

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND OF NATURAL RESOURCES**

DATE: FRIDAY, JULY 13, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:07a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Dr. Sam Gon

Jerry Edlao
Rob Pacheco

STAFF

Russell Tsuji/LAND
Barry Cheung/LAND
Paul Conry/DOFAW
Carty Chang/ENG

Sam Lemmo/OCCL
Dr. Bob Nishimoto/DAR
Curt Cottrell/PARKS

OTHER

Cindy Young, Deputy Attorney General (AG)
William Yuen, D-3
Ross Smith: M-1, M-2, M-3
Peter Young, D-2
Wray Kondo, D-13
Cindy Cower, D-13
Jeff Overton, D-9
Don Kitaoka, D-9
Nicole Ferguson, F-2

Michael Tom, D-11
Philip Leas, D-10
Jack Lockwood, K-1
Randall Ishikawa, D-16
Kyle Ushijima, D-13
Alethea Rebman, D-9
Peter Schall, D-9
Eric James, D-15
Keith Avery, D-14

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 June 8, 2011 Minutes

Chairperson Aila recused from item A-1 resulting in no quorum and no action can be made.

Deferred

Item A-2 June 22, 2012 Minutes

Approved as submitted (Pacheco, Gon)

Item D-11 RESUBMITTAL - Request Approval of Plans for Construction of New Residence, Patricia Moore, Diamond Head View Lots Unit Two, Increment One, Lot 42, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:050

Russell Tsuji representing Land Division reminded the Board that this is a resubmittal and indicated the Moore's withdrawal of the contested case hearing since the parties agreed to slight modifications to the plan which involves dropping the roof down 6 inches to the "v" line of Mr. Komer's house.

Michael Tom representing the Moores said he agreed with staff's recommendation per Member Gon's question who said he was happy that the neighbors worked out differences and made adjustments.

Unanimously approved as submitted (Gon, Edlao)

Item D-3 Consent to Sublease General Lease No. S-3624, 69 Railroad, LLC, Lessee, to Hui Malama Ola Na Oiwi, Kirby Kuoha, Sub-lessees, Subject to State's Participation in Sublease Rent Profits, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-1-12:26.

Mr. Tsuji referred to a spreadsheet he distributed of sublease rents on this site where James McCully is the landlord. He related a Bill that Mr. McCully may be promoting that would have affected all State leases in providing unlimited extensions and staff opposes that because upon expiration of the 65 year term those leases go out to public auction to allow others to bid on the State lease. The Governor agreed with staff and vetoed the Bill. As a side note, in 2012 Mr. McCully has 2 separate lease rent arbitrations with the State and private lands. Mr. Tsuji said he believes Mr. McCully was part of a Bill that came up years ago getting together lessees to try to convince law makers to pass a Bill that would impact private lands. Mr. Tsuji monitored that to see if it would affect State leases. They attempted to change the lease rent reopening contract provision by passing a law from fair market value to reasonable value which was struck down by the courts as unconstitutional.

Mr. Tsuji said that Mr. McCully requested the Board to consent on a couple subleases identified in the submittal and referred to the spreadsheet that the gross sublease rents collected maybe higher since this was in the past. There was the HECO facility where the sublease rent exceeded the ground rent and is 40 years old. Here Mr. McCully acquired these leases from the State through foreclosure and direct sale from GE Capital who foreclosed on a prior tenant. He does not operate an industrial business and acts as a landlord. Staff thinks the State should share the

sublease rent. Mr. Tsuji reviewed counsel's opposition, ran some numbers and found that each tenant pays utilities. The lease is up in 2016, ran the mortgage for 10 years, and calculated that Mr. McCully makes \$300,000 annually where most tenants own an industrial business. Mr. McCully does not and if he had an option to today he would not qualify.

Chair Aila said they were asked that the Board defer this item for further consideration by the Attorney General's (AG) office and asked whether they can they make that recommendation. Mr. Tsuji acknowledged that the AGs requested that.

William Yuen, attorney for Railroad, LLC said after making his inquiry he will present later since it'll be deferred.

Mr. Tsuji noted this was deferred the last time by Mr. McCully and this deferral is hurting them.

Chair Aila asked whether a month is sufficient.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded it. All voted in favor.

9:20 AM EXECUTIVE SESSION

9:37 AM RECONVENED

Chair Aila said the Board will defer item D-3 apologizing to the representatives for coming all the way from Hilo that staff will notify them when this item gets rescheduled.

There was some discussion where Mr. Yuen and Member Pacheco would not attend in August and it was decided to reconvene in September.

Deferred to a later meeting.

Item D-10 Amend Prior Board Action of December 9, 2011, Item D-18, Sale of Remnant to Richard R. Kelley Living Trust by Reducing the Remnant Area, Honolulu, Oahu, Tax Map Key: (1) 3-1-038:042; and

Grant of Term, Non-Exclusive Easement to Richard R. Kelley Living Trust for Seawall and Steps Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-1-038:seaward of 042

Mr. Tsuji distributed a handout and conveyed some background on item D-10, but a portion of the area to be sold was within the shoreline and under Hawaii law we don't sell anything within the shoreline. Deputy AG Bill Wynhoff and Mr. Leas (representing the Kelly family) worked out an easement for the area. They have an amendment because the submittal indicated a term easement and staff wanted to change that to perpetual. The Kelly's already paid the fee simple

value for the area. Now staff needs to retract a portion because the area purchased by fee simple and adding the easement area is less than what was paid for. It was based on an old appraisal before a recent one indicating a portion of the wall. They owe Dr. Kelly about \$200,000 back. There is an amendment that the title should be amending recommendation "B.7" changing it to "B.8" and continues on. It is authorizing a perpetual non-exclusive easement and authorizing the Chair. Because Dr. Kelly is willing to pay keep the value at fee simple.

