Summary of Testimony for Item D9

- The Legislature enacted Act 149 in 2018 to serve what it found to be the State's fiduciary duty to manage public lands in the best interests of the public by enhancing state revenues and promoting the public's social, environmental, and economic well-being through extending leases on public lands within the Hilo community economic district ("HCED") with lessees who commit to making substantial improvements.
- The Legislature found that the State is the majority landowner in East Hawaii and has an "enormous" influence on the community's vision, economic development, and overall success, and that infrastructure and facilities on these public lands have been deteriorating.
- The Legislature found that allowing for lease extensions could revive public lands, resulting in increased tax revenue, community revitalization, efficient and effective improvements, and economic opportunities.
- Applicants for extensions of leases under Act 149 have encountered inordinate delays in their applications being processed.
- DLNR has now informed applicants that had put a "hold" on processing applications.
- The Land Division submitted a report for Item D9 which provides DLNR's reasoning for not processing applications: the Land Division alleges that Act 149 may lead to the disparate treatment of lessees and that not amending extended leases with the Board's current forms is not in the State's best interest.
- As an executive department DLNR implements and follows the laws enacted by the Legislature in disposing of public lands.
- The Legislature determines policies and what constitutes a public purpose.
- DLNR must follow Act 149, which makes no distinction between leases issued by public auction or by direct negotiation and does not contain express provisions allowing for any extended leases to be updated with the Board's current forms—there is no potential for disparate treatment between lessees with leases issued by public auction or direct negotiation.
    - In contrast to Act 149, Act 219 (2011) which allowed for certain leases on public lands to be extended, specifically required that those extended leases be updated with the Board's current forms.
    - The report cites *State v. Kahua Ranch, Ltd.*, 384 P.2d 581, 47 Haw. 28 (1963) for the proposition that it cannot amend leases issued by public auction; however, the rationale of that case would also apply to leases issued by direct negotiation.
    - The public trust doctrine does not prevent DLNR from implementing Act 149.
- DLNR cannot contest the legislatively determined best interests of the public and refusing to implement Act 149 frustrates and damages the public interest and purposes served by Act 149 which sought to revitalize deteriorating infrastructure and facilities in the HCED.
- DLNR may be violating its fiduciary duties by not managing public lands in accordance with the Legislature's express intent.

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January 13, 2022

Re: Testimony for Item D9 on Agenda for the January 14, 2022 Meeting of the Board of Land and Natural Resources

Thank you in advance for considering our testimony regarding Item D9 on the agenda for the January 10, 2022 meeting of the Board of Land and Natural Resources ("Board"). We are submitting this testimony on behalf of our client 69 Railroad, LLC, which applied for an extension of General Lease No. S-3624 ("GL No. S-3624") in early 2019. 69 Railroad, LLC and other applicants have encountered inordinate delays in the processing of applications for lease extensions under Act 149 SLH 2018 ("Act 149"). This testimony is not focused on these delays, but rather the Department of Land and Natural Resources' ("DLNR") interminable delay in implementing Act 149 for all lessees within the Hilo community economic district ("HCED").

The Legislature enacted Act 149 in 2018 with the express intent and purpose of serving the best interests of the public to fulfill the State's fiduciary duties by enhancing state revenues and promoting the public's social, environmental, and economic well-being through extending leases on public lands within the Hilo community economic district ("HCED") with lessees who commit to making substantial improvements. The Legislature found that the State has an "enormous influence on the vision, economic development, and overall success of the East Hawaii community", that state-owned lands within the area had been deteriorating, and that Act 149 had the potential "to revive public lands, resulting in more tax revenue and community revitalization", and provide for efficient and effective improvements and economic opportunities.

However, since 2018, DLNR has only extended a single lease with a lessee within the HCED. Applicants have encountered inordinate delays[1] in the processing of applications for

[1] 69 Railroad, LLC's request for a thirty-year extension of lease still has not been brought before the Board although it filed the application for extension in early 2019. 69 Railroad, LLC went through a prolonged appraisal process to determine rent for the extended term that culminated with mediation in October 2020, in which the parties agreed to a mediated rental value for the 30-year term of lease. In October 2021, 69 Railroad, LLC worked with DLNR on a draft submission to the Board, but DLNR subsequently informed 69 Railroad, LLC that DLNR was "putting a hold" on presenting applications for lease extensions under Act 149 to the Board. *See* Attachment 1. 69 Railroad, LLC has seen exponentially increasing building costs during the period that the processing of its application has been delayed.

