

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

DATE: FRIDAY, SEPTEMBER 13, 2013
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 9:05 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Dr. Sam Gon
James A. Gomes
Shawn Smith

Rob Pacheco
David Goode
Reed Kishinami

STAFF

Russell Tsuji/Land
Ed Underwood/DOBOR
Alyson Yim/ENG

Sam Lemmo/OCCL
Keith Chun/DOBOR

OTHERS

Dan Morris, Deputy Attorney General (AG)
David Farmer: D-10
Tim Hogan: D-10
Ross Smith/DOT: M-1
Mr. Gaubauski: D-9
Pono Kealoha: D-9, K-1, D-1
Ku'i Palama: D-1

Donna Kalama/AG: D-10
Dan Purcell: D-10
Mayor Billie Kenoi: D-10
Charles Toguchi: D-9
Scott Chan: D-9
Glenn Honda: D-4
Woman Judge: D-1

Item D-10

Discussion on the Status of, and Decision-Making concerning Chapter 11 Bankruptcy Case No. 12-02279, Hawaii Outdoor Tours, Inc., Debtor, Filed in the United States Bankruptcy Court, District of Hawaii, General Lease Nos. S-5844 and S-5372.

The Board may make decisions on the following items:

- 1. Whether the Board will call the construction bond covering the renovation of improvements at the Naniloa Volcanoes Resort?**
- 2. Whether the Board will extend the time to pay the semi-annual rent installment of \$250,000 due August 1, 2013 and to assume/assign General Lease No. S-5844 until December 31, 2013?**
- 3. Whether the Board will extend the time to pay the \$500,000 increase in the performance bond?**

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on Questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. NO STAFF SUBMITTAL

Written testimonies from George Applegate, Bernard Balsis, Kevin Dayton, Donna Domingo, David C. Farmer, Wailana Herbst, Ka'iu Kimura, William P. Keno, Eloise M Kuniyoshi, Robert N. Herks, Ryan M. Hamaguchi, Ted N. Petit, Charles J. Maas, Jeffrey Melrose, Michael D. Miyahira, Barry Mizuno, Clarysse Kami Nunokawa, Dwayne T. Mukai, Barry Taniguchi, Carol VanCamp, Nico Leilani Verissimo, Robert "Bob" G. Williams, Jim D. Wilson and Donna Domingo were distributed to the Board members for item D-10.

Russell Tsuji, Administrator for the Land Division conveyed some background to the Board on item D-10 for discussion and decision making regarding the lease for the Naniloa Volcanoes Resort. The lessee is currently in bankruptcy. There are three questions that the trustee and the bank's attorney had requested the Board to consider:

Question No. 1 – The Bankruptcy Trustee is requesting the Board to release the lessee from having to pay upcoming construction bond premiums, which will result in no construction bonds.

Background: There was a special provision that required a construction bond due to \$5 million in required improvements. The Department also requested and received a labor and materials bond and a completion bond.

There are three towers: Kilauea, Mauna Kea and Mauna Loa. Mauna Loa Tower did not require a bond because there was no construction; Kilauea and Mauna Kea towers had construction work done.

Mauna Kea Tower was significantly improved. Construction was completed, and inspection was performed. A lien action has been filed on this building.

For Kilauea Tower, there was roughly a \$1.1 million bond. This Tower is gutted and is currently closed down because it is a safety hazard. No Notice of Completion has been filed. Kilauea Tower may be subject to lien actions in the future.

Question No. 2 - The trustee is requesting an extension of the rent payment (due in August) to the end of the year.

Question No. 3 - The bank and trustee are requesting that the Board further defer increasing the bond to \$1 million.

Background: The performance bond of \$1 million was previously allowed by the Board to be reduced to \$500,000. The Board later approved that the bond be changed back to \$1 million. Since that time, no one has stepped forward to replace the \$500,000 bond with a full \$1 million bond. David Farmer, Chapter 11 trustee for Hawaii Outdoor Tours Inc., lessee under the subject lease, testified on the lessee's position. Mr. Farmer's duties are to: (1) preserve the Hotel operations of the Hotel, and (2) sell the Hotel. He also pays the taxes and does payroll. Mr. Farmer said that the Mauna Kea Tower has no arbitration. The winning party moved to have the arbitration award action go to court where it was filed and dismissed because it was already paid off. There was never a mechanics lien as a judgment because it is a non-issue.

