

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

December 12, 2014

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

PSF No. 13OD-098
OAHU

Approval in Principle for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort situate at Kahuku, Koolauloa, Oahu, Tax Map Keys (1) 5-6-003:033, 040, 041, 042, 043, 044; 5-7-001:001 (por.), 016 (por.), 017, 020 (por.), 022 (por.), 033 (por.); 5-7-006:001, 002, 023 (por.).

APPLICANT:

STATE OF HAWAII, through its DLNR Division of Forestry and Wildlife (DOFAW).

PRIVATE LANDOWNER:

Turtle Bay Resort, LLC, a Delaware limited liability company, whose mailing address is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. (TBR)

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Land encompassing the area known as the Turtle Bay Resort, situate at Kahuku, Koolauloa, Oahu.

AREA:

Approximately 654.781 acres, more or less. A map of the current easement configuration is attached as Exhibit A.

ZONING:

State:	Urban, Agriculture, Conservation
County:	Resort, P-2

CURRENT USE:

Recreational and commercial use including golf course and horseback riding, and the Punaho'olapa Wildlife Preserve.

CONSIDERATION:

Purchase price will be \$43.5 million, which shall be subject to 1) the fair market value as determined by appraisal subject to review and acceptance by the State and 2) the availability of funds.

PURPOSE:

Public recreation, open space, and wildlife preserve.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the Division of Forestry and Wildlife's Exemption List, reviewed and concurred upon by the Environmental Council and dated June 12, 2008, the subject conservation easement is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, No. 16, that states "The acquisition of land or interests in land for the purposes of conservation, provided that the acquisition does not cause any material change of use of land or resources beyond that previously existing." An Exemption Notice is attached.

REQUIREMENTS:

Applicant shall be required to:

- 1) Pay its appraisal cost to determine the value of the properties to be acquired; and
- 2) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies recognized environmental conditions (RECs), conduct a Phase II environmental sampling and analysis plan. Applicant shall pay no more than \$500,000 for both the Phase I and Phase II (if needed).

Private Landowner shall be required to:

- 1) Process and obtain subdivision approval at own cost;
- 2) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Private Landowner's own cost;
- 3) Obtain title reports for the privately-owned property at its own cost and subject to review and approval by the Department; and
- 4) Following the Phase II, perform any and all remediation, abatement and disposal

as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

- 5) Provide baseline documentation for the conservation easement subject to review and approval by the Department.

REMARKS:

Senate Concurrent Resolution 164, Legislative Session 2013, requested the Governor to establish a working group to develop a conservation plan action plan to explore and identify conservation alternatives for the undeveloped portions of the Turtle Bay Hotel and Resort property. A copy of the resolution is attached as Exhibit B. As a result, the working group submitted a report to Governor Abercrombie and Senator Clayton Hee dated November 30, 2013. The report stated that the State has been diligently negotiating with the TBR regarding conservation options over the resort lands located makai of Kamehameha Highway. Negotiations focused on the acquisition of a conservation easement over the undeveloped land rather than a fee purchase since TBR was (and remains) unwilling to sell the land in fee. A copy of the report is attached as Exhibit C.

Pursuant to the negotiations, the State retained the appraisal firm of John Child & Co. (John Child), which calculated preliminary fair market value estimates based on the conservation easement proposals that were being considered at the time. In turn, TBR hired the Hallstrom Group, Inc. (Hallstrom) to provide preliminary fair market value estimates on behalf of the landowner. The respective appraisers came up with different fair market value estimates, with Hallstrom's value being significantly higher. The parties continued to work to resolve outstanding issues regarding the valuation, such as determining infrastructure costs and cost savings associated with non-development of the properties.

As negotiations progressed, the Attorney General became the primary representative on behalf of the State. The Attorney General and TBR reached consensus on the general restrictions and land area that would compose the conservation easement, and an original purchase price of \$48.5 million.¹ The purchase price is conditioned upon verification of the fair market value as determined by an appraisal conducted by Hallstrom. Although Hallstrom's appraisal is greater than John Child's preliminary fair market value estimate, HRS § 171-30(e) grants the State the discretion to acquire land at a value higher than the highest appraised value as determined by an appraisal contracted by the State if such value is determined by the Attorney General to be justified and within the range of market value.² And, as Hallstrom has been contracted by the landowner, their appraisal

¹ This is not your usual acquisition of private property by the State. In the normal course of business, the price paid for acquisitions of real property or any interest therein is set by the appraised value of the property as determined by the State's appraiser.

² HRS 171-30(e) provides in relevant part that: "The appraisal of private property to be acquired by the State may be performed by not more than three disinterested appraisers whose services shall be contracted for by the State, and no land shall be purchased for a sum greater than the highest value fixed by the appraiser or appraisals; provided that the State, after review of the appraisals by the appraiser or appraisers or the attorney

is subject to review by the State's appraiser (John Child) to determine whether the methodology, analysis and findings are sound and reasonable. The Attorney General has indicated that reliance on the conclusions reached by the State's appraiser would be sufficient to meet the statutory criteria.

Funding for the acquisition was approved by the Legislature through Act 81, Session Laws of Hawaii 2014. Act 81 authorized the issuance of \$40 million in revenue bonds with a debt service cap of \$3 million for the acquisition of the conservation easement. A copy of the act is attached as D. The revenue bonds would be issued by the Hawaii Tourism Authority (HTA). HTA would in turn re-finance the existing debt on the Hawaii Convention Center and would reallocate \$3 million of the transient accommodation tax revenue to pay the revenue bond debt. The Attorney General and the Director of Budget and Finance (B&F) have had discussions concerning the viability of being able to sell \$40 million in revenue bonds with a \$3 million in debt service cap in the normal bond markets. There is some question whether that can be done. The Administration may seek to amend the act during the 2015 Legislative Session in order to make sure that a sale of revenue or other types of bonds to finance this transaction would be assured of raising the necessary monies. The Act imposed additional requirements on HTA for the acquisition, including:

- 1) HTA must obtain an appraisal and perform due diligence for the acquisition;
- 2) HTA must offer to hold an informational briefing for the Legislature; and
- 3) The conservation easement shall provide for public access in perpetuity.

Of the remaining \$8.5 million of the original purchase price, \$5 million would be provided by the City and County of Honolulu (City), and \$3.5 million from the Trust for Public Land (TPL) through the Army Compatible Use Buffer Program (ACUB) and other sources. Originally, the City was intended to be a co-holder of the conservation easement. However, the City will now use the funds to purchase fee title to an approximately 5.1 acre site located at the Kawela Bay area of the TBR property, thus reducing the purchase price for the conservation easement itself to \$43.5 million. The site will serve as an expansion to a future City park site which the City will receive gratis at the time of closing. It is intended that the State will be the only holder of the conservation easement.

It is currently intended for the conservation easement to be acquired in two phases. The \$40 million provided by HTA will go to acquire a conservation easement over the bulk of the undeveloped property, approximately 625 acres more or less. The remaining \$3.5 million provided by TPL will fund the acquisition of a separate, smaller conservation easement encumbering the portion of the TBR property identified as RR-4 (Resort Residential), approximately 29 acres more or less. The acquisition of the HTA funded conservation easement is independent of and not contingent upon TPL successfully securing the ACUB or other funding in order to close on the second conservation

general, may purchase the property at a value greater than the highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value: ..."

easement. In short, the actual funding and obligations to close on the two conservation easements discussed above are separate and distinct from each other.

In regards to due diligence requirements, TBR has provided title reports, with the exception of one report still outstanding, for the parcels to be encumbered by the conservation easements subject to review and approval by the DLNR, Attorney General and HTA. TBR will also provide a survey map and description subject to review by the State Surveyor as well as fulfill all subdivision requirements for the conservation easement. As noted previously, DLNR has contracted with John Child to provide appraisal consultation services, and contracted with AMEC Environment and Infrastructure, Inc. (AMEC) to provide a Phase I Environmental Site Assessment (ESA). If Recognized Environmental Conditions (REC's) are determined to be present, then AMEC will deliver a Phase II ESA and environmental consultation services as needed.

The funds used for the John Child contract were sourced from an appropriation of \$100,000.00 from the 2013 Legislative Session. As no additional funds for due diligence were appropriated by Act 81, Land Division has committed a limited amount of funds, not to exceed \$500,000.00, toward the environmental consultant services contract.³ The State is not obligated and is not planning to seek any further appropriations to pay for any further due diligence items, any additional outstanding due diligence items shall be the responsibility of TBR, subject to review and approval by the State. Furthermore, the terms and conditions of the conservation easement are still under negotiation.

Upon acquisition, the conservation easement will be managed by the DLNR Division of Forestry and Wildlife (DOFAW). DOFAW staff possesses the necessary expertise to properly evaluate compliance issues as it relates to the conservation easement objectives of protecting the environment and natural resource of the area; TBR will retain the fee interest and manage the land subject to the conservation easement objectives and restrictions. Furthermore, DOFAW has an interest in the lands due to the presence of the Punaho'olapa Wildlife Preserve within the conservation easement area. Although DOFAW will be the primary holder of the conservation easement, other divisions may be asked to provide assistance in the monitoring and enforcement of the conservation easement as may be appropriate.⁴

At the request of TBR, the Board is requested to approve the Chairperson entering into a letter of intent with TBR affirming its commitment to continuing to explore the purchase of the conservation easement. The letter will not serve to commit the Board to any purchase, nor impose any obligations upon the Board or Department with regard to the closing of the acquisition. It is also understood that prior to closing, the acquisition must

³ In the vast majority of acquisitions, such due diligence costs are funded by an appropriation or additional grant funds. As in this instance there are no additional funds, in the interest of facilitating the negotiation of this acquisition, Land Division is taking the unusual step of committing its own operating funds for the environmental studies.

⁴ The Department intends to seek other sources of funds (whether private, federal or otherwise) to assist with monitoring and enforcing the terms and conditions of the conservation easement, and possibly seek other entities to assist with the monitoring of the terms and conditions of the conservation easement.

receive all necessary approvals, and all due diligence, statutory and regulatory requirements must be completed to the satisfaction of the Board, HTA, Attorney General, and the City. A copy of the draft letter is attached as Exhibit E. Comments were sought from the Attorney General and HTA, which have been incorporated into this submittal. Additional agency comments will be sought if final approval of the acquisition is brought before the Board.