extensions of leases, and only three lessees' applications have been brought before the Board for authorization. Other applications such as the application of 69 Railroad, LLC have languished waiting to be processed and brought before the Board as applicants face exponentially mounting building costs and are forced to decide whether to commit to perform substantial improvements without reassurances that their leases will be extended. These applicants have committed substantial time and money just to initiate the application process, and are suffering substantial damages due to mounting construction costs and potentially changed loan terms due to the delays. Further, other potential applicants have been deterred from initiating the process of performing substantial improvements in the HCED due to the delays and uncertainty in processing applications for lease extensions. In late October 2021, DLNR informed applicants that it put "a hold" on processing applications for lease extensions under Act 149 based on its opinion that there may be "disparate" results between lessees with leases issued by auction or by direct negotiation and stated that it would "re-evaluate the matter early next year". *See* Attachment 1.

The Land Division of DLNR subsequently submitted its Report to the Board dated January 14, 2022, which repeats the same rationale to justify not following the legislative mandate to implement Act 149. DLNR's refusal to implement Act 149 based on reasons directly contrary to the express language and legislative intent and purpose of the Act raises serious concerns about the separation of powers. The Report sophistically asserts the Land Division has encountered "issues" in processing applications that may lead to the disparate treatment of lessees, and that extending leases under Act 149 without amending the leases with the Board's current lease forms, practices, and policies (collectively "current forms") is not in the State's best interest. However, the "issues" purportedly encountered by the Land Division are created to justify its extended failure to follow and implement Act 149. The Report admits that Act 149 contains no express authorization to amend leases with the current forms, so there is no potential disparate treatment of lessees under Act 149- regardless of whether a lease is issued by auction or direct negotiation, the lease should not be amended to current forms when extended pursuant to Act 149. In Act 149 the Legislature expressly found that the State should fulfill its fiduciary duties to manage state lands in the <u>best</u> interest of the public by extending leases within the HCED in exchange for lessees' commitments to perform substantial improvements. DLNR is not free to dispute these legislative findings of public purpose and we respectfully submit that the Land Division be instructed to implement Act 149 forthwith. The interminable delays and DLNR's current express refusal to implement Act 149 are directly contrary to the Legislature's mandate and have frustrated the Act's purposes of positively contributing to the vision, economic development and opportunities, and the overall success of East Hawaii. These delays and the refusal to implement Act 149 have not allowed for substantial improvements on public lands to contribute to increased tax revenues and community revitalization.

A. Land Division Report

In its Report the Land Division states that in light of *State v. Kahua Ranch, Ltd.*, 384 P.2d 581, 47 Haw. 28 (1963) the Department of the Attorney General has construed Act 149 to not allow for amendments to leases issued through public auction; however, the Report asserts that

directly negotiated leases may be amended with current forms. The Report asserts this distinction may lead to "disparate results"; however, the Report admits that Act 149 did not expressly allow for the amendments to the terms and conditions of leases issued through public auction or direct negotiation. The Report notes that a different law, Act 219 passed in 2011, does allow for the terms and conditions of leases to be updated with the current forms. The Report concludes that Land Division staff does not believe extending leases on their original terms is in the best interest of the State, and that the Legislature should explore amendments to Act 149.

B. The Land Division Has Persisted in its Opposition Act 149 by Deliberately Failing to Implement the Law

1. DLNR Must Effectuate the Law

Under the doctrine of the separation of powers, the legislative branch is primarily responsible for broad policy-making and the executive branch is primarily responsible for the implementation and execution of the policies set by the legislative branch. *Akahane v. Fasi*, 58 Haw. 74, 565 P.2d 552, 558-559 (1977) (discussing the separation of powers for the City & County of Honolulu). Accordingly, Article III, Section 1 of the Hawaii State Constitution vests the policy-making or legislative power in the State Legislature, while Article V, Section 5 states that the governor is "responsible for the faithful execution of the laws." The Legislature determines what constitutes a public purpose through its legislative process and is given "wide discretion" in determining a public purpose that a court will not set aside unless it is manifestly wrong. *State ex rel. Amemiya v. Anderson*, 545 P.2d 1175, 1181, 56 Haw. 566 (Haw. 1976). In other words, it is the power of the Legislature to determine policies and make laws for the executive to carry them out. *State v. Jess*, 184 P.3d 133, 117 Hawai'i 381 (2008).