David Farmer testified on item D-10 and shared his struggle to attract buyers to the property. He has interested parties but has yet to make an actual transaction. He has engaged Colliers, a brokerage firm with local and national visibility, to assist with this task. The creditors are asking for operations to continue so the employees can remain employed. Any buyer of the property must cure all amounts including the number 2 item, rents to the state. There is a need for enough time to secure a buyer, get court approval and complete the sale. Mr. Farmer has been on duty since May 14, 2013, but the lessee has been seeking a buyer since November 2012. Preserving the operations will contribute to the value of the property. If the operations were to shut down, the value of the property would drop significantly. Going through the bankruptcy process will allow all of the creditors (e.g., State, banks, and unsecured creditors) to get paid. Mr. Farmer discussed the flow of revenue in April (during the Merrie Monarch Festival). Tourism numbers were also good this year, but they are currently in a dead zone as far as tourism in Hilo. Timing is an issue because of cash flow problems and the need to sell the lease.

Member Rob Pacheco asked if there were any interested buyers and if so, requested Mr. Farmer to tell the Board the nature and background of the interested buyers.

Mr. Farmer said that in the past, there were no Letters of Intent for any serious transactions. They have two parties who have submitted Letters of Intent for this round. Mr. Farmer noted that these types of acquisitions were typically funded by hedge-fund monies and developers are

in the process of acquiring borrowed money. One of the potential bidders has spent time at the Hotel taking measurements, making cost estimates, assessing how to rehabilitate the property to at least a 3-star status, and talking to the contractors and the local building community in Hilo. It is Mr. Farmer's job to ensure that all creditors are paid off, and to transfer the property to a buyer who will do the right thing by rehabilitating the property and restoring Banyan Drive.

Member Shawn Smith inquired about the interested parties and asked what were the problems or issues that caused the deal to fall through.

Mr. Farmer responded that there were no prior serious buyers. The two he discussed are the only serious Letters of Intent received during the bankruptcy. There have been other inquiries but no serious offers and nothing concrete.

Member Pacheco asked how soon the major creditors would be paid if the lessee were granted an extension.

Mr. Farmer said that it would depend upon how quickly the parties could get an actual sale agreement, and then get it before the bankruptcy court for approval. Then there is the possibility of other players coming in and bidding (e.g., a foreclosure sale). It is expected that the process will take the time requested in the extension. The first time that an extension was requested, there were no interested parties.

Member Pacheco, Mr. Tsuji and Mr. Farmer discussed the extension, interested parties and a delinquent rent payment that was paid by the bankruptcy court.

Member Pacheco asked about the relationship between the bankruptcy court, the bankruptcy trustee and the bank, and their various interests.

Mr. Farmer said the bankruptcy trustee is a fiduciary for all of the creditors, and most specifically the unsecured creditors. A secured creditor, such as the bank, is a major party in a bankruptcy. The State is also a major creditor with important standing. These are creditors that any trustee must work with and have a productive relationship. His goal is to liquidate the property and generate the money to take care of the creditors. As a Chapter 11 trustee, he must keep operations going and sell the property to pay the creditors.

Member David Goode asked what happens if the property is not sold.

Mr. Farmer said if the property is abandoned and the operations cease, there is no equity and nothing for the creditors. Abandonment puts it back in the hands of the debtors (i.e., Hawaii Outdoor Tours) subject to the bank's rights.

Member Goode asked who has the first position after the sale.

Mr. Farmer said the bank.

Tim Hogan, the court appointed Bankruptcy Council for Mr. Famer, testified on item D-10 and said that the State does not have a risk because it is going to be paid in full. The bank has a mortgage protection as part of the lease, so if the lease is lost, the bank will step in and cure the lease on its own and that would pay the State. If the lease is rejected on Monday, the chaos that would ensue would put the State at risk. If the lease is rejected on Tuesday, the State will be in charge as the Landlord. Mr. Hogan explained how the bankruptcy law works. The bankruptcy codes states that after 120 days, the bank has the opportunity to assume and assign the lease, if the parties to the lease consent. There is a parking lot and a pool, which are on private land on Banyan Drive. If the State agrees to extend it, those owners will go along with the extension because they want someone to pay the rent. If it's rejected, their claims become pre-petitioned, which would be worthless. The bank has a protection clause in the lease to send notice to the State that says that they want the lease now and there is a process to follow. There is a lease cancellation proceeding that must occur. Although the lease has been rejected from the bankruptcy, it does not necessarily kill the lease. It kills the bankruptcy, but it does not kill the lease. The lease is still a legal document that goes to State court for lease cancellation. The bank becomes the principal player because it is their collateral that will be impacted. It's a complicated process for bankruptcy lawyers. The trustee shall immediately surrender the property, and does not have any way to retrieve the property. The lease is an asset so if the extension is not granted, the lease cannot be sold.

Member Goode asked how does the Board's action on approving the extension affect the bankruptcy judge's decision. Why wouldn't the bank step up to cure the defaults so they can keep the process moving and avoid this chaos?

Mr. Hogan said the code is clear that if the Board rejects the extension, it will be rejected on Monday midnight, and the Hotel will shut down operations.

There was a discussion on how profitable this property has been over the last few years and how effective it would be to grant an extension. The two potential buyers are developers who see a potential in the property and are willing to invest in upgrading the Hotel. The Hotel will be an extension of Banyan Drive so it can become an attractive tourist destination in the middle of Hilo town, with a large golf course nearby. From a commercial perspective, the bank would be in better shape if it allowed the rejection and obtained the lease. There would be no bankruptcy, and the bank would now be the new owner of the Hotel. The bank will end up with the lease and be responsible for curing it, but in the meantime, there will be no Hotel operating on Banyan Drive.

Member Goode asked if there were no extension, would the bank take over.

Mr. Hogan said the bank has paid over \$500,000 in trying to preserve the lease, and the actions were taken under the mortgagee protection provisions in the lease. He could not tell what the bank will be doing in the future, but only what the experience has been. Should a default occur,

the bank has the right to request a new lease under the same terms. The bankruptcy court would not be able to extend the lease. Bankruptcy transactions can move as quickly as 30 days.

Mayor Billy Kenoi, testified on item D-10, on behalf of the community of Hawaii Island. Mayor Kenoi has seen the condition of the Naniloa deteriorate over the past seven years, and it breaks his heart. The County is responsible for properties on both sides of Naniloa, and the County has invested significant sums in these properties because Banyan Drive is important to the people of Hilo as an economic driver and a recreational location for local families. The County created Reeds Bay Beach Park, which is very popular for families, the kupuna (the elderly), and the children. He spoke about Coconut Island, Moku'ola, and Liliuokalani Park as showcase places for the community. The interior of Banyan Drive is the kuleana of DLNR which he describes as deplorable. DLNR's failure to maintain the interior of Banyan Drive has held the County's economy hostage. For example, Volcano National Park is the 2nd most popular tourist destination in Hawaii, but people choose not to stay in Hilo as the base for visiting the park because the Hotel is an embarrassment.

Hawaii has recently celebrated the 50th anniversary of the Merrie Monarch Festival, the showcase event in Hawaii. The Naniloa Hotel charged \$300+ per night, which is overpriced for the accommodations provided. The Naniloa was recently cited for safety violations in the kitchen (see Exhibit 1). Mayor Kenoi spoke at a State Convention a month ago, which was held at the Naniloa, and the condition of the Hotel was an issue. People complained about the odor, the kitchen facilities, and the algae in the pool. Also, there is only one working elevator, which is a safety violation. The entire situation makes him embarrassed. In contrast, the Hilo Hawaiian Hotel invested \$17 million in its facilities and is always occupied. However, the Naniloa has been allowed to fall into disrepair within the last seven years and has been shameful, disgraceful and deplorable. In a challenging economic environment, the assets need to be closely guarded to ensure compliance. He quoted Nainoa Thompson's blessing of a voyage that as a navigator (as a leader), "Your first decision is the most important one." If the first decision is wrong, every decision after that is wrong.