RECOMMENDATION: That the Board:

1. Approve in principle the above described acquisition of the subject property under the terms and conditions cited above which are by this reference incorporated herein, provided that the details of the proposed acquisition shall be submitted to the Board for final approval prior to final documentation and closing.
2. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and best serve the interests of the State including signing the letter of intent, as may be amended, as discussed above.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:


William J. Afta, Jr., Chairperson

LEGEND

Conserved Land Areas

Recreation Zone / Public Access	17.9 Acres
Ecological Zone	106.2 Acres
Recreation Zone / Public Access	534.3 Acres
City Owned	5.1 Acres
Total Conserved Lands	663.5 Acres

Areas Excluded from Conservation Easement	183.8 Acres
Total	847.3 Acres

DRAFT

Public Access Areas		
Recreation Zone / Public Access	17.9 Acres	
City Owned	5.1 Acres	
Total	23.0 Acres	

Public Access Trails		
Existing Public Access	0.7 Miles	
Interim Trails (Public Access)	2.1 Miles	
Permanent Trails (Public Access)	3.8 Miles	
Total Public Access / Trails	6.6 Miles	

Public Parking Areas

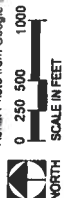
Existing Public Parking Areas (2)	
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Note:
Permanent trails/paths in recreation easements are to be provided upon issuance of the certificate of occupancy for the development on parcel(s) in which the easement is located

CONSERVATION EASEMENT AREAS UPON CONSERVATION CLOSING



Source:
Aerial Photo from Google Earth dated 01/29/2013



Turtle Bay Resort
October 2014

EXHIBIT "A"

MAR 13 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO DEVELOP
A CONSERVATION ACTION PLAN TO EXPLORE AND IDENTIFY
CONSERVATION ALTERNATIVES FOR THE UNDEVELOPED PORTIONS OF
THE TURTLE BAY HOTEL AND RESORT PROPERTY AND SURROUNDING
LANDS WITH CONSERVATION OR HISTORIC VALUE.

1 WHEREAS, Act 140, Session Laws of Hawaii 2008, authorized
2 the Governor to negotiate on behalf of the State with private
3 interested parties to purchase the resort property located in
4 Kahuku, Oahu; and
5

6 WHEREAS, the subject property under negotiation includes
7 the lands of and surrounding the Turtle Bay Hotel and Resort
8 (Property) and dates back to the latter years of the previous
9 administration as part of an effort to purchase and protect
10 precious natural resource lands from development; and
11

12 WHEREAS, despite two separate attempts to acquire the
13 Property, nothing has been successfully completed and the matter
14 remains unresolved; and
15

16 WHEREAS, the subject lands for conservation:
17

18 (1) Shall include the undeveloped lands, defined as those
19 that are not used for the existing hotel and
20 condominiums;
21

22 (2) May include the unoccupied areas, such as the golf
23 courses, stables, parking areas, nurseries, and lands
24 with similar uses that could be relocated; and
25

26 (3) Generally include the undeveloped portions of the
27 Property and surrounding lands that have significant
28 conservation or historic value if the conservation
29 would better protect coastal and natural resources



1 between Malaekahana State Recreational Area and Kawela
2 Bay; and
3

4 WHEREAS, this body believes that it remains in the public's
5 best interest to continue efforts to conserve the undeveloped
6 portions of the Property; and
7

8 WHEREAS, during the Regular Session of 2013, the
9 Legislature introduced S.B. No. 894, S.D. 2, to appropriate
10 funds and authorize the Governor, or the Governor's designee, to
11 continue efforts to acquire certain unimproved lands surrounding
12 the Property; and
13

14 WHEREAS, if the Governor finds that it is not feasible for
15 the State to acquire sole interest of the Property, S.B. No.
16 894, S.D. 2, also authorized the Governor to enter into a
17 cooperative agreement or agreements, such as a conservation
18 easement, with private or other public entities interested in
19 conserving the undeveloped portions of the Property; and
20

21 WHEREAS, in a letter dated March 4, 2013, the Chief
22 Executive Officer on behalf of the developer Turtle Bay Resorts,
23 LLC, expressed the developer's willingness to voluntarily
24 negotiate in good faith to explore alternatives between the
25 State and the developer to keep a portion of the undeveloped
26 lands at the Turtle Bay Resort for public benefit; and
27

28 WHEREAS, the developer expressed in the letter an
29 understanding that the Legislature may be open to deferring S.B.
30 No. 894, S.D. 2, while the State and developer negotiate; and
31

32 WHEREAS, the developer communicated a willingness to
33 negotiate in good faith with the State; provided that the
34 negotiations take place immediately and terminate no later than
35 November 30, 2013, at which time the State and developer will
36 submit to the Legislature a report regarding the result of the
37 negotiations; and
38

39 WHEREAS, the developer also proposed in the letter that if
40 the developer and the State are able to negotiate terms, area,
41 and price, then S.B. No. 894, S.D. 2, could be amended to
42 effectuate the terms of the negotiated settlement; and
43



1 WHEREAS, however, if the developer and the State are unable
2 to negotiate a settlement, then S.B. No. 894, S.D. 2, may
3 proceed accordingly through the legislative process during the
4 Regular Session of 2014; and

5
6 WHEREAS, the developer noted that the deadline of
7 November 30, 2013, provides a reasonable amount of time for the
8 State and the developer to engage in good faith negotiations to
9 reach a reasonable solution that benefits the immediate
10 community and the State; and

11
12 WHEREAS, accordingly, on March 5, 2013, the Senate
13 recommitted S.B. No. 894, S.D. 2, to the Committees on Judiciary
14 and Labor and Ways and Means, thereby deferring the measure
15 pending negotiations between the State and the developer as
16 proposed in the letter from Turtle Bay Resorts, LLC; and

17
18 WHEREAS, this body believes that the Governor can assist in
19 promoting the conservation of the subject lands and urges the
20 Governor to immediately engage in good faith negotiations with
21 the developer; now, therefore,