Philip Leas agreed to the recommendations and amendments.

The Board:

Approved as amended. The Board amended within the text of the submittal, the Recommendation section by amending recommendation B.7 and adding a B.8 to read as follows:

- "7. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Richard R. Kelley Living Trust covering the subject area for seawall and steps purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:**
- A. The standard terms and conditions of the most current perpetual [~~term~~] shoreline encroachment easement document form, as may be amended from time to time;**
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-1-038:024, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;**
 - C. Authorize the Chairperson pro-rate the fee value obtained from the recent appraisal for the sale of remnant and apply such pro-rated value for the subject easement;**
 - D. Review and approval by the Department of the Attorney General;**
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and**

F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

8. Remove all references in the submittal regarding the requirement of an appraisal for the subject easement.”

Language to be deleted is bracketed and stricken. New language is underscored.
Approved all other aspects of the submittal.

Unanimously approved as amended (Edlao, Gon)

Item M-1 Issuance of Direct Lease to Hawaii Fueling Facilities Corporation to Develop a Fueling Facility to Provide Onsite Fuel Storage and Delivery of Aviation Fuel via Underground Pipeline at Tax Map Key: (2) 3-8-01: 19 (portion), Kahului Airport

Ross Smith representing Department of Transportation (DOT)/Airports briefed the Board on item M-1 that fuel storage at Kahului is badly needed since they currently truck fuel 20 times a day.

Member Gon asked whether it would completely alleviate the problem. Mr. Smith said they would truck in less and make it much safer.

Item M-2 Consent to Sublease of State Lease No. DOT-A-94-0007 Federal Express Corporation to Evergreen Aviation Ground Logistics Enterprises, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-72:61 (portion)

Mr. Smith conveyed some background on item M-2 which is a sub-contract to handle mail.

Item M-3 Modification/supplement No. 1 to State Lease No. DOT-A-08-0009 FAA Master Lease Agreement No. DTFAWP-08-L-00012, United States of America, Federal Aviation Administration, Molokai Airport, Tax Map Key: (2) 5-2-04:portion of 8

Mr. Smith said for item M-3 FAA is decommissioning some equipment which is required.

Unanimously approved as submitted (Gon, Edlao)

Item K-1 Time Extension Request (HA-12-11) for Conservation District Use Permit (CDUP) HA-3250 regarding the completion of hand quarrying of volcanic ash, by Dr. Jack Lockwood, at the Pu'u Nene Cinder Cone, Saddle Road (SR200), North Hilo District, Island of Hawaii, TMK: (3) 3-8-001:001

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) briefed the Board on item K-1 that the CDUP was issued in 2006 to continue hand quarrying cinder at Saddle Road. Condition 5 was to initiate in 1 year and completed within 6 years. The permit allowed for

3 phases to produce a total of 125 tons of Martian soil simulate where phase 1 produced 3 tons and phase 2 produced 8 tons, but after the initial 11 tons funding ceased and quarrying was put on hold. Based on the original approval the applicant has a remainder of 114 tons of material to mine and requests an extension to October 12, 2018 to continue. This material supports a variety of scientific and educational activities by NASA as well as others. Hand quarrying is used to mitigate any damage. Staff looked at the project and recommended approval of the extension.

Dr. Jack Lockwood representing Big Island Ash Mining testified that they last mined in 2007 and is waiting for funding. He explained what palega was after Member Pacheco's inquiry that NASA was looking for a similar Martian material on earth which was found at Mauna Kea cinder cones along Saddle Road. Member Gon referred to tufa formation and Dr. Lockwood acknowledged that was correct.

Unanimously approved as submitted (Pacheco, Gon)

Item D-2 Consent to Assign Grant of Easement No. S-4880, H-B, Inc., Assignor, to Bobbie's Steak & Lobster, LLC, Successor Company to Bobbie's Steak & Lobster, Ltd., Assignee, Assignment of Lease from Bobbie's Steak & Lobster, LLC, Assignor to NSIC Ponds LLC, Assignee, and Cancellation of Grant of Easement No. S-4880 and Issuance of a New Grant of Easement, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-06:10.

Mr. Tsuji requested an amendment to the title, third line from "Assignment of Lease..." to read "Consent to Assignment of Grant of Easement No. S-4880", and amend Exhibit A by deleting the first page. Otherwise, no changes to the text of the submittal.

Peter Young representing the applicant testified in agreement to the changes.

The Board:

Approved as amended. The Board amended the title, third line from "Assignment of Lease from Bobbie's..." to read "Consent to Assignment of Grant of Easement No. S-4880", and amended Exhibit A by striking or deleting the 1st page. Approved all other aspects of the submittal.