Executive departments are under the supervision of the governor with their respective powers and duties allocated by law. Hawaii State Constitution, Article V, Section 6. HRS § 171-3 provides that the Department of Land and Natural Resources "shall manage, administer, and exercise control over public lands … and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law."

Courts will defer to legislative enactments that are clear and unambiguous and will not defer to an agency's reading of a statute which contravenes the legislature's manifest purpose. *In re Water Use Permit Applications*, 9 P.3d 409, 456-457, 94 Haw. 97 (Haw. 2000); *see also Dist. Council 50, of the Int'l Union of Painters & Allied Trades v. Lopez*, 129 Hawai'i 281, 298 P.3d 1045 (2013) ("[a]lthough judicial deference to agency expertise is generally accorded where the interpretation and application of broad or ambiguous statutory language by an administrative tribunal are subject to review, this deference is constrained by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose, and history"). "Neither official construction nor usage, no matter how long indulged in, can be successfully invoked to defeat the purpose and effect of a statute which is free from ambiguity,

nor will the courts be influenced by the construction placed upon a statute by the officials whose duty it is to execute it where such construction is manifestly incorrect." *State v. Dillingham Corp.*, 60 Haw. 393, 591 P.2d 1049 (Haw. 1979)

"[L]egislative enactments are presumptively valid and should be interpreted in such a manner as to give them effect." *Richardson v. City and County of Honolulu*, 76 Hawaii 46, 868 P.2d 1193, 1201-1202 (Haw. 1994). Courts "give effect to the plain and obvious meaning" of a statute's language. *Lopez*, 298 P.3d 1045.

In the present case Act 149 is clear and unambiguous and the Legislature made express findings contrary to the arguments in the Report concerning the potentially disparate treatment of lessees and best interest of the public. The Legislature has defined and articulated its policy and found how Act 149 serves the public interest. The executive branch, including DLNR and the Board, are to implement and execute the policies stated in Act 149 by extending leases within the HCED. DLNR is an executive agency which must follow the law and is not at liberty to disregard legislative mandates based upon its staff's opinions of the best interest of the public which contravene the express findings, intention, and purpose of a legislative enactment.

2. Enactment of Act 149

When the Legislature enacted Act 149 in 2018 it made the following express findings and stated the intention and purpose of the law:

> The legislature finds that the State has a fiduciary duty to manage state lands in the best interests of the public by enhancing state revenues and promoting social, environmental, and economic well-being of Hawaii's people. As the majority landowner in East Hawaii, the State has an enormous influence on the vision, economic development, and overall success of the East Hawaii community.
>
> The legislature further finds that, under existing laws, many public land lessees face uncertain futures following expiration of their leases. The legislature further finds that these lessees have little incentive to make major investments in infrastructural improvements or to ensure the long-term maintenance of facilities on the land. As a result, the infrastructure and facilities on public lands in East Hawaii have been deteriorating in many locations.
>
> The legislature also finds that the Banyan Drive area on the Waiakea Peninsula in East Hawaii, Wailoa State Park, Wailoa Estuary, and the commercial leases in the Kanoelehua Industrial Area are currently facing this difficult economic challenge. Due to the uncertainty regarding continued tenancy, despite East Hawaii being the center of tourism for the island of Hawaii, improvements have not been made and infrastructure has deteriorated, leaving the region underutilized and in disrepair. The legislature further finds that Hilo has the

> potential for increased growth that can improve workforce and affordable housing, parks and open space, public facilities, and commercial, industrial, and hotel facilities, and a pilot project in this area has the potential to revive public lands, resulting in more tax revenue and community revitalization, and be assessed to determine whether it can be replicated in other areas of the State.
>
> The purpose of this Act is to establish a ten-year pilot project to authorize the board of land and natural resources to extend leases of public land in an area to be known as the Hilo community economic district to facilitate efficient and effective improvement, and economic opportunity, in the area for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements.

Section 1 of Act 149 SLH 2018.

DLNR and the Attorney General's Office both submitted testimony opposing Act 149. The Attorney General Office's opposition was based on the fair market value of land not including the value of improvements, which it asserted to be a potential violation of the State's fiduciary duties to beneficiaries for the public trust. The Attorney General's office claimed that this fiduciary duty is violated if the State does not make the most productive use of public lands.