22
23 BE IT RESOLVED by the Senate of the Twenty-seventh
24 Legislature of the State of Hawaii, Regular Session of 2013, the
25 House of Representatives concurring, that the Governor is
26 requested to establish a working group to develop a conservation
27 action plan to explore and identify conservation alternatives
28 for the undeveloped portions of the Turtle Bay Hotel and Resort
29 property and surrounding lands with conservation or historic
30 value; and

31
32 BE IT FURTHER RESOLVED that the working group consist of
33 the following members:

- 34
35 (1) The Governor or the Governor's designee;
36
37 (2) The Chairperson of the Board of Land and Natural
38 Resources or the Chairperson's designee;
39
40 (3) The Administrator of the State Historic Preservation
41 Division of the Department of Land and Natural
42 Resources or the Administrator's designee;
43



- (4) The Chairperson of the Legacy Land Conservation Commission or the Chairperson's designee;
- (5) The Chairperson of the Land Use Commission or the Chairperson's designee;
- (6) The Chairperson of the Board of Directors of The Trust for Public Land or the Chairperson's designee; and
- (7) Any other entity or organization the Governor deems necessary; and

BE IT FURTHER RESOLVED that the purpose of the working group is to provide information and make recommendations to the Governor as the State and the developer Turtle Bay Resorts, LLC, engage in good faith negotiations; and

BE IT FURTHER RESOLVED that during the course of negotiations between the State and the developer, the working group:

- (1) Develop an action plan that explores and identifies conservation alternatives for the undeveloped portions of the Turtle Bay Hotel and Resort property and the surrounding lands with conservation or historic value;
- (2) Hold meetings to foster community engagement and gather community input regarding conservation alternatives relating to the subject lands, which shall be included in the action plan;
- (3) Provide updates to the Governor, at periodic intervals deemed necessary by the Governor, regarding the development of the action plan and make any recommendations; and
- (4) Submit a written final action plan, including recommendations and any proposed legislation, to the Governor and Legislature no later than November 30, 2013; and

BE IT FURTHER RESOLVED that the working group shall cease to exist on November 30, 2013; and



1 BE IT FURTHER RESOLVED that the Governor and the developer
2 submit a written report to the Legislature regarding the results
3 of their negotiations and any proposed legislation no later than
4 November 30, 2013; and
5

6 BE IT FURTHER RESOLVED that certified copies of this
7 Concurrent Resolution be transmitted to the Governor;
8 Chairperson of the Board of Land and Natural Resources;
9 Administrator of the State Historic Preservation Division of the
10 Department of Land and Natural Resources; Chairperson of the
11 Legacy Land Conservation; Chairperson of the Land Use
12 Commission; Chief Executive Officer of Turtle Bay Resorts, LLC;
13 and Chairperson of the Board of Directors of The Trust for
14 Public Land.
15
16
17

OFFERED BY: 



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 30, 2013

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Honorable Neil Abercrombie
Governor, State of Hawai'i
Executive Chambers
Hawai'i State Capitol

The Honorable Clayton Hee
Senator, State of Hawai'i
Hawai'i State Capitol, Rm. 407
Honolulu, HI 96813

Subject: Turtle Bay Resort – SCR 164

Aloha e Governor Abercrombie and Senator Hee:

The Working Group established under SCR 164 met on November 27, 2013 and reported on the progress that has been made in the State's negotiations with the Turtle Bay Resort (TBR) regarding conservation options for the makai lands surrounding the Resort. Under SCR 164, the Working Group consists of Deputy Chief of Staff Blake Oshiro, designee of the Governor; Department of Land and Natural Resources (DLNR) First Deputy Esther Kia'aina, designee of the Chairperson of the Board of Land and Natural Resources, William J. Aila, Jr.; Michael Gushard, Architectural Historian, designee of the Administrator of the State Historic Preservation Division; Kaiwi Nui Yoon, Chairperson of the Legacy Land Conservation Commission; and Lea Hong, designee of the Chairperson of the Board of Directors of the Trust for Public Land. In addition to the members of the Working Group, also in attendance at the November 27, 2013 meeting were Ian Hirokawa, Special Projects Coordinator, DNLR Land Division, Molly Schmidt, Legacy Land Conservation Program Coordinator, DLNR Division of Forestry and Wildlife, and Douglass Cole, Executive Director of the North Shore Community Land Trust. Other active participants in this process include North Shore community leader Denise Antolini, DLNR Land Division Administrator Russell Tsuji and Deputy Attorney General Julie China.

The Working Group reported that the State has been diligently negotiating with the TBR regarding conservation options over the makai land. The makai land has been divided into three

EXHIBIT "C"

areas or phases for the purposes of negotiation and negation (map attached). Phase I includes the area around Kawela Bay. Phase II includes the area near Kahuku Point. Phase III includes the middle area near the existing Resort. Negotiations have been focused on a conservation easement over the land rather than a fee purchase because the Turtle Bay Resort is unwilling to sell the land in fee.

The State retained the appraisal firm of John Child & Co. (appraiser Paul Cool) which completed a preliminary valuation of a conservation easement that would prohibit development of the land over Phase I and Phase II but allow the Resort to use the land for otherwise lawful and permitted recreational activities.¹ The TBR also retained the appraisal firm of the Hallstrom Group, Inc. (appraiser James Hallstrom) to advise it in these negotiations. The North Shore Community Land Trust and The Trust for Public Land provided input into the preliminary terms of the conservation easement.