Unanimously approved as amended (Pacheco, Edlao)

Item D-16 (1) Amend Governor's Executive Order No. 1808, Issued to the United States of America, to be Managed by the Civil Aeronautics Administration (CAA), to Accurately Depict the Access Easement Area on the Ground and to Note that the CAA has been succeeded by the Federal Aviation Administration Pertaining to the Haleakala Peripheral Hi Site, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-007:007 and

(2) Amend Executive Order 1987 Issued to the University of Hawaii to Accurately Depict the Access Easement Area on the Ground for Governor's Executive Orders, No. 1808 and 1987 Pertaining to the

**United States of America, Federal Aviation Administration's
Haleakala Peripheral Hi Site and the University of Hawaii's
Haleakala High Altitude Observatory site, Kula, Makawao, Maui,
Tax Map Key: (2) 2-2-007:008**

Mr. Tsuji indicated that item D-16 is a request to amend the easement area on the ground to 2 Executive Orders (EO) and noted that Randall Ishikawa from the U.H. General Counsel's office was here.

Unanimously approved as submitted (Edlao, Gon)

Item D-13 Deny the Request for Rent Reduction and Consider Request for Mutual Cancellation of General Lease No. 5708, if appropriate; Landscape Hawaii, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:016

Mr. Tsuji conveyed some background on item D-13 regarding the eviction of Candy Lake from the State property, needing to clean the property and there was some agreement entered into that allowing for a portion of the rent to be reduced for the Lessee because of the condition of the site. Staff has worked with the Lessee over the years and there are disputes that can't be resolved. Their complaint or request is in the submittal. Staff's recommendation is to deny the request for the rent reduction that the Lessee currently has and consider a request for a mutual cancellation of the lease. It doesn't appear that they can come to terms that would be appropriate for an auction lease. Normally it doesn't allow any modification of anything. Not even the rent according to the AG's office.

Member Gon asked what procedure for a mutual cancellation would be to take it up to auction again. Mr. Tsuji confirmed that they would have to evaluate and will come back to the Board noting that the Lessee and counsel was here.

Wray Kondo introduced himself as the attorney for Landscape Hawaii, Inc. and introduced CEO, Kyle Ushijima and Cindy Comer the resident care taker at Waimanalo. He testified that their position is what is in staff's submittal does not fully and accurately state the summary of the facts and they want an opportunity to talk to the AG's office to review the situation since 2004 when the bid auction was consummated up to the present time. His client still desires to consummate the lease in accordance with the terms of the bid auction packet, but he has not been provided with what was represented to him in that bid auction packet up to the present time. They want to avoid any contested case hearing, but he requested a contested case hearing to preserve that right. Before that they want to present their side of the facts and have the opportunity to discuss with the AG's office to come to some kind of resolution to prevent a contested case hearing.

Member Pacheco asked whether they had a different timeline from that presented in the submittal. Mr. Kondo confirmed that.

Kyle Ushijima testified that staff's response was to cancel the lease as is the condition noting that they had a meter box for electricity for their office on the first level which they wanted to

develop, but can't without it. When they did the walk through there was electricity and he was promised that the meter box would be restored. All his actions or non-actions were the instructions by the DLNR land agents. He just followed directions and was told not to pay until the electricity was restored and to talk to the AG's office. Mr. Ushijima kept meeting with them and every time he got a bill they told him not pay it. He was just followed instructions not knowing what else to do. The fence is not an issue; the reduction of the lease (the 20%) is not an issue because he was told 20% of his property was cut off by fencing that he didn't ask for fencing. It was put up by DLNR due to vandalism because they hadn't occupied the property for 2 years. The hazardous material, contamination to the soil is a liability issue and they were going to remove the 65 gallon drums and that was ok. They told him 20% was cut off by the fencing that they didn't follow the marked lines and they said to put it in there and they will offer him a reduction and that was fine.

Cindy Comer testified reiterating that the auction occurred in 2004, but 2006 was when Landscape Hawaii assumed the property. There was a letter sent that they would assume soon, but no response to the letters they sent for months during that time. Because of the vandalism staff gave Landscape Hawaii a 6 month right-of entry permit to the property and could not take or leave any personal items on the property which is hard to set up a business. She related the damage done in 2 years while under the State's control.

Mr. Ushijima said Candy Lake accused Bob Medeiros from DLNR of stealing the (power) box and Bob was irate with Candy Lake. HECO records show they have electricity there. Mr. Ushijima worked with Charlene Unoki and Caesar Santos who instructed not to pay.

Ms. Comer said during their meetings with DLNR they were assured to get electricity restored. Mr. Ushijima related dates where that were discussed the Chairperson and a representative. Ms. Comer said they were told to hold on until everything was reconciled. Mr. Ushijima said he is not looking for rent reduction. He just wants it the way it is with electricity.

Chair Aila asked what would be resolution for you. Mr. Ushijima said electricity and as is.

Chair Aila asked your impression way back when the bid was done as is included the electricity and water. Mr. Ushijima said yes based on the walk through with Charlene Unoki. Ms. Comer said the bid included utilities and assumed electricity.

Member Pacheco asked what it would take to get electricity there now. Mr. Ushijima explained that HECO has a new code that the run is too long and they would need another pole. Ms. Comer said once the electricity was cut off for 2 years the building is considered abandoned and the building would have to be brought up to code.