The \$1 million performance bond was not the lease rent. It was a performance bond to ensure compliance with the lease. The lease is between the State of Hawaii and the lessee. The bank is advocating that the lease is theirs; but the language in the lease says that if there is failure to comply, the State can terminate this lease. Mayor Kenoi, speaking on behalf of his community, is in favor of terminating the lease and starting over. Mayor Kenoi would like the State to exercise some leadership, acknowledge past decisions and mistakes, to help Hawaii Island attain a better lifestyle. Mayor Kenoi has held meetings and has worked very hard to resolve the issue. He would like the State to ensure compliance, investment, maintenance and repair. He is not looking for a 5-star property, but a place where families can work, and where visitors can stay with clean and reasonable accommodations. As a result, Banyan Drive could be restored to the beautiful, special place that it is meant to be. Mayor Kenoi pointed out the issues with the golf course and with excuses he receives when asked about it, such as, "It's right around the corner,"

“We’re working on it,” “It’s out of our hands.” Mayor Kenoi pleaded with the Governor for help on behalf of his community. Mayor Kenoi’s position is not to say who’s right or who’s wrong, but to ask the Board to please help his community. He is willing to go to the bank, mitigate, fight for his community, stand before a judge and explain what happened. Mayor Kenoi cannot bear to tolerate the problem any longer. He feels that he has failed in his fiduciary responsibility to his community and failed as Chief Advocate for the people of Hilo, Moku O Keawe, Hawaii Island. If he stands by any longer, he is not fulfilling his responsibility to 187,000 people who call Hawaii Island their home.

Member Pacheco asked if there were inspections by the Building Department and Fire Department, and if everything at the Hotel was in compliance.

Mayor Kenoi said that everything is not in compliance and the Hotel could be shut down. There is only one working elevator in the entire Hotel. The Hotel has safety problems in the kitchen so the Hotel cooks outdoors. At this point, the State is causing more harm than good with the Hotel. The decision could go either way which is to continue operations or to close down.

Member Pacheco agreed that the decision could go either way, that the Hotel be shut down next week or keep working towards a resolution. Member Pacheco agreed that the lease is inherently faulty; however, that the lease met the procurement requirements.

Mayor Kenoi disagreed and said that the lease could state a need to be a qualified buyer to bid, and required \$10 million in the bank, a credit line that proves there is a qualification to manage the property. He respectfully disagreed if procurement was a justification for the highest bid lease rent in lieu of showing an asset in the community and letting it run down for seven years. It was not about getting the highest rent, but it’s about ensuring the viability of the asset. The Board has much more responsibility than getting the highest lease rent.

Member Pacheco agreed with Mayor Kenoi but the way the State statute is written, the process does not give the Department the ability to do those types of things.

Mayor Kenoi said that the lease requires a \$5 million investment over five years. You can define what constitutes a qualified bidder. You can define that it required more money in a shorter period of time. He requested to terminate the lease because the lease rent is not viable, having no suitable vendor to come in. Mayor Kenoi said that during bankruptcy, the \$500,000 lease rent stays in place because their job is to protect all creditors, and DLNR at the \$500,000 yearly lease is part of the creditors. That lease remains at half a million dollars. Trying to maintain the \$500,000 yearly lease is based on someone who used that very same provision to take an asset away from very qualified bidders and run this asset into the ground. Termination of the lease takes it out of bankruptcy and takes away the \$500,000 lease rent because you’re terminating the lease for non-compliance.

Member Goode said that the State is really faced with a 3½-month gamble and was unsure what to decide. If the State decides to get a May extension, there may be some progress to work together with someone who is willing to do it. Member Goode is hopeful that Mayor Kenoi will work with the Board if there is an extension.