The difference of opinion over value between the State's appraiser and Resort's appraiser is significant, but not insurmountable. When acquiring any interest in real property, the State is generally limited to paying a sum not greater than the fair market value as determined by an appraiser contracted for by the State, i.e., the State's appraiser. HRS §171-30.² The State and the Turtle Bay Resort are working together on a plan forward to agree, on a non-binding Letter of Intent or Memorandum of Understanding, working together to determine infrastructure costs and cost savings associated with avoiding development of Phase I and II, refinement of the appraisal estimates in light of these costs and cost savings, finalize the terms of the conservation easement, finalize the appraisal or value, draft and execute a definitive purchase agreement for the conservation easement, perform and finalize other due diligence items normally required in land acquisitions,³ and execute the purchase of the conservation easement. We believe this plan can be executed in the coming calendar year of 2014.

Based on the foregoing, the working group recommends the following:

- (1) the dialog and informal negotiations between the State and TBR continue in its current format beyond the November 30, 2013 deadline set for in SCR 164 to determine if there are further good faith efforts that can be conducted to achieve the purposes set forth in SCR 164;
- (2) the process of dialog and negotiations continue to be in the informal process as has been occurring thus far, and that there is no particular need at this time for all of the members

¹ The group discussed and concluded that for purposes of continuing the dialog and facilitating informal negotiations, attaching and releasing the John Child & Co.'s report herein would not be beneficial to the process at this point. Under Haw. Rev. Stat. Section 92F-13 and associated case law and opinions, an exception to the Uniform Information Practices Act provides that the report need not be disclosed at this time.

² In other words, the State cannot pay for more than the fair market value of the interest in real property acquired, unless the higher value is justified as found by the appraiser(s) or attorney general. Otherwise, the State may pay less, or may accept an interest in real property worth more than the consideration paid.

³ Such as a title and encumbrance review, performing a Phase I (and possibly a Phase II) environmental site assessment (to make sure the property is not contaminated or contains any hazardous materials), etc.

of the SCR 164 working group to participate in the discussions so long as they are periodically updated;

- (3) the process is not yet ripe for the community meetings to be conducted at this time, but if and when substantive and significant concurrence between the State and TBR starts to arise and some compromise or resolution appears imminent, such community meetings be held and include participation of all of the working group members or their designees; and
- (4) in lieu of community meetings, but recognizing the importance of transparency, a legislative informational briefing be conducted where more specific information and updates can be provided, and that such briefing be held by the lead sponsor of SCR 164, Senator Hee, and/or in conjunction with the applicable Senate, or at their discretion jointly with House, Committee(s) with appropriate jurisdiction.

The Legislature's support will be needed to fund this historic and monumental effort over a number of years to purchase the conservation easement. So far, the State's appraiser has estimated the value of the conservation easement over Phase I and Phase II to range between \$31.3 million and \$38.3 million. However, TBR has raised a question on the amount of infrastructure costs and savings for avoided infrastructure costs where there will be no development under the conservation easement. As discussed above, the plan going forward hopes to more definitively identify and verify those costs. As a start, the Governor is planning to include a general obligation bond request of \$ 40 million in DLNR's budget for funding the purchase of the conservation easement and hopes the Legislature will join him in making this vision a reality.

Thank you for your continued support of and leadership for this process.

With Aloha,



William J. Aila, Jr.
Chairperson, Board of Land and Natural Resources

c: Working Group

A BILL FOR AN ACT

RELATING TO THE TRANSIENT ACCOMMODATIONS TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish a
2 method to use transient accommodations tax revenues to pay for
3 the debt service on revenue bonds, the proceeds of which will be
4 used to acquire the conservation easement in Turtle Bay, Oahu.

5 This Act:

6 (1) Authorizes the Hawaii tourism authority to issue
7 \$40,000,000 in revenue bonds and use the proceeds to
8 acquire a conservation easement in Turtle Bay, Oahu;

9 (2) Allocates transient accommodations tax revenues of
10 \$3,000,000 annually to the Hawaii tourism authority
11 for use to pay the debt service on the revenue bonds;

12 (3) Reduces the transient accommodations tax revenue
13 allocation to the convention center enterprise special
14 fund from \$33,000,000 to \$26,500,000; and

15 (4) Requires the Hawaii tourism authority and department
16 of budget and finance to restructure the convention
17 center debt owed to the department to accommodate an



1 annual payment for debt service of not more than
2 \$16,500,000.

3 As a result of the events specified above, this Act is
4 intended to produce an additional \$3,500,000 in transient
5 accommodations tax revenues to the general fund.

6 SECTION 2. Chapter 201B, Hawaii Revised Statutes, is
7 amended by adding two new sections to be appropriately
8 designated and to read as follows:

9 "§201B-A Revenue bonds for conservation easement in Turtle
10 Bay, Oahu. (a) As authorized by section 6 of Act , Session
11 Laws of Hawaii 2014, the authority shall issue revenue bonds to
12 acquire a conservation easement in Turtle Bay, Oahu. The public
13 shall have perpetual public access to said conservation
14 easement. The conservation easement shall be in compliance with
15 chapter 198.

16 Prior to executing the agreement to acquire the
17 conservation easement, the authority shall:

18 (1) Obtain an appraisal and perform its due diligence on
19 the conservation easement and property rights proposed
20 to be acquired; and

21 (2) Offer to hold an informational briefing for the
22 legislature. The offer shall be made through the



1 president of the senate and speaker of the house of
2 representatives.

3 (b) For the purpose of this section, the authority shall
4 be deemed a "department" and the acquisition of the conservation
5 easement shall be deemed an "undertaking" under chapter 39.

6 (c) The revenue bonds issued to acquire the conservation
7 easement shall be secured by and payable from the transient
8 accommodations tax revenues allocated to the Turtle Bay
9 conservation easement special fund established pursuant to
10 section 201B-B. For this purpose, the revenues allocated shall
11 be deemed "user taxes" for the undertaking.

12 (d) The revenue bonds shall be issued in accordance with
13 chapter 39, part III. The authority shall request the director
14 of finance, on behalf of the authority, to perform the duties
15 specified under section 39-68 regarding the preparation, sale,
16 and administration of the revenue bonds.

17 **§201B-B Turtle Bay conservation easement special fund.**

18 (a) There is established the Turtle Bay conservation easement
19 special fund.

20 (b) Transient accommodations tax revenues allocated to the
21 Turtle Bay conservation easement special fund pursuant to
22 section 237D-6.5 shall be deposited into the special fund. All



1 interest earned on the moneys in the special fund shall be
2 credited to the special fund.

3 (c) Moneys in the Turtle Bay conservation easement special
4 fund shall be expended to pay the debt service on revenue bonds
5 issued to acquire the conservation easement in Turtle Bay, Oahu,
6 pursuant to section 201B-A.

7 (d) The Turtle Bay conservation easement special fund
8 shall be exempt from the central service expenses of section 36-
9 27 and departmental administrative expenses of section 36-30."

10 SECTION 3. Section 201B-8, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Moneys in the convention center enterprise special
13 fund shall be used by the authority for the payment of any and
14 all ~~[debt service]~~ of the following:

15 (1) Debt owed to the department of budget and finance
16 relating to the convention center~~[, any expense]~~;
17 provided that, after the restructuring required by
18 section 5 of Act , Session Laws of Hawaii 2014, the
19 annual debt service payment owed to the department
20 shall not exceed \$16,500,000 from fiscal year 2014-
21 2015 until fully retired; and



(2) Expenses arising from any and all use, operation, maintenance, alteration, improvement, or any unforeseen or unplanned repairs of the convention center, including without limitation the food and beverage service and parking service provided at the convention center facility, the sale of souvenirs, logo items, or other items, for any future major repair, maintenance, and improvement of the convention center facility as a commercial enterprise or as a world class facility for conventions, entertainment, or public events, and for marketing the facility pursuant to section 201B-7(a)(7)."

SECTION 4. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Revenues collected under this chapter shall be distributed as follows, with the excess revenues to be deposited into the general fund:

(1) [~~\$33,000,000~~] \$26,500,000 shall be allocated to the convention center enterprise special fund established under section 201B-8;

(2) \$82,000,000 shall be allocated to the tourism special fund established under section 201B-11; provided that:



1 (A) Beginning on July 1, 2012, and ending on June 30,
2 2015, \$2,000,000 shall be expended from the
3 tourism special fund for development and
4 implementation of initiatives to take advantage
5 of expanded visa programs and increased travel
6 opportunities for international visitors to
7 Hawaii;

8 (B) Of the \$82,000,000 allocated:

9 (i) \$1,000,000 shall be allocated for the
10 operation of a Hawaiian center and the
11 museum of Hawaiian music and dance at the
12 Hawaii convention center; and

13 (ii) 0.5 per cent of the \$82,000,000 shall be
14 transferred to a sub-account in the tourism
15 special fund to provide funding for a safety
16 and security budget, in accordance with the
17 Hawaii tourism strategic plan 2005-2015; and

18 (C) Of the revenues remaining in the tourism special
19 fund after revenues have been deposited as
20 provided in this paragraph and except for any sum
21 authorized by the legislature for expenditure
22 from revenues subject to this paragraph,



1 beginning July 1, 2007, funds shall be deposited
2 into the tourism emergency trust fund,
3 established in section 201B-10, in a manner
4 sufficient to maintain a fund balance of
5 \$5,000,000 in the tourism emergency trust fund;

6 (3) \$93,000,000 shall be allocated as follows: Kauai
7 county shall receive 14.5 per cent, Hawaii county
8 shall receive 18.6 per cent, city and county of
9 Honolulu shall receive 44.1 per cent, and Maui county
10 shall receive 22.8 per cent; provided that commencing
11 with fiscal year 2018-2019, a sum that represents the
12 difference between a county public employer's annual
13 required contribution for the separate trust fund
14 established under section 87A-42 and the amount of the
15 county public employer's contributions into that trust
16 fund shall be retained by the state director of
17 finance and deposited to the credit of the county
18 public employer's annual required contribution into
19 that trust fund in each fiscal year, as provided in
20 section 87A-42, if the respective county fails to
21 remit the total amount of the county's required annual
22 contributions, as required under section 87A-43; [and]



1 (4) \$3,000,000 shall be allocated to the Turtle Bay
2 conservation easement special fund established under
3 section 201B-B for the payment of debt service on
4 revenue bonds, the proceeds of which were used to
5 acquire the conservation easement in Turtle Bay, Oahu,
6 until the bonds are fully amortized; and

7 ~~[(4)]~~ (5) Of the excess revenues deposited into the general
8 fund pursuant to this subsection, \$3,000,000 shall be
9 allocated subject to the mutual agreement of the board
10 of land and natural resources and the board of
11 directors of the Hawaii tourism authority in
12 accordance with the Hawaii tourism authority strategic
13 plan for:

14 (A) The protection, preservation, and enhancement of
15 natural resources important to the visitor
16 industry;

17 (B) Planning, construction, and repair of facilities;
18 and

19 (C) Operation and maintenance costs of public lands
20 connected with enhancing the visitor experience.

21 All transient accommodations taxes shall be paid into the
22 state treasury each month within ten days after collection and



1 shall be kept by the state director of finance in special
2 accounts for distribution as provided in this subsection.

3 As used in this subsection, "fiscal year" means the twelve-
4 month period beginning on July 1 of a calendar year and ending
5 on June 30 of the following calendar year."

6 SECTION 5. (a) The executive director of the Hawaii
7 tourism authority and the director of finance shall enter into
8 negotiations to restructure the debt owed to the department of
9 budget and finance for the convention center so that the annual
10 amount payable on the debt service is not more than \$16,500,000
11 until fully retired.

12 (b) If the debt is not restructured as required under
13 subsection (a), no state funds, including revenue bond funds,
14 shall be expended to acquire any conservation easement or other
15 real property interest in Turtle Bay, Oahu, notwithstanding the
16 authorization under section 201B-A, Hawaii Revised Statutes, and
17 sections 6 and 7 of this Act.

18 SECTION 6. (a) The board of directors of the Hawaii
19 tourism authority, with the approval of the governor, is
20 authorized to issue revenue bonds in the sum of \$40,000,000 or
21 so much thereof as may be necessary for fiscal year 2014-2015
22 for the purpose of acquiring a conservation easement in Turtle



1 Bay, Oahu, as authorized under section 201B-A, Hawaii Revised
2 Statutes.

3 (b) The board of directors, with the approval of the
4 governor, shall issue the revenue bonds under such terms,
5 conditions, and maturity dates that do not require any debt
6 service payment to exceed \$3,000,000 in any fiscal year.

7 (c) If the board of directors cannot issue revenue bonds
8 in accordance with the conditions of this section or section
9 201B-A or chapter 39, part III, Hawaii Revised Statutes, no
10 state funds shall be expended to acquire any conservation
11 easement or other real property interest in Turtle Bay, Oahu.

12 SECTION 7. There is appropriated out of the revenue bond
13 proceeds authorized by section 6 of this Act the sum of
14 \$40,000,000 or so much thereof as may be necessary for fiscal
15 year 2014-2015 to carry out the purpose of section 6; provided
16 that any unexpended or unencumbered balance of the appropriation
17 shall not lapse at the end of fiscal year 2014-2015 and shall
18 lapse instead on June 30, 2016.

19 The sum appropriated shall be expended by the Hawaii
20 tourism authority for the purpose of this Act.

21 SECTION 8. This Act shall not be severable. If any
22 provision of this Act, or the application thereof to any person



1 or circumstance, is held invalid, then the entire Act shall be
2 invalid.

3 SECTION 9. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on July 1, 2014.



H.B. NO. 2434
H.D. 2
S.D. 2
C.D. 1

Report Title:

Transient Accommodations Tax Revenues; Turtle Bay Conservation Easement

Description:

Establishes a method to use transient accommodations tax revenues to pay the debt service on revenue bonds issued by the Hawaii tourism authority to acquire a conservation easement in Turtle Bay, Oahu. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



November 14, 2014 SECOND DRAFT (SUBJECT TO ADDITIONAL STATE COMMENTS AND REVISIONS)

Turtle Bay Resort, LLC
57-091 Kamehameha Highway
Kahuku, Hawaii 96731
Attention: Drew Stotesbury
Scott McCormack

Re: Turtle Bay Resort Conservation Easement

Dear Messrs. Stotesbury and McCormack:

The State of Hawaii ("Hawaii"), through its Board of Land and Natural Resources, remains committed to exploring the purchase of a conservation easement over portions of the Turtle Bay Resort, situated in Kahuku, City and County of Honolulu, State of Hawaii.

The basic terms of the proposed transaction (the "Proposal") would include:

- (i) The sale by Turtle Bay Resort, LLC ("TBR") to the State of Hawaii (the "State") of a conservation easement (the "Phase I CE") encumbering that certain portion of the TBR property consisting of about 625 acres, more or less, identified as Lots 3, 4, 5, 7, 8, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 1204-A, as shown on the map attached hereto as Exhibit A¹ (the "Phase I CE Property");
- (ii) A second sale by TBR to the State of a conservation easement (the "Phase II CE") encumbering the remaining TBR property consisting of about 29 acres, more or less, identified as Lot 19 on Exhibit A (the "Phase II CE Property") (the Phase I CE Property and the Phase II CE Property are collectively referred to herein as the "CE Properties");
- (iii) The sale by TBR to the City and County of Honolulu ("City") of a fee simple interest in a portion of the TBR property ("Fee Simple Lot") of approximately 5.053 acres, identified as Lot 2 on Exhibit A; and
- (iv) The Phase I CE + Phase II CE will total approximately 654.784 acres, more or less.

Conserved Lands and Public Access: Upon the closing of the Phase I CE transaction, the Fee Simple Lot transaction and the Phase II CE transaction, the portions of TBR's property which will be conserved (either pursuant to the terms of a grant of conservation easement or as a result of being conveyed to the City) will be roughly as shown on the preliminary map attached hereto as Exhibit B, except that the areas to be open for public access have yet to be agreed upon.

¹ Exhibit A is the proposed subdivision map that TBR has submitted to the City in connection with its pending subdivision application (DPP File No. 2014/SUB-145).