Member Pacheco asked whether they were using the property since then. Mr. Ushijima said they are trying to grow some plants on one of the levels using potable water by hand. After Member Edlao inquiry Ms. Comer said there is water. Member Edlao said you just need electricity and Mr. Ushijima said for the office, security and a warehouse.

Member Edlao asked whether they feel the State should be installing the utilities and Mr. Ushijima said yes that they said they were going to do that.

Member Pacheco asked the back rent that the Department is claiming the \$127,750 and you quit paying rent because you were told by the Department not to pay rent until what was resolved. The billing date and that seemed to be resolved. The electricity is the only thing. Mr. Ushijima acknowledged that. Member Pacheco asked it's been 5 years to get electricity and have you considered that once you have the electricity in that some kind of reckoning on the back lease on this property or are you claiming you don't know anything for those interim years because you weren't able to use it. Are you prepared to pay the back rent? Mr. Ushijima said they were told not to pay by Charlene Unoki.

Member Gon queried whether there was anything written stating that or was it all verbal. Mr. Ushijima confirmed everything on the phone he wrote down following up with letters after their meetings. Member Edlao asked whether he had copies of those letters to Charlene saying he is not to pay rent. Mr. Ushijima said yes, but it is not in the submittal. A lot of things are not in the submittal. Mr. Kondo confirmed a lot a correspondence is not included in the packet. Where Ms. Comer questioned wouldn't staff have it here in their office.

Chair Aila asked you're asking us to defer this item until the evidence you have is presented to the AG's office. Mr. Kondo confirmed that they want to try to resolve it without going to a contested case hearing because there is no request for a mutual cancellation of the lease. They want what was promised to them.

Member Edlao said he would be inclined to defer this item and have them work it out with the AG's office and the Department and hope to resolve this. He is concerned with the past rent and wants to resolve that.

Chair Aila asked when did they occupy the property or start growing plaMr. Ushijima and Ms. Comer said 2007. There was some discussion that Mr. Ushijima paid for the bid and another payment of \$18,000 when they occupied the property.

Member Edlao asked if he had another property and Mr. Ushijima described where his warehouse is.

Mr. Tsuji said he doesn't think he ever met with them. What bothers him is they normally go to auction and it's done, sign the lease and take it as is and they make no promises other than what is on the documents. It is their understanding what was documented in letters to them by certain staff and not knowing whether responses claiming to that was true. Mr. Ushijima and Ms. Comer showed their letters. Mr. Tsuji does know that they claimed certain allegations of promises were made and he couldn't understand how that could have happened. It's clear in the law that when you do a public auction, here it is and that is it. Take it where it is. You can't change anything, not even the rent.

Member Pacheco asked why has it taken 5 years and \$127, 250 in back rent for this to come before the Board. Mr. Tsuji said Barry Cheung (Land Division staff) inherited this upon Charlene (Unoki's) retirement and Mr. Tsuji doesn't think the she has the authority to promise

certain things inconsistent with the terms of the package. Perhaps this matter should be litigated because he can't believe it. Once you go to auction that is it and we've had instances that if you don't want to take it you don't have to sign it.

Member Pacheco asked are you disputing that it wasn't the State's responsibility that it was 2 years before the people could take the property. Mr. Tsuji said he couldn't understand why that would happen. If it was him if you don't want the lease, cancel it. Member Pacheco referred to the submittal and the documentation from their letters looks bonafide from the time they got the lease that the State didn't give them permission to get into it because they got that right-of-entry and that speaks volumes. If we already gave them permission to take the property, why would we give them a right-of-entry 18 months into it? Mr. Tsuji said some people notwithstanding the terms and conditions of the bid package agreed to use State resources to do certain things and he doesn't know how that was done. Normally, that is not allowed in the bid package.

Chair Aila asked if in the bid package we indicate it comes with electricity and they signed based upon that subsequently, the electricity is not there are we responsible for putting the electricity in. Mr. Tsuji said if you make that representation.

Member Pacheco said yes you say the property as is ok, but and described going out into the market place for a place to live signed a lease with the landlord and the landlord says come back in 2 years and it has substantially changed. There is something wrong there. Why is it taking 5 years for this back rent to come forward? Was it sitting on Charlene's desk? Mr. Tsuji said apparently. Member Pacheco said that tells him that something is not right and if they weren't paying the rent it would be brought to us as a default. Is it characteristic of your division to have arrears go that far before bringing before the Board? Mr. Tsuji said they have 3 years default and they do have a list of delinquencies come out every month with comments of working with the tenant. If staff cannot work with the tenant any more, then they go to the next step which is penalty and notice of default. If nothing is resolved it goes to the Board for action. Unfortunately, Barry Cheung who now runs the Oahu District picked up this file and was not involved in the alleged discussions and meetings. If those occurred that is not standard practice and cannot do that.

Member Pacheco said what he is asking is staff has this situation what communications has gone on between the Lessees and Division. Mr. Tsuji asked since after Charlene left and Member Pacheco confirmed that. Barry Cheung said he sent them a draft submittal for comments and he didn't receive any further comments for today's agenda about a month or 2 ago.

After Member Edlao's inquiry if that was the first communication. Mr. Cheung said he received this case about a year ago, started looking into the old files and that he was part of the eviction committee prior to the auction and knew the condition of the property. He was the one that walked through the property with them. Mr. Cheung asked Bob Medeiros about the allegations and staff met that they couldn't afford to waive the rent where they decided to bring this to the Board for disposition. Member Edlao asked when they did the actual walk through there was no electrical box. Mr. Cheung said a year ago, no that he did look at the location of it. He even referred to his old file from the 2005 eviction and couldn't find any conclusive evidence of the photos they took on whether there was a box or not.

Member Pacheco noted that the lady that was there before did have electricity. Mr. Cheung said there are 3 levels and the box they want on the lowest level. The lady was on the upper level. There was some discussion about a structure and electricity.

Member Pacheco said we don't have enough information here and encourage staff to sit down with the Lessees and look at their documentation and try to get a better picture of this. Find out if there were insertions made from our Department where appropriate or not. If they were made we have some responsibility toward those...we have legal responsibilities. Mr. Tsuji said to check with the AGs on whether they can make concessions here. Chair Aila pointed out that is not the question here. We don't even have enough information to ask that question. He would recommend we defer this matter to get the rest of the information to make a determination. He would like more information of what happened in the past. With your indulgence I would ask for a deferral of this recommendation to get the rest of the information on what is really out there. Mr. Tsuji said it's what we have in the files that it is hard when people are no longer with us.

Member Edlao said he agrees with Russell, but there are other things coming into play that we want what's fair. What has happened so they can make a better decision? Mr. Tsuji related another issue where the Deputy AG said they couldn't do any of those changes and not to sign it. Chair Aila said because of extenuating circumstances and we will bring documents to the AG's office if we have to.

Member Pacheco said he wants to know what happened during that 2 year gap when the lease was approved. Mr. Tsuji asked when did they sign it. Mr. Kondo described what happened and the problems of getting the tenant out. Mr. Tsuji asked they auctioned the property while the tenant was there. Mr. Kondo confirmed that which is why the right-of-entry due to the vandalism. Mr. Tsuji shook his head in disapproval.

Deferred (Edlao, Gon)

Item D-9 Denial of Request for Contested Case Hearing by Alethea Rebman; Amend Prior Board Action of March 9, 2012, Item D-7 by Adding the Completion of the Environmental Assessment regarding Quitclaim of State's Interest, if any, in Kalia Road to the City and County of Honolulu, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to 001

Mr. Tsuji reminded the Board of the previous Board meeting and related some background regarding the Highways Act which is public roads under the County's jurisdiction. This one was laid out on a map, but not really on the ground. This is the disposal of the remnant to get the proceeds from it. What staff brought the last time was to consummate the County's plan which was always under the County's jurisdiction by operation of law and pursuant to the Act. Alethea Rebman contested because we had claimed an exemption and an EA was required. After talking to counsel a full EIS was done and included the road site that was being disposed by the City once they were done with the quit claim deed and ultimately purchased by Hilton. The EIS was filed at the Office of Environmental Quality Control, public noticed, public meeting and is a valid EIS. Staff wrote back with advice from the AG's office explaining that situation with Ms.

Rebman and asked her to withdraw her request, but she will not per her testimony. Staff's recommendation is still consistent with the AG's office advice to deny Ms. Rebman's right for a contested case. Corp Counsel and the buyer representatives are here.

Chair Aila asked whether Ms. Rebman disagreed with staff's recommendation and Ms. Rebman confirmed that and hoped not to do a contested case hearing. She was here as an adjacent landowner and would be directly affected by this. She referred and reiterated to the March 9, 2012 BLNR meeting that an EA/EIS is required and that Hilton's EIS is irrelevant that the applicant has to do one. The City could adopt Hilton's, but has not done so. Ms. Rebman referred to her 2 written letters that the City expressed the need for that corridor and this is the densest area in Hawaii. Since Hilton's EIS Trump Tower which wasn't included in the EIS, Watermark by the old Outrigger Ala Wai and Allure Waikiki have opened in the same neighborhood and traffic has changed dramatically. If the City does an EIS in the City's point of view of preserving view plains, of traffic management, and so on it should be different from the Hilton's EIS. The land agent mentioned the money and she doesn't know how relevant that is here, but her letter notes based on appraisals of surrounding properties and assessments an 8,000 square foot parcel on the mauka side would go for approximately \$4 million or more. Another parcel 4 times the size and not quite as desirable was appraised \$16.6 million. Ms. Rebman is asking the State to follow the law and make the City do an EA and then it may be appropriate to transfer – follow the existing laws on the books. Make the City adopt the Hilton's EIS if that is what they plan to do. And, to address the abandoned Highway law, Section 264-3, either this is an abandoned highway or it's not. It's actually being used. In Hilton's EIS it is being used. She lives there and she sees it being used as a 20 foot long sidewalk. If Hilton reduces that to 10 feet there is a loss of beneficial public use. There are a number of impacts to the area, to the neighborhood if this parcel is transferred. Ms. Rebman asked continuation on the part of the Board to investigate and to look into it because this is the second justification given for a contested case hearing.

Member Pacheco asked on your evaluations, whether this is a property with setbacks squared would give value to somebody as opposed to a walkway. Ms. Rebman said since every property has set back requirements a quarter of a property that is 4 times the size would be subject to setbacks, too. She believes setbacks are already built into appraisals. In this case it's considerable value to a Hilton because what it does is reduce their amount of their setbacks that they would otherwise use their own existing land for. If they can add 50 feet here then they don't have to move back another 50 feet. They can move 50 feet toward the road. Member Pacheco clarified don't you think it's reasonable that the shape of that property comparing apples to apples with another 8,000 sq. ft. piece or a larger piece that is developable or not you can't do from an appraisal perspective. Ms. Rebman said in all due respect she is not sure of that. We don't have an appraisal on it or the City has never produced one which is another lack. It is not mentioned here. There are other land issues with that conveyance that may be delaying or hindering Hilton's efforts to acquire that land. She didn't know. Is the sidewalk valuable for a building lot? No. Is it valuable for other purposes? Yes. Would it allow Hilton to build a certain number more time share rooms? Probably and then we would be looking at the value of the time share rooms, but she is no appraiser.

Chair Aila asked if the City were to do an EIS would the result be any different from Hilton's.

Peter Schall, a consultant to Hilton said no that the City approved Hilton's EIS and the appraisal was part of the EIS. Member Pacheco asked whether he was talking about the Master Plan and Mr. Schall said correct.

Chair Aila asked with respect to the traffic patterns and walking conditions...Mr. Schall said the traffic pattern included the Allure, the Trump Tower and the Watermark which has been accepted by the City as part of the EIS. Member Pacheco asked was it an addendum to the EIS, the traffic study and is that the EIS there. Jeff Overton, a planner with Group 70 International said this is volume 1 and volume 2 is the same size including the traffic study. This is a letter from David Tome accepting the EIS in July 2011 and it specifically mentions the remnant parcel. Mr. Schall explained with regards to the walkway area Hilton has proposed and has been accepted that the walkway will be relocated to Hilton's property open to the public and Hilton will have the liability for that walkway. Currently, there is no bus pull out so to speak. What it does is traffic backs up on Kalia Road to Ala Moana Blvd. because when the buses stop the traffic can't move forward. Hilton is doing a dedicated bus pull out that will alleviate that back up and Hilton will pay for those improvements to the City. Relative to the appraisal for the property, the City didn't appraise for the property and asked Hilton for \$1, 250, 0000. Hilton had their own appraisal and that came in at \$816,000 where the Hilton tried to negotiate with the City for something in between, but the City cannot because the once the appraisal is done the City cannot negotiate. Hilton agreed to pay for the full price. Mr. Overton left a copy of EIS with staff.

Mr. Tsuji clarified Ms. Rebman's points and first no, he is not saying the exemption that they originally claimed does not apply because the law is the road is under the jurisdiction of the County period. What the Department is asked to do is what he calls a ministerial matter to execute a quit claim deed. The County has had jurisdiction and responsibility for this area of Kalia Road for many, many years. No, we are not saying the exemption we claimed does not apply and in fact it still applies. What they are trying to say is Ms. Rebman claims that 343 wasn't complied with and they found out a full EIS was done as part of it which has been duly published and has not been overturned by the court. As far as value, he believes that is the County's jurisdiction because it is their road. Whatever evaluation and process is the County's kuleana. To be consistent with County roads and how to deal with it statewide it is the County's responsibility and the jurisdiction is their right.

Chair Aila asked whether the County has the legal right to do what they are doing. Don Kitaoka, Deputy Corporation Counsel for the City & County of Honolulu answered yes and advised this Board that it may be considering things that are outside the scope of what is before the Board. What is before the Board is the actually the disposition of this portion of a roadway which fell under Act 288 and whenever there is a government road the City is exercising jurisdiction over it and so it is a matter of disposing of it and having all of the loose ends tied up by a conveyance from the State to the City so the title is perfected. That is the only thing before the Board. With respect of the City's disposal of it to Hilton that has been vetted before the City Council. In answer to your question whether everything is legal in my opinion the answer is yes.

Member Pacheco said what is before us is whether a person has a right to a contested case and we are giving clarity to information related to that. Mr. Kitaoka said but the action of the contested case is being requested for position and title.

Ms. Rebman said this is not a ministerial matter that ministerial is approving leases that sort of thing. This is a land transfer and this is whether she gets a contested case hearing that she is an adjacent land owner and is affected. And, whether the law is being complied with whether the City as applicant has complied with the law. Accepting an EIS is not drafting an EIS per the law. At this point no EIS has been adopted by the applicant and she requests a contested case.

Board member Gon made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it. All voted in favor.

10:52 AM EXECUTIVE SESSION

11:04 AM RECONVENED

Mr. Tsuji mentioned some AG's opinions by Dawn Chang who was at Land/Transportation (AG's Division) for many years and these pertain specifically to roads in the Statute. She repeatedly scolded the Kauai District land agent for requesting deeds for the County because the County said they needed a deed to maintain a road. In that letter she articulated 288 and the reason for that. #1 – Pursuant to the Highways Statute the DLNR no longer has jurisdiction over these roads. It is County by operation of law so you cannot even deed it if you wanted to. However, under 288 if the County wishes to dispose of it i.e. transfer title to it or lease it for example for title or clearing title purposes they request the road by conveyed to them and that is only when circumstances allow to proceed to quit claim deed and that is what is before us. As soon as that Act was passed that road was County jurisdiction. What we are trying to do is clean up that title portion so the County on their side can convey it in clear title.