The extension of leases on and redevelopment of public lands in Hilo has been a frequent subject of state legislation, as from 2011 to 2021, the Legislature considered approximately twelve bills addressing these issues. The DLNR and Attorney General's office have opposed this legislation and frequently repeated the opinion that the State will violate its fiduciary duty if it does not include the value of improvements in determining the fair market value of land. This opinion ignores the equitable consideration that lessees in the HCED or their predecessors had constructed the improvements on the lots leased from the State. The opinion also ignores the practical consideration that the Board and DLNR would be overwhelmed if the public lands within the HCED were to be re-let through public auction. The uncertainty and delay of that process would further contribute to deterioration and disrepair of the public lands in the HCED and surrounding community and correspondingly lower the values of these public lands. Under those circumstances, DLNR neglecting and abandoning these public lands which are critical to the economic revitalization and opportunities for the community would certainly violate its fiduciary duties. In Act 149 the Legislature rejected DLNR's arguments as to the public purpose and trust, and found that it was in the best interests of the public to extend leases in the HCED based on the value of land and to give the lessees credit for their contributions of substantial improvements that will further increase the values of these State properties.

3. Act 149 Provides for Extending, and not Amending, Existing Leases

As stated in the Land Division's report, Act 149 provides for the extension of existing leases and does not expressly provide for amending the terms and conditions of these leases. The

Report distinguishes Act 149 from Act 219 (2011), which expressly provided that extended leases be updated with current forms. "Laws in *pari materia*, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another." *Richardson*, *supra*, 868 P.2d at 1202. Another aid for statutory interpretation is *expressio unius est exclusio alterius*, meaning that "the inclusion of a specific matter in a statute implies the exclusion of another only where in the natural association of ideas the contrast between a specific subject matter which is expressed and one which is not mentioned leads to an inference that the latter was not intended to be included within the statute." *International Savings and Loan Association, Ltd. v. Wiig*, 921 P.2d 117, 121, 82 Hawaii 197, 201 (Haw. 1996).

Clearly, based on the plain and unambiguous language in Act 149, the Board is not at liberty to amend the terms and conditions of leases with current forms when extending leases pursuant to that law whether the lease was issued by auction or direct negotiation. Act 219, which is in *pari materia*, reinforces the fact that Act 149 does not provide the Board with authority to amend leases it is extending with current forms, as Act 149 was enacted subsequently to Act 219 but did not include the express authorization of Act 219 to amend extended leases with the current forms.

Therefore, Act 149 makes no distinction between leases awarded at auction or by direct negotiation but allows for the extension of "any" lease of public lands within the HCED. For all lessees, both those issued their leases by auction or by direct negotiation, Act 149 only allows for existing lease provisions to be modified to accommodate lenders or the cost of substantial improvements. The conditions of this law were robustly debated within the Legislature, and the language chosen expressly and unequivocally states the Legislature's intent.

The legislative intention of Act 149 is clear- to provide for lease extensions as an incentive for lessees of public lands in the HCED to invest in infrastructure improvements and ensure the long-term maintenance of the facilities on this land. The express purpose of the Act was to authorize the Board to extend leases in the HCED, "to facilitate efficient and effective improvement, and economic opportunity, in the area for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements."

Further, the premise is faulty that the *Kahua Ranch* case prevents the Board from amending the terms and conditions of a lease issued by auction but not the terms and conditions of a lease issued by direct negotiation. An analytical reading of the *Kahua Ranch* case leads to the conclusion that the terms and conditions of a lease issued by direct negotiation also should not be reformed. In *Kahua Ranch* the Court held that the terms and conditions of a lease issued at public auction could not be reformed based on the statutory requirement to publicly publish minimum required terms and conditions of leases issued at a public auction in a notice of sale, as bidders for leases rely on these minimum required terms which are incorporated into the contract. *Kahua Ranch*, *supra*, 384 P.2d at 586-587. HRS §171-59 provides for the disposition

of public lands by negotiation, and that statute also requires that the Board "[g]ive public notice as in public auction" of the terms and conditions of the lease. Therefore, leases issued by direct negotiation also should not be reformed because those leases also have minimum required terms and conditions publicly published upon which prospective lessees rely. Once again there is no distinction or potential disparity between lessees with leases issued by auction or by negotiation. As stated above, the plain language of Act 149 only allows for the amendment of these extended leases in limited circumstances for purposes specific to obtaining loans or amortizing the costs of substantial improvements.

The Report's position that the Board cannot amend leases issued by public auction with current forms is further undercut by its statement that the four leases extended under Act 219 were all issued by public auction and had their terms amended with the current forms. *Kahua Ranch* was decided in 1963 and Act 219 was enacted in 2011, so the Board has not previously acted as if *Kahua Ranch* absolutely prohibits the Board from amending leases issued by public auction.

