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The Honorable Suzanne D. Case <Suzanne.D.Case@hawaii.gov>
Chair, Board of Land and Natural Resources
State of Hawaii
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1151 Punchbowl Street
Honolulu, Hawai`i 96813

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Re: **Thomas Square Park**: Objections to Request by City and County of Honolulu to Amend Executive Order 3873 to unlawfully change uses of Thomas Square

Dear Ms. Case, Mr. Kaulukukui, Mr. Dacus, and Mr. Glenn:

Introduction. By this letter, several groups and persons identified below hereby request that the City and County of Honolulu (“City”), through its Department of Enterprise Services (“DES”), withdraw its request to the Board of Land and Natural Resources (“BLNR”) that BLNR propose to the Governor an amendment to Executive Order 3873, dated June 12, 2001, relating to the scope of uses of Thomas Square Park. The park is bounded by Ward Avenue, South Beretania Street, Victoria Street, and South King Street, in the City and County of Honolulu, an area of approximately 6.4 acres.

In the alternative, if the City refuses to withdraw its request for an amendment of the Executive Order, we request that BLNR summarily deny the City’s request for the reasons detailed below. If BLNR deems it necessary to conduct hearings on this matter, we request timely notice thereof.

Statement of Interest. The groups and individuals identified below have been active users of Thomas Square for a number of years and these groups and people include organizers of activities conducted in Thomas Square.

Life of the Land (“LOL”) is Hawai`i’s own energy, environmental and community action group advocating for the people and `aina for 46 years. The mission of LOL is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation. LOL was one of several groups who worked with the Ad Hoc Committee to Save Thomas Square in the early 1970s working to protect the park.¹ LOL was also involved in litigation to protect the special district from granting height variance to the Admiral Thomas condominium.²

¹ “Kulaokahu’a and Thomas Square--From Boom to Bust to Now”, by Hawaiian Journal of History founding editor Richard A. Greer. Hawaiian Journal of History, Volume 26, 1992, citing Original Source: HA, 23 Feb. 1972. <https://evols.library.manoa.hawaii.edu/bitstream/10524/411/2/JL26141.pdf>. The other groups working to protect the park included the Outdoor Circle, the American Institute of Architects, the American Society of Landscape Architects, the Garden Club of Honolulu, the Historic Buildings Task Force, and the Honolulu Academy of Arts.

² Life of the Land, Inc. v. CITY COUNCIL, ETC., 592 P.2d 26 (Haw. 1979)

Ka Lei Maile Ali'i Hawaiian Civic Club ("KLMA") is dedicated to educating the community about Hawaiian history, after a century of (mis)education within the system that taught an incorrect history of Hawai'i's relationship with the U.S.³ KLMA participates in historical and cultural activities held at Thomas Square.

Alan Burdick is a 34-year resident of Oahu, and has visited Thomas Square dozens of times, for all sorts of occasions – the American Indian pow-wows, the plant sales, the art displays, and as a happy place to walk through when leaving for the Beretania Street bus stop from the Blaisdell or the doctors' offices at 1010 South King Street. He has always enjoyed this quiet corner in the middle of a portion of Honolulu that it, alas, becoming ever-more crowded, unpleasant, and Manhattanized with sterile glass skyscrapers housing condos owned by absentees and speculators.⁴

Samuel M. Mitchell and Mae M. Mitchell.⁵ Mr. Mitchell is a long-time member of the Makiki Neighborhood Board. Thomas Square is within the jurisdiction of this Neighborhood Board. Mr. Mitchell joins this statement of objections in his individual capacity. Dr. Baron Kaho'ōla Ching is one of the regular organizers of the annual La Ho'ihō'i Ea (re-enactment of the restoration of Hawaiian sovereignty) at the park for the last 40 or so years, which the Mayor frequently mentions as an event that he supports.⁶

Other individuals and groups include H. Doug Matsuoka (Hiroshi Douglas Matsuoka). Individually and for Food Not Bombs,⁷ David Mulinix and Sherry Pollack. Individually and for

³ <http://www.kaleimailealii.org/>

⁴ PO Box 51, Honolulu, Hawaii 96810

⁵ 1043 Kinau Street, Apt. 301, Honolulu, Hawaii 96814

⁶ 321 N Kuakini St Ste 708 Honolulu, HI 96817-2362

⁷ P.O. Box 22046, Honolulu Hawaii 96823-2046

DeOccupy Honolulu,⁸ Maivân Clech Lâm,⁹ Lindsey Wilbur,¹⁰ Javier Mendez,¹¹ and Laulani Teale, MPH.¹²

Background Information.

Early history. As is well known Thomas Square is a well-used park in the central part of urban Honolulu. It has great historical significance as the site of a ceremony on July 31, 1843, when Admiral Richard Darton Thomas of the British Navy “restored” the sovereignty of the Kingdom of Hawai`i after sovereignty had been purportedly seized by another British official.

Thomas Square was the first Park established in the Hawaiian Kingdom. The King and the Privy Council met on March 8, 1850 and decided to expand Thomas Square. The land is "not to be sold."¹³

What is known to many as the main celebration of Lā Ho‘iho‘i Ea, is held there annually in synchrony with others on Neighbor Islands and different parts of the world, on the anniversary of the day of the restoration of the Hawaiian Kingdom. Thomas Square is currently also where many gather for American Indian Pow-Wows, community meetings, picnics, displays and sales of plants and arts and crafts, autonomous acts of free association and expression, and other active uses of the park.

⁸ Wilbur is a student of Political Science at the University of Hawai‘i, and an affiliate researcher at the Center for Futures Studies and the Institute for the Future. 47-185-A Hui Akepa Place, Kaneohe, Hawaii 96744

⁹ Maivan Clech Lam, professor emerita of international law, City University of New York Graduate Center. Professor Lam authored, among other scholarly publications on the rights of indigenous peoples, the classic article "The Kuleana Act Revisited " in the Washington Law Review (April 1989) and the seminal book "At the Edge of the State: Indigenous Peoples and Self-Determination". She has participated, at the invitation of the late Dr. Kekuni Blaisdell, in virtually every La Ho‘iho‘i Ea commemoration he convened at Thomas Square in his lifetime.

¹⁰ 47449 Ahuimanu Place, Kaneohe, Hawaii 96744

¹¹ President of the U.H. Manoa Biology Alumni Association

¹² P.O. Box 61508, Honolulu Hawaii 96839

¹³ Res. 2, Privy Council Records, Territorial Land Office, Book 3, p. 255

Thomas Square is protected by State law as a public park. In 1925, the Territorial Legislature enacted Joint Resolution 1 which stated in part, “Whereas the park at Thomas Square should be maintained as sacred ground; now, therefore, Be it Enacted by the Legislature of the Territory of Hawai‘i: That Thomas Square be maintained in its present condition as a public park.”¹⁴ The statute is currently codified as HRS §46-65.5 (hereinafter “the Thomas Square Statute”), that states, with no ifs, ands, or buts, that “Thomas Square shall be maintained as a public park.”¹⁵

Park Upgrades

“However, in 1932, a retaining wall was added on the Beretania side of the Park and the remainder of the site was graded to flatten the slope to King Street.

A major design effort was by Catherine Jones Richards Thompson and Robert Thompson in 1931-32, under direction of the Parks Board, headed by Lester McCoy. Prior to this plan, the original ground plain sloped makai at what was thought to be a relatively constant grade until the park was renovated. At that time, it was graded and a wall was constructed to create the terrace that is now adjacent to South Beretania Street.”¹⁶

Rock Wall

“I understand a great deal of comment has been made about the rock wall running along the Beretania side and a person without knowing cannot see its purpose. Thomas Square, though not generally believed, is not a level site. There is a difference in elevation of 15 feet between the Beretania and King St levels which few realize, which is considerably sloping topography. In undertaking this landscape problem, I gave considerable thought to the Academy of Arts, as it is one of the finest monuments given to this city by a private benefactor. I therefore approached

¹⁴ Session Laws of Hawai‘i, 1925. Legislative Reference Bureau KFH25 A25 1925, page 402, dated April 27, 1925.

¹⁵ Documentation is weak during this period. The Library of Congress’s Chronicling America (<http://chroniclingamerica.loc.gov/>) has digitalized U.S. newspapers from 1789 to 1922, including several dozen Hawai‘i newspapers. The Hawai‘i Newspaper Index starts in 1929.

¹⁶ http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Oahu/2010s/2016-10-08-OA-5B-DEA-Thomas-Square-Park.pdf

Thomas Square from the King St. side looking up hill towards Punchbowl. The rise is noticeable, and as one strolls directly across the site, passes giant banyans, his gaze immediately falls on the Academy of Arts. Considering balance and effect it was perfectly natural to throw in a virgin green terrace rising slightly so that the eye looks across the Square it naturally falls upon this beautiful memorial.”¹⁷

Proposed Street Widening 1970

“The Outdoor Circle stands firm that Historic Thomas Square, the focal point within the cultural center, should be preserved in its entirety. ...Thomas Square is the oldest, dedicated open-space in Honolulu. Its historical significance is great.”¹⁸

“Thank you for your patience in waiting for my views...My delay was due, in part, to the impending final action on Thomas Square and the Honolulu Academy of Arts by the National Register of Historic Places. ... The National Register is the nation`s official roll of property that are worth preserving and the fact that both the Academy of Arts and Thomas Square have now been listed on this Register recognizes their historic value to Hawaii and to the Nation. ... The acceptance of both sites to the National Register reaffirms and strengthens my belied and feeling that both sites should be protected in every possible way.”¹⁹

National Register of Historic Places in 1972

The State filed the Application to place the park on the National Register of Historic Places in 1972. Sunao Kino, Chairman and Member of the Board of Land and Natural Resources (BLNR), filed a nomination form to the United States Department of the Interior (DOI) National Park Service, National Registry of Historic Places, on March 30, 1972. The document was prepared by Dorothy Riconda, a Historian with the Hawaii Register of Historic Places.²⁰ “As the

¹⁷ Landscape Gardening by Robert L. Macconel, Honolulu Star-Bulletin January 23, 1932, p. 7

¹⁸ The Outdoor Circle Letter to Department of Traffic, City and County of Honolulu, dated November 1, 1971

¹⁹ Letter from Sunao Kido, BLNR Chair to the Department of Traffic, City and County of Honolulu, dated May 22, 1972

²⁰ <http://hartdocs.honolulu.gov/docushare/dsweb/Get/Document-16107/AR00155382.pdf>

designated State Liaison Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service.”