Purchase Price: The purchase price would be \$48,500,000 and paid as follows: (a) \$40,000,000 for the Phase I CE acquisition; (b) \$3,500,000 for the Phase II CE acquisition; and (c) \$5,000,000 for the Fee Simple Lot acquisition, provided that the purchase price for the Phase I CE and the Phase II CE is not greater than the value agreed to by the State's appraiser(s).

Sources of Funding: Closing and funding, inclusive of the State's and City's share of closing costs, shall be subject to sufficient appropriation, allocation and release of funds in accordance with State and City procedures and constraints. The funding sources for the transactions presently contemplated are as follows: (a) Act 81 (2014) for the Phase I CE acquisition; (b) \$5,000,000 from the City for the Fee Simple Lot acquisition; and (c) \$3,500,000 from the Trust for Public Lands for the Phase II CE acquisition. Closing and funding for the Phase I CE acquisition is also subject to compliance with Act 81 (2014) and the generation of net revenues from bond sales under Act 81 sufficient to cover the Phase I CE purchase price and support bond debt service.

Other Expenses: Other than as described above, as of the date of this letter neither the City nor the State can commit to additional funds, including funds for due diligence and closing costs, unless additional funds are appropriated.

Timing: The closing would occur in two stages: (a) at the first closing, TBR would grant the Phase I CE to the State and convey the Fee Simple Lot to the City; and (b) at the second closing, TBR would grant the Phase II CE to the State. The obligation to close the Phase I CE transaction is conditioned upon the closing of the Fee Simple Lot transaction, and vice versa. Subject to satisfaction of conditions, the Phase II CE closing would occur within two years of the first closing.

Other Matters: Prior to execution of definitive documents: (a) the State, City and TBR still need to agree as to the exact legal metes and bounds for the Phase I CE area and the Phase II CE area, and where the public will be allowed access; (b) the property needs to be subdivided, and maps and metes and bounds descriptions need to be provided by TBR to the State and City for their review, and (c) the conditions of the conservation easements, including baseline documentation, and deed language, need to be agreed upon by all parties. Appraisals, due diligence, including environmental investigation, a public hearing before the Legislature, and approvals by the Board of Land and Natural Resources and the Hawaii Tourism Authority Board, must also be completed and/or negotiated before the definitive documents are executed. Execution of documents and closing are subject to satisfaction of the requirements of Act 81 (2014). Any pending challenges to the transaction must be resolved to the State's satisfaction prior to closing, and State and the City must receive title insurance for the conservation easements and property being granted or conveyed to them. The definitive agreements will contain other conditions to closing and representations and warranties by respective parties, as the parties agree.

Expenses: Except as otherwise provided herein or in a written agreement, the State, HTA, the City, TPL and TBR agree to bear their respective fees and expenses incurred in connection with the transactions contemplated herein, including any due diligence expenses, without regard to whether such transactions are ultimately consummated.

City: The State and TBR confirm that the City has not participated in the preparation or negotiation of this letter, and that a copy of this letter is being provided to the City for information purposes only.

NEITHER THE PROPOSAL CONTAINED HEREIN NOR THIS LETTER CONSTITUTE A LEGALLY BINDING AGREEMENT. ANY OBLIGATIONS RELATING TO THE PROPOSAL AND THIS LETTER SHALL BECOME EFFECTIVE ONLY UPON THE EXECUTION OF THE DEFINITIVE AGREEMENT CONTAINING SUCH TERMS AND CONDITIONS AS SHALL BE MUTUALLY AGREED UPON BY THE STATE, CITY AND TBR, AND THEN ONLY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH DEFINITIVE AGREEMENT.

Very Truly Yours,

Chairperson
Board of Land and Natural Resources

THE FOREGOING IS HEREBY ACKNOWLEDGED AND ACCEPTED:






TURTLE BAY RESORT, LLC

By _____
Name: _____

cc: Mike McCartney, Hawaii Tourism Authority
Ray Soon, City and County of Honolulu
Russell Tsuji, Land Division, DLNR
David Louie, Department of the Attorney General
Lea Hong, Trust for Public Lands
Doug Cole, North Shore Community Land Trust

EXHIBIT A

DRAFT

Conserved Land Areas		
	Recreation Zone / Public Access	17.9 Acres
	Ecological Zone	106.2 Acres
	Recreation Zone / Public Access	534.3 Acres
	City Owned	5.1 Acres
Total Conserved Lands		663.5 Acres
	Areas Excluded from Conservation Easement	183.8 Acres
Total		847.3 Acres

Public Parking Areas



 NORTH

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 12, 2014

WILLIAM J. AHL, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVATION COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an Environmental Assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Approval in Principle for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort.

Project Location: Kahuku, Koolauloa, Oahu


Project Description: Acquisition of conservation easement for public recreation, open space and wildlife preserve over the undeveloped portions of the Turtle Bay Resort.

Chapter 343 Trigger: Use of State Funds

Exemption Class No.: In accordance with the Exemption List for the Division of Forestry and Wildlife, approved by the Environmental Council and dated June 12, 2008, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 16, that states: "The acquisition of land or interests in land for the purposes of conservation, provided that the acquisition does not cause any material change of use of land or resources beyond that previously existing". As the purpose of the conservation easement is to maintain and preserve the existing resources and land use activities, there is no material change of use of land or resources.

Consulted Parties: DLNR Division of Forestry and Wildlife, Department of the Attorney General

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr.
Chairperson