4. The Public Trust Doctrine Requires DLNR to Implement Act 149

The Land Division misconstrues its duties as a trustee, as the public lands within the HCED are not undeveloped land with natural resources to be protected but are instead identified and have been developed as urban lands the currently generate lease revenues for the State. The Land Division's fiduciary duties require it to fulfill the legislatively defined public purposes underlying Act 149 to manage the public lands in the HCED as provided therein.

The public trust doctrine is focused on the equitable and sustainable distribution of natural resources. "[T]he public trust doctrine, as incorporated into the Hawai'i Constitution, necessitates 'a balancing process' between the constitutional requirements of protection and conservation of public trust resources, on the one hand, and the development and utilization of those resources, on the other." *Mauna Kea Anaina Hou v. BLNR*, 136 Hawai'i 376, 363 P.3d 224 (2015). "This is not ownership in the corporeal sense where the State may do with the property as it pleases; rather, we comprehend the nature of the State's ownership as a retention of such authority to assure the continued existence and beneficial application of the resource for the common good. The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining." *Robinson v. Ariyoshi*, 65 Haw. 641, 658 P.2d 287, 310 (Haw. 1982).

Applying this balancing test, the Hawaii Supreme Court found that the proposed Thirty Meter Telescope would comply with the public trust doctrine. *In re: Contested Case Hearing for the Thirty Meter Telescope At the Mauna Kea Sci. Reserve*, 431 P.3d 752, 773-775 (Haw. 2018). The Court found that the Board had met its duties as a trustee in granting a Conservation District Use Permit for the project by finding the project would not cause substantial adverse

impact to geologic sites, that the telescope would be decommissioned within 50 years or when the lease terminates, and that the Board had imposed conditions on the permitted use to help protect the natural resources in the area. *In re: Thirty Meter Telescope*, 431 P.3d at 774. The Court found the Board fulfilled its fiduciary duties as the project proposed the development and use of land consistent with its conservation and the self-sufficiency of the State as the project could co-exist with Native Hawaiian uses and provide scientific and economic benefits. *Id*. at 774-775.

The balancing test applied by the Court in *Thirty Meter Telescope* appears inapplicable to public lands within the HCED which are not known to contain natural resources and are clearly suited for commercial and industrial development and use. In contrast to the conservation district lands in the summit area of Mauna Kea, the lands within the HCED are in the urban State Land Use District. HRS § 171-10 provides for different classifications of public lands, including a classification for commercial and industrial use for lands suitable and economically feasible for commercial and industrial development and use. In any event, the DLNR and Board should act as a fiduciary to serve the public's best interest as articulated by the Legislature in Act 149 by allowing for the further development, revitalization, and utilization of the public lands within the HCED to positively contribute to tax revenues, and the vision, economic development, revitalization, and overall success of East Hawaii.

In opposing Act 149, the Attorney General's Office cited *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawaii*, 117 Hawai'i 174, 194, 177 P.3d 884, 904 (2008), rev'd and remanded sub nom. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009), in support of the proposition that DLNR should act as a fiduciary in administering public lands. That case is inapplicable to Act 149, as it addresses the duties of the State to OHA beneficiaries. However, even if these standards applied to the public lands within the HCED, Act 149 does not constitute any breach of fiduciary duties. A trustee's duty is "to use reasonable skill and care to make trust property productive, ... or simply to act as an ordinary and prudent person would in dealing with his [or her] own property". *Ahuna v. Department of Hawaiian Home Lands*, 64 Haw. 327, 640 P.2d 1161 (1982). In this instance, to make the public lands or trust property "productive" the DLNR should follow the Legislature's mandates, including those found in HRS § 171-17 and Act 149 to enhance the State's revenues and ensure that the public lands generate fair market rent as determined by appraisal while being used to benefit the public and community. All of the lessees within the HCED are presently paying fair market rent to the State.

In light of the precedent above, DLNR and the Board are not violating any fiduciary duties by implementing Act 149, as the law provides for the State to act as a fiduciary and facilitate the efficient, effective, and productive development and use of the public lands within the HCED. An ordinary and prudent ground lessor would not seek to exercise the same amount of oversight and control as DLNR but instead may adjust or abate rent to facilitate a lessee constructing substantial improvements on the property. Act 149 allows for the public lands within the HCED to be used to promote the public interest and these lands have been and can continue to be leased without any substantial impairment of the public interest in the remaining

land and water. The State will receive direct economic benefits as DLNR will continue to receive rent from lessees for the extended lease terms and receive the benefit of substantial improvements performed solely at the lessees' expense. Further, the Legislature made express findings as to how implementing Act 149 will enhance the State's revenues, create positive social, economic and environmental effects for the public, and contribute to the vision, economic development, and overall success of East Hawaii. Given the unambiguous language intent and the strong public interests and purposes underlying Act 149 we submit that DLNR should proceed to implement the law forthwith, as the failure to implement the law potentially constitutes a breach of its fiduciary duties to manage public lands as provided by the Legislature.