Section 7 of the Application stated, “DESCRIBE THE PRESENT AND ORIGINAL (1) PHYSICAL-APPEARANCE” “Thomas Square is approximately 6.5 acres of landscaped lawn across South Beretania Street from the Honolulu Academy of Arts. It offers a green and quiet space to residents and visitors both in the Honolulu Civic Center area. The park is surrounded by a trimmed mock orange hedge and is planted with many shrubs common to Hawaii. The center of the square is marked by a single fountain spurting 20 ft. in the air and cascading into a surrounding pool. The central area of the park is made cool and shady by the presence of a huge banyan tree. Other areas of the park are shaded by different varieties of banyan, flowering shower trees, and some rare varieties of Hawaiian ‘fish poison’ trees. The square is bounded on all sides by a wide pedestrian sidewalk allowing the interior space to remain lawn and shaded areas for recreational use.”

National Registry of Historic Places (NHRP) Approval

The National Registry of Historic Places website provides information about the site.²¹

Thomas Square (added 1972 - - #72000423)

Bounded by King, S. Beretania, and Victoria Sts. and Ward Ave., Honolulu.

Historic Significance: Person

Historic Person: Thomas, Rear Admiral Richard, et al.

Significant Year: 1843

Area of Significance: Politics/Government

Period of Significance: 1825-1849

Owner: **State**

Historic Function: Landscape

Historic Sub-function: Garden

²¹ <http://www.nationalregisterofhistoricplaces.com/hi/honolulu/state3.html>

Current Function: Landscape

Current Sub-function: Park

Since 1925, under various agreements between the City on the one hand and the then-Territory and later the State on the other, the City has maintained Thomas Square on behalf of the State. The most recent iteration of the relationship is set out in Executive Order 3873, executed by Governor Cayetano on or about June 12, 2001.

BLNR (2001)

The sidewalk around the park is part of the park, and not exterior to it, as the City has sometimes asserted.

“Staff is uncertain when, but the City in its efforts to have all sidewalks near parks become ADA accessible, went ahead and rounded the corners between Ward Avenue and South Beretania Street, and the corner between Victoria Street and South Beretania Street, without notifying the Department. What was once part of Thomas Square property is now in the road.”²²

“The Land Board at its meeting of September 25, 1970, Item F-14, approved of and recommended to the Governor the issuance of an executive order setting aside the Thomas Square site to the City and County of Honolulu Department of Parks and Recreation for park purposes.

The request has not been completed and has only recently been revitalized by the City and County of Honolulu. DAGS, Survey Division is recommending the subject property be turned over without the square corners fronting South Beretania Street. The City and County of Honolulu has rounded the corners with ADA accessible sidewalks. The existing corners would be in the road.”²³

²² DLNR Land Division letter to BLNR, dated May 11, 2001

²³ Approved by the BLNR at its May 26, 2000 Land Board Meeting. Submitted by DLNR Land Division. Approved by Timothy E. Johns, BLNR Chair

Executive Order 3873 (2001)

“BY THIS EXECUTIVE ORDER, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes ...FOR THOMAS SQUARE, to be under the control and management of the City and County of Honolulu, a municipal corporation, being that parcel of land situate at Kulaokahua, Honolulu, Oahu, Hawaii, containing an area of 6.410 acres.”

State Law re Executive Orders

“Hawai'i Revised Statutes §171-11 Public purposes, lands set aside by the governor; management. The governor may, with the prior approval of the board of land and natural resources, set aside public lands to any department or agency of the State, the city and county, county, or other political subdivisions of the State for public use or purpose. [] Such department, agency of the State, the city and county, county, or other political subdivisions of the State in managing such lands shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry covering such lands for such use **as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board.**” [emphasis added]

The City now wants to radically change how the people use Thomas Square.

However, recently, the City has decided that it wants to substantially modify the uses of Thomas Square and to make substantial physical alterations to the Thomas Square Park itself. This decision is reflected to some extent in a memorandum dated April 28, 2016, from City DES Director Guy H. Kaulukukui to BLNR Chair Suzanne D. Case. By that letter, the City has asked BLNR to modify the Executive Order to change the uses of Thomas Square. (Presumably, the City is requesting that BLNR merely draft a modification for the present Governor's approval.)

The proposed changes would violate the statutory limitations on the uses of Thomas Square. Moreover, we believe that the proposed changes are unwanted by the neighboring community and detrimental to the public's use of the park.

The City's memorandum is one of several actions it is taking to implement its "Thomas Square Master Plan," a copy of which was evidently attached to the DES letter to BLNR of April 28, 2016. Further, the City has prepared, in purported compliance with HRS Chapters 6E and 343, a "Draft Environmental Assessment – Anticipated Finding of No Significant Impact" ("Draft EA"), promulgated in September 2016.²⁴ (The "Master Plan" is sometimes referred to in the Draft EA as a "Renovation Plan.")

Some of the groups and persons who are filing this letter have submitted timely objections to the Draft EA, and we are awaiting further proceedings thereon. Meanwhile, we are unsure of the current status of the City DES's requests to BLNR set out in the memorandum of April 28, 2016.

