
K.T. Cannon-Eger, Former Member, BDHRA  
Russell Y. Tsuji, Administrator, DLNR Land Division  
Kevin E. Moore, Assistant Administrator, DLNR Land Division  
Ian C. Hirokawa, Special Projects Coordinator, DLNR, Land Division  
Gordon C. Heit, Former Hawaii District Land Agent, DLNR, Land Division

Criticism has been leveled at Land Division for not requiring BDM to address the NOV's issued against the property by DPW in 2017 and 2023 and for not disclosing the NOV's to the Board. However, Land Division disclosed the 2017 NOV to the Board at its meeting of December 13, 2019, under agenda Item D-2, when the Board approved conducting the first RFQ/RFP for Country Club (First RFQ/RFP). Land Division sent a draft of the submittal to DPW and the County of Hawaii Planning Department and received no comments. The First RFQ/RFP ended without a selected applicant because the highest ranked applicant was ultimately determined to lack the financial capacity to undertake the renovation of the property. At its meeting of June 9, 2022, Item D-8, the Board approved the cancellation of the First RFQ/RFP and at its meeting of July 22, 2022, Item D-5, the Board authorized conducting a new RFQ/RFP (Second RFQ/RFP) on the same grounds as the First RFQ/RFP. The 2017 NOV was again specifically referenced in the July 22, 2022 Board action under agenda Item D-5.

With respect to the June 30, 2023 NOV, that NOV was issued after the Board approved the selection of BDM as the developer for the renovation project at its meeting of April 28, 2023 under agenda Item D-3. Accordingly, the Land Division could not have apprised the Board of an NOV that had not yet been issued. In any event, both the First RFQ/RFP and the Second RFQ/RFP were intended to address all NOV's and any other code compliance issues through the renovation of the building as explained in the staff submittals. It would not have been reasonable to require BDM to invest the funds needed to cure the NOV's under the month-to-month tenancy. As it is, BDM expended \$3.2 million on operations and improvements to the property under

RP7955 while collecting \$500,000 in revenue. Curing the NOV's would only have increased BDM's costs without enhancing its chances of securing a development agreement and long-term lease for the property.

Amendment Requested to Item D-7 on the January 24, 2025 Agenda

Based on discussions between Land Division and BDM staff regarding winding up of operations at the property, staff understands that BDM gave at least some of the authorized tenants at the property 45 days' notice to vacate the premises pursuant to the residential landlord-tenant code. However, BDM only provided 25 days' notice of surrender to Land Division under RP7955. Land Division cannot manage this property with tenants in it even in the short term. In Item D-7 on the agenda, staff recommended that the Board waive the Phase I Environmental Site Assessment (ESA) required under the permit. Land Division now requests that the Phase I ESA waiver be conditioned on BDM retaining management control of the property through the end of the 45-day notice period it provided to its authorized tenants or until the last authorized tenant has vacated, whichever shall first occur. At that time, Land Division will take possession to secure the property in coordination with DOCARE.

C: Henny Saraswati