Very truly yours,

LAW OFFICES OF YEH & KIM

RONALD N.W. KIM

Cc: client, Rep. C. Todd, Rep. M. Nakashima, Rep. R. Onishi, Sen. L. Inouye

**Subject:** RE: [EXTERNAL] Department of Land and Natural Resources | Land Board Submittals – 10/22/21
**From:** "Moore, Kevin E" <kevin.e.moore@hawaii.gov>
**Date:** 10/25/2021, 8:36 AM
**To:** Jim McCully <jwmccully54@gmail.com>
**CC:** "Tsuji, Russell Y" <Russell.Y.Tsuji@hawaii.gov>, "Heit, Gordon C" <gordon.c.heit@hawaii.gov>, Michael Shewmaker <michaelshewmaker@yahoo.com>, ron kim <ron@rkimlaw.com>

Jim,

After discussing with the Chairperson, we are letting you know that the Department will be putting a hold on presenting requests for the extension of auction leases under Act 149 SLH 2018 to the Land Board in order to evaluate these further. Under the act, there is no means for the Department to update auction leases in the extension period using the most current lease form and leasing practices and policies of the Board. This creates disparate results among lessees of State lands in KIA because leases issued by direct negotiation can be so updated. As you know, General Lease No. S-3624 to 69 Railroad, LLC is an auction lease. We will re-evaluate the matter early next year. Thank you.

Kevin

-----Original Message-----
From: Moore, Kevin E
Sent: Monday, October 18, 2021 4:50 PM
To: Jim McCully <jwmccully54@gmail.com>
Cc: Heit, Gordon C <gordon.c.heit@hawaii.gov>; Michael Shewmaker <michaelshewmaker@yahoo.com>; ron kim <ron@rkimlaw.com>
Subject: RE: [EXTERNAL] Department of Land and Natural Resources | Land Board Submittals – 10/22/21

Jim,

We've scheduled a meeting with Chair for Thursday, October 21, and will get back to you afterwards. Thanks.

Kevin

-----Original Message-----
From: Jim McCully <jwmccully54@gmail.com>
Sent: Monday, October 18, 2021 9:55 AM
To: Moore, Kevin E <kevin.e.moore@hawaii.gov>
Cc: Heit, Gordon C <gordon.c.heit@hawaii.gov>; Michael Shewmaker <michaelshewmaker@yahoo.com>; ron kim <ron@rkimlaw.com>
Subject: Re: [EXTERNAL] Department of Land and Natural Resources | Land Board Submittals – 10/22/21

Kevin

After nearly 3 years this is very disappointing.
Amongst other reasons we have significant near term financial obligations with contractors.
Please advise on the details so that we may address them immediately.

Mahalo

Jim

Sent from my iPhone

> On Oct 15, 2021, at 4:27 PM, Moore, Kevin E <kevin.e.moore@hawaii.gov> wrote:
>
> Hi Jim,
>
> The staff submittal was not approved for placement on the agenda. We need to discuss the reasons with the Chairperson and get back to you. Thanks.
>
> Kevin
>
> -----Original Message-----
> From: Jim McCully <jwmccully54@gmail.com>
> Sent: Friday, October 15, 2021 3:49 PM
> To: Heit, Gordon C <gordon.c.heit@hawaii.gov>; Moore, Kevin E <kevin.e.moore@hawaii.gov>
> Cc: Michael Shewmaker <michaelshewmaker@yahoo.com>; ron kim <ron@rkimlaw.com>
> Subject: [EXTERNAL] Department of Land and Natural Resources | Land Board Submittals – 10/22/21
>
> Aloha Gordon & Kevin
>
> I see that 69 Railroad did not make the Agenda for 10/22. Are there any issues that need addressing or did you just run out of time to process what you have ?
>
> Please advise
>
> Jim McCully
>
> https://dlnr.hawaii.gov/meetings/blnr-meetings-2021/land-board-submittals-10-22-21/
>
> Sent from my iPhone