The Association of Hawaiian Civic Clubs at their 57th Annual Convention on November 17, 2016 adopted Hawaiian Civic Club Resolution No. No. 16-20 *"Urging the Mayor and the City and County of Honolulu to support allowing for Thomas Square to remain in the department of parks and recreation to allow for the visibility and integrity of the Hawaiian historical significance of Thomas Square."*

Thomas Square is a designated "Historic Place" and City actions are already endangering it. Further, we urgently note that the City has already taken actions that appear to be in violation of its responsibilities to preserve the heritage of Thomas Square. Thomas Square was added to the National Register of Historic Places listings for Oahu on April 25, 1972.

²⁴ The Draft EA is available online from the Hawaii State Office of Environmental Quality Control: http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Oahu/2010s/2016-10-08-OA-5B-DEA-Thomas-Square-Park.pdf.

At this time, we question whether the City's current plans and actions with respect to Thomas Square remain in conformity to historic preservation requirements. The City's recent "renovation" actions at the park appear to have obliterated portions of the walkways that had been laid out for decades to represent the British flag.²⁵ The de facto boundary change may impact federal historical preservation status.²⁶

BLNR has a responsibility to ensure that the City has been acting in conformity with the strictures of the Thomas Square Statute, E.O. 3873, and the National Historic Preservation Act as part of its decision-making process in evaluating the City's present request to amend the E.O. We fear that such an evaluation will result in a determination that the City has not been meeting its responsibilities.

Trying to Amend the Statute by Amending the E.O. – Public Purpose vs Public Park

The City's memorandum of April 28, 2016, fleetingly mentions the Thomas Square Statute, and says that the E.O. would remain in conformity with the Statute, it fails to even attempt to show that the City's proposed modification of E.O. 3783 would not violate the Statute. For the reasons discussed below, we believe both of the proposed "Solutions" set out in the City's memorandum would violate the Statute, and therefore the City must withdraw the memorandum. Failing that, BLNR must deny the requests contained in the memorandum.

The memorandum points out, at the top of its second page, that the City plans to incorporate Thomas Square "into the Neal S. Blaisdell Center campus and implement [] a program of public events, activities, and festivals consistent with civic centers, "town squares" in general and the Thomas Square Master Plan in particular." Note that the memorandum does **not** state that the Master Plan is consistent with use of Thomas Square as a public park.

²⁵ See, "Obliteration of Thomas Square history apparently already underway," by Ian Lind, Sept. 26, 2016. <http://www.ilind.net/2016/09/26/obliteration-of-thomas-square-history-apparently-already-underway/>.

²⁶ National Register of Historic Places Sec. 60.14 Changes and revisions to properties listed in the National Register. (a) Boundary changes. (1) A boundary alteration shall be considered as a new property nomination. <https://www.nps.gov/NR/regulations.htm>

The memorandum then points out a governance problem that the City has, and it proposes what are really two alternative “tail-wagging-the-dog” solutions. Note that, as to each alternative, the City does not propose text for such amendments, but merely describes what the amended text would (putatively) accomplish. DES states that, on advice of Corporation Counsel, although the Mayor can transfer operational control of Thomas Square from the City’s Department of Parks and Recreation to DES, the administrative rules of the Department of Parks and Recreation must continue to be applied so long as “Thomas Square is considered a ‘park’ ... [and] DES rules cannot be applied and the desired public program will not be fully realized.”

Therefore, in order to permit DES to promulgate administrative rules for Thomas Square, the City asks BLNR to stop “consider[ing]” Thomas Square as a public park. Each of the City’s two proposed “solutions” to this concern violates the Thomas Square Statute, because each such suggested solution would require the State and the City to “consider” Thomas Square as something **other than a public park**.

The City’s preferred “Proposed Solution” “would allow the City to use the property for whatever purposes its (*sic* - it) needs as long as that purpose is a **public purpose**.” (Emphasis added.) That proposed amendment to E.O. 3873 would invite violation of the Thomas Square Statute that mandates that “Thomas Square shall be maintained as a public park.” Why? Because many public purposes do not involve using property as a park – for example, a public parking garage or a fire station or a government office building is used for a public purpose, but none of these uses is consistent with a place being a public park.

The City’s alternative proposal is at best hopelessly vague and ambiguous, and it would be counterproductive to the need to preserve Thomas Square as a public park. In the alternative proposal, the City asks that the E.O. be amended “[1] in a manner that continues to restrict the public purpose [2] but is broad enough to allow DES to conduct the Neal S. Blaisdell Center program of public events, activities and festivals.” (*Sic*; bracketed numbers inserted.)

First, what does [1] “continues to restrict the public purpose” mean? Apparently, the writer very unartfully was intending to say something like, “continue to restrict purposes to

public purposes.” But that’s not good enough. As we have noted above, a “public purpose” could involve all sorts of purposes and uses that do not conform to the purposes and uses of a public park. The Thomas Square Statute requires that Thomas Square be maintained as a public park. Nothing else. Any other purpose violates the statute. So, even if this part of the “Alternative Proposal” was rewritten to say what the author apparently intended, the proposal, if adopted, would purport to allow the City to violate the Thomas Square Statute.