Mayor Kenoi said that his style is to collaborate and work together to achieve desired outcomes and objectives. He encourages a deadline and ensuring that the deadline is met.

Member Sam Gon asked about the meeting with the interested parties.

Mayor Kenoi discussed the need for an investor and the importance of working together to help rehabilitate, invest, and create a nice accommodation in the community.

Member James Gomes thanked Mayor Kenoi for coming in and speaking to the Board. Member Gomes said that his testimony and pictures are worth a thousand words.

George Martin, representing the ILWU, read written testimony concerning the responsibility of the stewards of the land, the deplorable conditions of the Naniloa, failure to restore the Hotel, laying off of 80% of the employees who had been working there for 25-30 years, and that Hilo deserves much better. When asked, he noted that the existing employees are non-union workers.

Dan Purcell testified, expressing his embarrassment with Banyan Drive's condition. Hilo has wonderful historical buildings and a great walking town, but lacks attention. Mr. Purcell had intentions of cleaning the town himself by showing up with cleaning supplies but three police officers showed up and stopped him. Mr. Purcell noticed the increase in crime which makes Hilo very uncomfortable and unsafe. Mr. Purcell is interested and excited to see the future of Hilo because Hilo has a lot of deep roots in Hawaiian history, and he would like to see the whole area revitalized.

Member Pacheco made a motion to hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on Questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded that.

10:32 AM EXECUTIVE SESSION

11:57 AM RECONVENE

Member Pacheco made a motion to deny extensions on all three issues.

Board members stated that they looked at the Federal and State laws, and what is best in the long term for Banyan Drive, Hilo, East Hawaii, the Island of Hawaii, and the entire State. They feel that this is the best course to move things along in a most expeditious manner and to resolve the situation.

The Land Board denied all three (3) requests.

Unanimously denied (Pacheco, Gomes)

Item M-1 Amendment No. 2 to Lease No. DOT-A-11-0006 Restaurant and Lounge Concession, Additional Premises Host International, Inc., Lihue Airport TMK: (4) 3-5-01: 8 (Portion).

Ross Smith, Department of Transportation (DOT), Airports Division, conveyed some background on item M-1, asking for approval to amend the existing agreement with the food and beverage concession at Lihue Airport. The lessee would like to add more space to install grease trap interceptors.

Unanimously approved as submitted (Pacheco, Gon)

Item D-9 Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu on behalf of the Honolulu Authority for Rapid Transportation for Elevated Guideway, Rail Transit Station, Bus Interface, Joint Use Parking Lot Purposes, Aiea, Ewa, Oahu, Tax Map Key: (1) 9-9-003:061, 070, & 071.

Written testimony from Tyler Dos Santos-Tam was distributed to the Board members on item D-9.

Mr. Tsuji presented the staff report on item D-9.

Charles Toguchi, Aloha Stadium Authority Chairperson, was concerned about the monetary compensation they would receive. The Memorandum of Understanding (MOU) sets the parameters for the negotiations in determining what physical improvements will be a part of the station and the parking lot. Honolulu Authority for Rapid Transportation (HART) will operate the parking lot on non-event days, and the Stadium will have full control on event days (e.g., football games, Great Aloha Run, etc.). Leaving the monetary issue open-ended well into the future does not provide a level of assurance or the ability to plan in terms of budgeting.

Mr. Grabauskus said they do not have a budget for any future lease rent payments. If there are monetary requirements in the future, it would require raising fares at the gates and will deter people from using the rail transit. This is in opposition to having a station at Aloha Stadium, which enhances accessibility to stadium events. There is a plan to make improvements that the Stadium is looking for in terms of how we evaluate the immediate area and the accessibility from the parking lot and the station to the other side of Salt Lake Boulevard so that people can cross safely. HART will work with Department of Accounting and General Services (DAGS) and Aloha Stadium staff.

Member Gomes said if a fee is assessed, it would not be economically feasible due to an increase of fares. He asked if Mr. Grabauskus wants the State to not charge any fees.

Mr. Grabauskus said that was correct which has been a typical relationship with the various State agencies. Occupancies or lease agreements with other agencies will allow access to their lands

for guideway or stations with the understanding that having stations improves flexibility for land use options in the future and enhances value and possible revenue generation for those agencies who own lands in those areas. The Stadium station is meant to improve accessibility and desirability for getting to and from the Stadium, especially for events that are extremely well attended and parking is an issue. The acknowledgement that the rail transit will enhance accessibility and having a rail station at the Stadium provides some level of value that will compensate for their presence in some of the land areas.

Scott Chan, Manager of Aloha Stadium (for several years) has worked with HART and is looking forward to having a station at the Stadium. Mr. Chan felt that was a good opportunity to create a major destination in Hawaii. Since the last conversations on the MOU, there have been some issues that warrant some adjustments to the MOU. Mr. Chan does not want to close the door on the flexibility of being able to ask for fair compensation and wants to consider monetary value as part of the total lease. Member Goode said that the staff recommendation indicates clearly monetary and/or improvements to be negotiated. There are lots of opportunities for that discussion.

Mr. Chan said that they getting closer to the major items that are being worked on. Mr. Chan does not want to completely turn over the easement without considering those issues.

Pono Kealoha testified and was in opposition to item D-9.

Pursuant to discussions with the Stadium Authority earlier in the week, staff recommended the staff submittal be amended as noted in Attachment 2 to these minutes, primarily concerning negotiating fair compensation in the form of money or improvements. Staff also noted it intends to come back soon to the Board to limit the perpetual easement to the rail guideway, and for the issuance of either a term easement or lease for the rail transit station, bus interface and joint use parking lot.

Unanimously approved as submitted (Pacheco, Gon)

Item D-8 Issuance of (1) a right-of-entry permit for construction of an overhead guideway; (2) a grant of a perpetual non-exclusive easement for an overhead guideway; and (3) a direct lease for a park-and-ride facility, all on State lands in East Kapolei, Honouliuli, Ewa, Oahu, TMK (1) 9-1-17:97 por., to City and County of Honolulu for its planned rail transit project.

Written testimonies from Tyler Dos Santos-Tam and George Atta were distributed to the Board members on item D-8.

Mr. Tsuji said item D-8 was the next HART item in Kapolei, and the lands are under DLNR. Two parcels are directly across the currently built UH West Oahu, and a couple more are on the mauka side of UH West Oahu. Land Division received a letter from the Department of Planning and Permitting (DPP) committing that in lieu of monetary compensation; they will zone the

property through a deed process for State purposes, and will allow for income production. The Board submittal does provide the alternative consideration. Going through the zoning process will require a Council vote. If the County is not successful in getting the zoning, they will try to get monetary compensation instead. It is right on the rail line, across UH West Oahu, next to DL Horton's Ho'opili project. These are prime, income producing lands. HART's position is the same as it is for the Aloha Stadium in that they do not believe they should have to pay for the use of public lands. HART and the City Administration are in support of developing the areas around the stations which includes the DLNR parcels. There is interest in terms of rail ridership to have the appropriate types of developments that encourage walkable, rideable transit type use of living styles. Having the DLNR parcels developed in an appropriate manner that suits a rail transit type facility is to everyone's benefit.

Member Goode asked if HART issued a similar letter in regards to using the best efforts for rezoning.

Mr. Tsuji said that in HART's discussions with DLNR, they have expressed support, but do not control the zoning process. He thinks the stronger position is to have a letter from DPP, which has control over zoning. As Mr. Tsuji stated, the City Council will have the final authority to approve the recommendations made by DPP. DPP has confirmed in their letter to include the DLNR parcels in this process.

Member Goode asked if they are moving ahead with the rezoning request.

Mr. Tsuji said that his understanding is that the DPP is going to initiate it.

Member Gomes said that it's a profitable land and income producing.

Chairperson William Aila said that land belongs to the Land Division, and revenues will come back to the Land Division.

On the issue of fair compensation, staff recommended and the Board approved the zoning alternative as articulated in Attachment 1 to these minutes; with the understanding that if the County is not successful in rezoning the Kapolei parcels as noted in Attachment 1, then monetary consideration will be charged for the easement and lease.

Unanimously approved as amended (Kishinami, Gomes)

Item D-3 Consent to Assign General Lease No. S-5642, JJCO Properties, LLC, Assignor, to Edmund Clarence Olson, Trustee of the Edmund C. Olson Trust No. 2, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-032:062.

Members Pacheco and Gon were recused from item D-3.

Unanimously approved as submitted (Kishinami, Gomes)

Item D-4 Approval in Concept, Withdrawal of Approximately 2 Acres from General Lease No. S-5570, Michael C. Tulang, Lessee, Set Aside to the County of Hawaii for the Kawaihoni Fire Station and Issuance of a Right-of-Entry, Waiakea Homesteads, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-51: portion of 01.

Glen Honda, representing the Hawaii Fire Department, said the lessee may be entitled to some form of compensation.

Unanimously approved as submitted (Pacehco, Gon)

Item K-1 Conservation District Use Application (CDUA) KA-3668 for Kalāheo Water System Improvements by the Kauaʻi County-Department of Water Located at Kalāheo and Wahiawa, County of Kauaʻi, TMKs: (4) 2-4-003:006 & 007;2-4-004:005, 039, 049 & 058; and 2-4-009:003.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL), provided background on item K-1, which will upgrade the aging water system in upper Kalaheo to meet future Maximum Day Demand storage capacity and fire flow requirements for current and future demand. Staff recommends approval.

Member Smith thanked Mr. Lemmo and said that it was long overdue.

Pono Kealoha testified on item K-1 and against the project claiming that it affects his cultural practices.

Unanimously approved as submitted (Smith, Gon)

Item D-1 Denial of Request for Contested Case Hearing Regarding BLNR Agenda Item D-1, May 24, 2013, Enforcement Action and Imposition of Fine against Kuʻi Palama for Unauthorized Waste Disposal and Trespassing on State Unencumbered Lands; Indefinite Closure and Remediation of State Unencumbered Lands; Request to the Department of the Attorney General to Commence Criminal and/or Civil Proceedings to Recover Costs for Remediation of Unencumbered State Lands at Hanapepe, Kauai, Tax Map Key: (4) 1-8-005:008.

Mr. Tsuji conveyed some background on item D-1. Mr. Palama would like to contest his \$5,000 fine for the cost of removing illegal encumbrances from State land. However, Mr. Palama did not meet the requirements of HAR Section 13-1-29 (a) in requesting a contested case. The staff recommendation is to approve the submittal. Mr. Tsuji noted that Mr. Palama has re-occupied the area since it was closed. Mr. Tsuji noted that the Department needs Mr. Palama's cooperation in this case and advised Mr. Palama that he needs to work something out with the landowner on another piece of property that they own jointly. He also needs a Stream Alteration

Permit to take water from the stream for the parcel of taro land. However, he cannot put any buildings, structures or equipment on the State land.

Ku'i Palama testified on item D-1 said that he didn't put any structures on the State land. Mr. Tsuji noted that there were dog houses on the State land.

Chairperson Aila pointed out that the water diversion is that last violation that Mr. Palama needs to take care of, and suggested that he apply to the Commission on Water Resources Management (CWRM) for an After-the Fact Stream Alteration permit. However, Mr. Palama does not want to have to put a water meter in to measure his water use. He noted that he is not a commercial taro farmer, but is doing the lo'i (taro farm) with his children. Chairperson Aila noted that the Stream Alteration Permit is not about charging for water, but gives permission to alter a stream. After the Stream Alteration Permit, CWRM allots how much water you can take out, based on the impact to the rest of the stream. This is something that CWRM has to do. The Land Board cannot do it. The Stream Alteration Permit will cure Mr. Palama's last outstanding violation, and anybody who wants to alter a stream has to file one, regardless of whether they are Hawaiian or are Alexander and Baldwin (A&B). