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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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November 30, 2013

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'āina, 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

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 <u>not</u> 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

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[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