Second, the DES memorandum to BLNR proposes that the Thomas Square E.O. 3873 be amended to [2] be “broad enough to allow DES to conduct the Neal S. Blaisdell Center program of public events, activities and festivals.” Why does DES need an amendment to this Thomas Square E.O. in order to continue to conduct Blaisdell Center activities? The Blaisdell Center is on City land, and the City doesn’t need the State’s permission via a Governor’s E.O. to conduct its Blaisdell Center business. The alternative proposal thus appears to make no sense at all.

Perhaps, however, the intent of this alternative “solution” is to describe those Blaisdell Center activities that would spread out from the Blaisdell complex and actually be conducted at Thomas Square under the new Master Plan. Unfortunately, the City fails to propose actual text that can be analyzed or modified. Evidently, what the City wants to do to Thomas Square is so vague and nebulous that the City is unable to propose its own revised language for the E.O. Instead, basically, the City is throwing this conundrum into BLNR’s lap, and it is asking BLNR to craft language to accomplish these purposes. We submit that where a government agency (evidently) cannot propose its own draft language in a situation like this, it is inappropriate and dangerous for BLNR to try to resolve the City’s problem.

The bottom line of any discussion of the Thomas Square E.O. is that any amendment of the EO must necessarily remain within the parameters of the Thomas Square Statute, a fact that both the memorandum and the Draft EA ignore. Meanwhile, the City evidently is continuing to try to accomplish a *de facto* amendment of the Thomas Square Statute by amending the E.O. that implements the Statute. That is simply not legally possible. This is especially a problem when the City’s own DES has declared – in another communication that it has evidently not shared with BLNR - that **“any Thomas Square renovation” will have a significant impact on the**

program and activities Neal Blaisdell Center complex. See the letter of June 1, 2015, from Guy H. Kaulukukui, then Director-Designate of the Honolulu Department of Enterprise Services, to PBR Hawaii (the contractor for the Draft EA) (copy attached) in connection with the preparation of the Draft EA. He stated, “The Department of Enterprise Services is working on a master plan for the proposed redevelopment of our [Neal S. Blaisdell Center] campus, and I expect **any renovation** of Thomas Square Park **will have a significant impact** on our existing program and proposed plans.” (Emphasis added.)²⁷

DES should have made BLNR aware of this critical statement, because the statement makes clear that the repercussions of “any” Thomas Square renovation will be major. It follows that “any” renovation having such a major impact on Blaisdell Center is highly unlikely to involve preservation of Thomas Square as a true “public park.” As we all know, the Blaisdell Center “campus” is a huge City facility. It occupies 22.4 acres, larger by far than Thomas Square’s 6.4 acres. The Blaisdell Center complex draws entertainment talent from around the world. It is also an important commercial venue for exhibitions – everything from automobile shows, to job fairs, to home improvement fairs. Something really major would have to happen in Thomas Square before it would have a significant impact on the Blaisdell Center complex.

Under these circumstances, where DES declares that “**any** renovation” of Thomas Square “**will** have a **significant impact**” on the Blaisdell complex, then BLNR must take this declaration into account in responding to the request to modify the Executive Order.

Fundamentally, BLNR must take into consideration the fact that DES operates City-owned properties as **revenue-generating venues**. And, equally fundamentally, a park is not supposed to be a revenue-generating venue.

Our concerns are reconfirmed by statements made by Mr. Kaulukukui in an article in Civil Beat on July 25, 2016, <http://www.civilbeat.org/2016/07/the-importance-of-thomas-square-park/>. To our knowledge, DES has NOT called BLNR’s attention to that Civil Beat article or the detailed plans set out in the article. There, he stated, among other things:

²⁷ This letter is included in the lengthy, unpaginated Appendix A-3 to the Draft EA. The letter is at page 203 of the Draft EA document in its electronic format. See footnote 24, above.

An Environmental Assessment has been completed and will be submitted in August for inclusion in the State of Hawaii Office of Environmental Quality Control publication, Environmental Notices. The EA process allows community stakeholders an opportunity to review and provide comments on the city's renovation plan for Thomas Square.

Upon completion of the EA review in the fall of 2016, Thomas Square will be closed to public use for up to six months while new grass and irrigation systems are installed and the past glory is returned to this historical treasure.

When Thomas Square re-opens, it will be under the management and control of the city's Department of Enterprise Services, which also manages the Neal S. Blaisdell Center, Waikiki Shell, Municipal Golf Courses and Honolulu Zoo.

The department's mission is to manage and market a diversity of community oriented facilities and services for the use and benefit of the public and supporting cultural, recreational and educational opportunities and events toward a self-supporting basis.

The Department of Enterprise Services will combine existing Thomas Square cultural events — such as La Hoihoi Ea and the Inter-Tribal Pow Wow, among others — with new activities to develop a vibrant monthly program of free-to-the public events and festivals specifically for Thomas Square that are intended to enhance, engage and educate the community with culture, art and entertainment.

Meanwhile, all permitted activities and current uses of the park will continue.

[Emphasis added.]

Privatizing the Commons. The planned transfer from Parks and Recreation to Enterprise Services would be a radical change, because it introduces commercialization into potentially all activities at Thomas Square, and it radically changes the culture of how people will be allowed to use the park. A careful reading of the Civil Beat article shows that DES does not promise that ALL activities will be free of charge. Only some of them will be, while others likely will not be. That is not what a public park is. Thomas Square would remain a public

venue, like the Blaisdell, yes; but not as a public park, which is precisely what the Thomas Square Statute requires.