Unanimously approved as submitted (Pacheco, Gon)

Item D-15 Consent to Assign General Lease No. S-5512, Hawaii Meat Company, Limited, Assignor, to HMCO, LLC, Assignee, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:037

Mr. Tsuji read item D-15 and didn't have any changes.

Eric James, attorney for Hawaii Meat Company was here for any questions.

Member Gon asked whether he was fine with staff's recommendations and Mr. James acknowledged that.

Unanimously approved as submitted (Edlao, Gon)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to John Burns, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Disease Survey Activities

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) presented some background on item F-2 from staff's submittal. The purpose is to assess the health and community structure of shallow water coral reefs in order to improve the understanding of coral disease and disease dynamics. He noted that previous surveys came before the Board and this is a more intense survey of this coral disease. The studies by Dr. Karl and Dr. Aeby are going back to visit sites which are similar, but a more extensive coverage. Photography will be used to survey shallow water with traditional scuba gear and nothing will be touched or taken. Dr. Nishimoto read staff's recommendation and to approve.

Member Gon asked to clarify whether this was new or a continuation of on-going research by Dr. Burns. Nicole Ferguson representing Dr. John Burns testified that he has conducted research previously on the Island of Hawaii and this will be his first trip to the Monument. He proposes to use similar methods to evaluate coral health and if allowed to he will establish comparisons between the Main islands and Northwesterns.

Member Gon asked whether they anticipate this as a multi-year study. Ms. Ferguson confirmed that to see changes over time.

Unanimously approved as submitted (Gon, Edlao)

Item K-2 Time Extension Request (KA-12-10) for Conservation District Use Permit (CDUP) KA-3509 regarding the initiation of construction and completion of construction deadlines for the Malerich's Single Family Residence (SFR), at 7834 Kuhio Hwy, Ha'ena, County of Kaua'i, TMK: (4) 5-9-005:025

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed that this was a single family residence approved by this Board. Because of the contested case hearing request it caused a delay in getting the shoreline certification and indicated the need of additional time to get County permits and to initiate. Staff recommends approval subject to all conditions.

Member Gon asked and no further extensions. Why is that? Mr. Lemmo said this is the second extension and a third time makes staff concerned that they are holding the permit for speculative reasons to add value to the land. This is an incentive to put their money where their mouth is and do it. They can always request another extension, but...

Member Edlao said usually extensions are when they've already initiated, but they haven't and Mr. Lemmo confirmed that.

The Chair asked whether the representative was in agreement with staff's recommendation and their representative spoke in favor of it.

Unanimously approved as submitted (Edlao, Gon)

Item C-1 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contract(s) to Install Ungulate-Proof Fencing Within the Hono O Na Pali Natural Area Reserve, Kauai

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) briefed the Board on item C-1 that a final EA was done and staff is asking for approval.

It was asked by Member Gon when the EA was completed how large the acreage was. Mr. Conry said he couldn't recall, but could get him that information. Member Gon said he was pleased to see NARS protected.

Unanimously approved as submitted (Gon, Pacheco)

Item F-1 Request for Approval to Authorize the Department of Land and Natural Resources Chairperson to Enter into a Federally Funded Contract (\$387,000) between DLNR and Pioneer Machinery, Inc. for the Casting/Manufacturing and Delivery of Artificial Reef Habitats

Dr. Nishimoto relayed staff's submittal that Pioneer Machinery was the lowest bidder and the project is construction and delivery of the artificial reef habitat at Pier 60 located at Sand Island. Staff recommends authorization to the Chairperson.

Unanimously approved as submitted (Edlao, Gon)

Item E-1 Consent to Assign General Lease No. SP-0178 Dwight Ornellas, Assignor, to George I. Kawamura and Elizabeth A. Kawamura, Assignee

Curt Cottrell representing State Parks that Mr. Ornellas wants to reassign to the Kawamuras and staff was here to answer questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item E-2 Request for Approval of the Design of a New Warning Sign, and Placement of Additional Warning Signs at Sacred Falls State Park, Oahu, and Opaekaa Falls, in Wailua River State Park, Kauai, Pursuant to Act 82, SLH 2003

Mr. Cottrell related that Member Goode previously asked why the Board has to approve the signs as opposed to the Chair. Act 82 which has a sunshine of 2014 and was not codified yet. Their goal is to get it in Chapter 663 and he read the Act. He referred to the recommendations and Exhibit A that was executed in 2007 which was first approved by the Land Board. It explains when they would use Warning Flash Flood and Danger Flash Flood when someone is hurt. In Exhibit B, staff is asking to approve a new sign giving Opaekaa's Falls as an example where injury and death had occurred and anywhere where there is a chance of falling off a cliff.

It is really hard keeping people out of Sacred Falls. Staff has area closed signs, the park is closed, danger falling rock signs and it's not working. In one month DOCARE officers issued 30 citations. They are also posting the flash flood signs there. In the interest of safety they have to initiate these other warnings. The other signs were previously approved and amended.