As has been noted by some of those who join in this statement of objections, the transfer of Thomas Square from the Department of Parks and Recreation to the Department of Enterprise Services constitutes a taking from the public that currently enjoys free use of the park, to a City revenue-generating entity.

Just as importantly, this proposed transfer would also take away the status of Thomas Square as a public park where First Amendment rights of freedom of speech and assembly must be honored (for now). Parks are covered under City ordinances that require hearing before the City Council. Enterprise Services are ruled by the city's administrative rules that can be adopted without public hearings or approval of the City Council, and need not allow for any "free speech zone" as a venue for public forums. Those rules could cover not only admission fees but other restrictions on what people are allowed to do – and not allowed to do – in Thomas Square. These charges might be imposed on virtually any activity at Thomas Square – consuming food and beverages at the Park; sitting in a beach chair; having a community meeting – if community meetings will still be allowed; having a picnic – if picnics will still be allowed – attending concerts there; and any other activity at Thomas Square.²⁸

The City's slideshow summary of the Thomas Square Master Plan,²⁹ at slide 8, includes "Light weight movable chairs by concession" as an element of the proposed "renovation."³⁰ In other words, City residents will no longer be allowed to bring their own beach chairs to Thomas Square. Instead, they will have to pay to rent the concessionaire's beach chairs. This is but one example. It seems quite probable that – just as at the Blaisdell Concert Hall and other buildings

²⁸ See, "What the City Doesn't Want You to Know About Thomas Square," Civil Beat, July 21, 2016, by H. Doug Matsuoka, <http://www.civilbeat.org/2016/07/what-the-city-doesnt-want-you-to-know-about-thomas-square/>.

²⁹ We have not been able to find the text of an actual Thomas Square Master Plan through either our Google searches and other inquiries to date. Evidently, it has not been released, and it may not yet have been prepared by the City in final form. The only "Thomas Square Master Plan" we have found to date is the slideshow presentation.

³⁰ <http://www.slideshare.net/ChrisDacus/thomas-square-masterplan-presentation>.

in the Blaisdell complex, residents will no longer be allowed to bring their own food and drink, but will have to purchase these items from the concession stands.

Even more importantly, it appears that the City plans to wipe out the sidewalk on the Ward Avenue side of the park and create a new sidewalk that goes well into the interior of the park. Unless such a new sidewalk strictly follows the old pathways of the park, which follow the layout of the British Union Jack flag, such a new sidewalk would.

From the point of view of park users, this “renovation” threatens to become a closing of a commons and *de facto* privatization of a public resource. It will be in clear violation of the Thomas Square Statute, it appears certain to violate the designation of Thomas Square as a Historic Place, and it has no community support.

Moreover, the proposed six-month closing of the park pending renovations would force a halt to activities of Food Not Bombs to feed homeless persons in the area, because they would no longer have a gathering place during this period and possibly indefinitely. The City previously promised such a place, but has failed to confirm this.

These comments show that the City’s proposal could have major adverse impacts on the public’s traditional and ongoing use of Thomas Square as a public park.

The City’s plans for such radical changes in the way Thomas Square will be operated should have been described in the April 28, 2016 memorandum that is the subject of this present statement of objections. Such radical changes will, necessarily, be in violation of the Thomas Square Statute: Thomas Square will NO LONGER be operated as a public park. For this reason alone, the request contained in that memorandum should be sent “back to the drawing boards” for substantial revision.

More fundamentally, the City needs to reconsider – and scrap – its underlying plans to violate the Thomas Square Statute by attempting to convert Thomas Square from a public park into an enterprise facility. There is no indication that the people in the neighborhood, or other

Oahu residents who also use and rejoice in the existence of Thomas Square as it is, want or need commercial enterprises in this park. We have the entire Blaisdell complex, plus the museums, in the area already. A laid-back park, with community-generated activities, is what Thomas Square is and should remain.

Summary and Conclusion. The memorandum from City DES to BLNR of April 28, 2016, asks BLNR to allow for major changes in the management of Thomas Square. Such changes would constitute serious violations of the Thomas Square Statute, which requires that Thomas Square be maintained as a public park. The City's plans for changes at Thomas Square are radical and entirely inconsistent with maintaining Thomas Square as a public park.

For these reasons, as elaborated above, we ask the City DES to withdraw the requests set out in its memorandum. We ask BLNR to withhold any action on the requests pending action by the City in response to the present statement of objections. If the City fails to withdraw its requests, we ask BLNR to reject them. In all events, we ask to be kept fully and timely apprised of all new developments in this matter.

Thank you very much in advance for your consideration and anticipated compliance with these requests.

Respectfully submitted,



Henry Curtis

Executive Director

Attachments:

[1] Memorandum from Guy H. Kaulukukui, Director of the City's Department of Enterprise Services, to Suzanne D. Case, Chair of the Hawaii State Board of Land and Natural Resources, April 28, 2016.

[2] Letter from Guy H. Kaulukukui, then Director-Designate of the City's Department of Enterprise Services, to PBR Hawaii, June 1, 2015.