Member Gon asked whether the new sign at Sacred Falls is Danger Flash Flood and Mr. Cottrell confirmed that.

Member Edlao asked about the citations. Mr. Cottrell said its petty misdemeanor with criminal penalties and there is a sign there with the penalties listed. Where Member Edlao asked about the fines and Mr. Cottrell said it is in our Statute. Ideally it would be a civil process, but not yet. Hefty penalties would be a much better deterrent.

Member Pacheco asked whether Opaeka'a was the result of the lawsuit and Mr. Cottrell confirmed that.

There were some discussions about when to use the signage. Mr. Cottrell said in the past it was proactive with staff's knowledge to use danger, but danger everywhere dilutes it. It depends if the public reads it. Member Pacheco said having signs everywhere and Mr. Cottrell said staff is not excited by this because of the management load. Unless we amend 663 to give us immunity for any potential hazardous recreational activity this is the best we got pursuant to the Act we're off the hook as long as the sign is there.

Unanimously approved as submitted (Edlao, Gon)

Item L-1 Certification of Elections of Karen Ah Mai and Warren Wong and Appointment of Judy Nii to Serve as Directors of the South Oahu Soil and Water Conservation District

Carty Chang representing Engineering Division said he had no changes to item L-1.

Member Pacheco pointed out allowing the Board to authorize the Chair to do certifications. Mr. Carty said they can look into it, but in the past people protested it.

There was some discussion about that.

Unanimously approved as submitted (Pacheco, Gon)

Item D-14 Amend Prior Board Action of August 8, 2008, Item D-10: Withdrawal from Governor's Executive Order No. 3867 to the Department of Agriculture for the Kahuku Agricultural Park, Approval, in Principle, of the Issuance of a Direct Lease to West Wind Works, LLC, for a Commercial Renewable Wind Energy Generation Facility, and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, Tax Map Key: (1)5-6-08:6 and

Amendment: Consent to the Assignment, from West Wind Works,

LLC, the Assignor, to Na Pua Makani Power Partners, LLC, the Assignee, of the Direct Lease Approved, in Principle, by the Board at its August 8, 2008, Meeting, and Extend Right-of-Entry Permit to Expire on the Commencement Date of the Lease.

Mr. Tsuji related some background on item D-14 that the goal is to assign to a financing entity of this project. The Board of Ag asked to have the Land Board consummate the transaction.

Keith Avery, President of West Wind Works testified that this is the second extension expiring in August. They have been in a process with HECO since 2008 for 100 megawatts. They were approved by the PUC to continue that process and are trying to complete negotiations with HECO. The developer comes in with final financing and he will still be part of that.

Unanimously approved as submitted (Pacheco, Edlao)

- Item D-1** **Consent to Assign General Lease No. S-4392, Lois N. Hashimoto, Assignor, to Lois N. Hashimoto, Clyde T. Hashimoto, and Lynne N. Tamashiro, Assignees, Lot 25, Hanapepe Rice & Kula Lots, Hanapepe, Waimea (Kona), Kauai, Tax Map Key: (4) 1-9-001:011**

- Item D-4** **Reconsideration of Rent for General Lease No. S-5151, Louis Paulo Sr., Lessee, Phase II, Milolii-Hoopuloa Residential Lease, for Residential Purposes at Milolii and Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 012.**

- Item D-5** **Rescind Prior Board Action of January 27, 2011, Item D-4, Grant of Perpetual, Non-Exclusive Easement to William Wade Latham for Waterline Purposes, Koolau, Keanae, Hana, Maui, Tax Map Key: (2) 1-1-003: Portion of 092.**

- Item D-6** **Issuance of Right-of-Entry Permit to Maui's Original Hawaiian Corporate Games Inc., for a Team Building Event at Wailea Beach, Honuaula, Wailea, Maui, Tax Map Key: (2) 2-1-008: seaward of 109.**

- Item D-7** **Amend Prior Board Action of November 22, 2010, Item D-9, to Extend the Department of Transportation, Highways Divisions' Kawela Bridge Replacement Project Right of Entry Expiration Date from November 22, 2012 to January 31, 2014 and Increase the Area of Use from 277 sq. ft. to 19,863 sq. ft.; and Issuance of an Immediate Right-of-Entry to Maui Electric Company for Temporary Power Pole Installation to Service the Kawela Bridge Replacement Project, Kawela, Molokai, Tax Map Key: (2) 5-4-001: 102 por.**

- Item D-8** **Issuance of Right-of-Entry Permit to Fireworks by Grucci, Inc. for Set up and Firing of Aerial Fireworks Display on July 24 and 25, 2012, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).**

Item D-12 Amend General Lease No. 5620 by Allowing Two (2) Dwellings on the Premises; Heine W. Aruda and Gladys L. Aruda, Lessees, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013:032

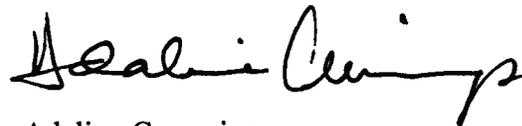
Mr. Tsuji had no changes to the rest of his items.

Unanimously approved as submitted (Pacheco, Gon)

Adjourned

There being no further business, Chairperson Aila adjourned the meeting at 11:34 a.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



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