TO: Central
FROM: CCLD

No.: ED 3873

DEPARTMENT OF ENTERPRISE SERVICES
GOLF COURSE DIVISION * HONOLULU ZOO * NEALS. BLAISDELL CENTER * WAIKIKI SHELL

CITY AND COUNTY OF HONOLULU
777 WARD AVENUE · HONOLULU, HAWAII 96814-2186
PHONE: (808) 768-5400 * FAX: (808) 768-5433 * INTERNET: www.honolulu.gov/des

KIRK CALDWELL
MAYOR



GUY H. KAULUKUKUI
DIRECTOR

TRACY S. KUBOTA
DEPUTY DIRECTOR

April 28, 2016

MEMORANDUM

TO: Suzanne D. Case, Chairperson
Board of Land and Natural Resources

FROM: Guy H. Kaulukukui, Director *GHK*
Department of Enterprise Services

SUBJECT: Thomas Square

RECEIVED
LAND DIVISION
2016 APR 28 PM 3:43
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Background

From about 1931 to 1970 the City and County of Honolulu (CCH) managed Thomas Square under an informal arrangement with first the territory, then the state of Hawai'i. In 1970, the Department of Land and Natural Resources (DLNR), Division of Land Management recommended that the Board of Land and Natural Resources (BLNR) approve and recommend to the Governor the issuance of an executive order to set aside the Thomas Square site to the CCH, Department of Parks and Recreation (DPR) for park purposes. However, an executive order to that effect was never executed and CCH continued to manage Thomas Square, under an informal agreement, until an executive order was finally executed by Governor Cayetano in 2001.

Executive Order and Relevant Legislation

Executive Order No. 3873 SETTING ASIDE LAND FOR PUBLIC PURPOSES sets aside Thomas Square to CCH (not DPR) for the purpose of "THOMAS SQUARE", and HRS 46-65.6 states that "Thomas Square shall be maintained as a public park". Therefore, it appears that the state set aside Thomas Square to CCH for the purpose of (being) Thomas Square, and (subject to HRS 46-65.6) it must be maintained as a park.

City's Planned Action

Mayor Caldwell plans to transfer the management and operational control of Thomas Square from DPR to the Department of Enterprise Services (DES) for the purposes of incorporating the square into the Neal S. Blaisdell Center campus and implementing a program of public events, activities and festivals consistent with civic centers, "town squares" in general and the Thomas Square Master Plan in particular. The master plan is attached to this memo for your reference.

Issues

Although the Mayor can transfer operational control from DPR to DES, DPR administrative rules must continue to be applied (according to CCH Corporation Counsel) if Thomas Square is considered a "park" because (by County Charter) DPR is the CCH department responsible for managing city parks. As long as DPR administrative rules are enforced at Thomas Square, DES rules cannot be applied and the desired public program will not be fully realized.

Proposed Solution

CCH requests the public purpose of EO 3873 be amended to read "FOR THOMAS SQUARE OR A MUNICIPAL PURPOSE" which CCH Corporation Counsel suggests would allow the City to use the property for whatever purposes its needs as long as that purpose is a public purpose.

Alternative Solution

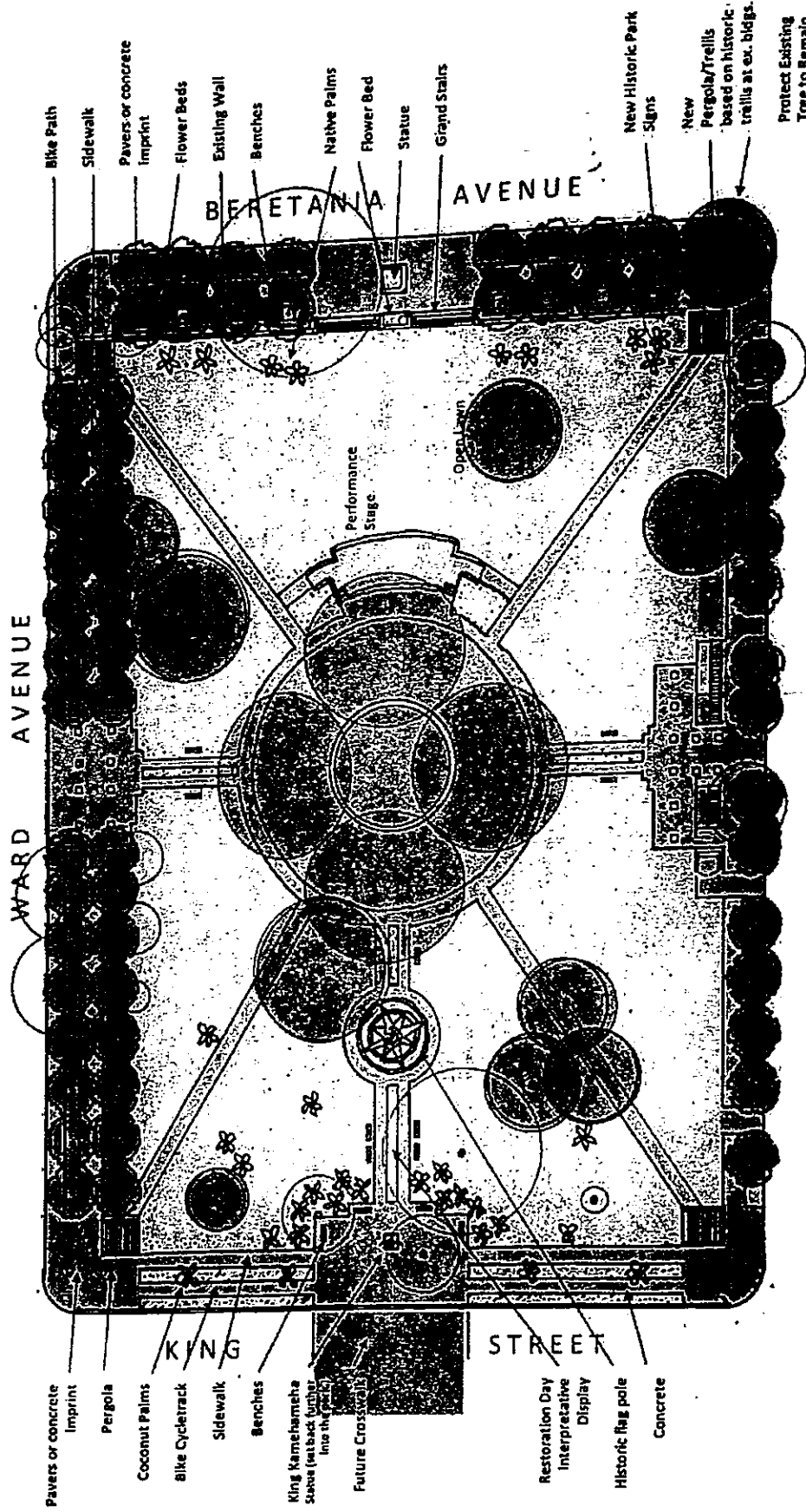
CCH requests BLNR amend EO 3873 in a manner that continues to restrict the public purpose but is broad enough to allow DES to conduct the Neal S. Blaisdell Center program of public events, activities and festivals.

Precedence

A similar course of action was employed during the Harris Administration for a proposed (but not realized) expansion of the use of the Ala Wai golf course which had originally been conveyed to CCH for golf course use only. Upon the request of CCH the executive order from the State to the City for the golf course was amended to broaden the purpose of the property from golf course use to golf course and park use.

Thomas Square Master Plan

Restore the square. Honor the past. Enhance for modern day use. Activate the square.



Thomas Square Master Plan

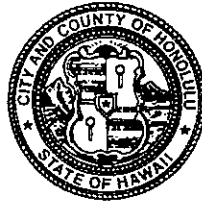
Restore the square. Honor the past. Enhance for modern day use. Activate the square.

- Maximize open green space. Street tree buffer.
- Honor the past- Prominent location for King Kamehameha III statue on King Street, Hawaiian Flag pole, and story telling.
- Thompson & Thompson 1929. Restore Banyan fountain. British Jack. International period. Furnishings.
- Activate. Enhance for modern day use. Events. Art.
- Multimodal. Bicycle. ADA accessible. Bike share. Efficient & permeable paths. King Street bicycle path. 12 foot width paving around fountain.
- Sustainable. Water & energy conservation. Recycle. LED lights. Water conserving irrigation.
- Continuity with NBC. Coconut Palms. Open to NBC – no street trees. King Street paving color. Remove parking along King Street.
- Setback sidewalks from streets. Planting buffer. Use different paving, pattern, color, materials at entrances (i.e. pavers or imprint). Replicate historic trellis arches at entries into the Square.
- Incorporate bike path on Ward Avenue side of park.
- Coconuts, signature NBC palm. Native Pritchardia palms. Resilient street trees. Protect fountain Banyans from Ainahou Estate. Horticultural diversity.
- Create town square on Beretania Terrace – allee of trees, cobblestone, flower beds, benches, tree grates
- Grand Staircase. Widen stairs. Simple. Affordable.
- Permanent performing arts stage with changing room with running water. Lights. Speakers.
- Operations upgrades. Sustainable Comfort station. Economically feasible food kiosk. Expand maintenance and event equipment storage. Restore historic trellis. Install conduits.

CITY AND COUNTY OF HONOLULU

777 WARD AVENUE · HONOLULU, HAWAII 96814-2166
PHONE: (808) 768-5400 * FAX: (808) 768-5433 * INTERNET: www.honolulu.gov/des

KIRK CALDWELL
MAYOR



GUY H. KAULUKUKUI
DIRECTOR DESIGNATE

TRACY S. KUBOTA
DEPUTY DIRECTOR

June 1, 2015

Catie Cullison, AICP
Associate
PBR Hawaii & Associates, Inc.
1001 Bishop Street, Suite 650
Honolulu, Hawaii 96813-3484

Dear Ms. Cullison:

Thank you for your correspondence dated May 19, 2015, soliciting comments regarding a proposed renovation of Thomas Square Park.

The Neal S. Blaisdell Center is immediately adjacent to the park and we are keenly interested in reviewing draft plans. The Department of Enterprise Services is working on a master plan for the proposed redevelopment of our campus, and I expect that any renovation of Thomas Square Park will have a significant impact on our existing program and proposed plans.

I appreciate the opportunity to review PBR Hawaii plans for the park as soon as they become available and I can provide more meaningful comments at that time.

Sincerely,

A handwritten signature in black ink that reads "Guy H. Kaulukukui".

Guy H. Kaulukukui
Director Designate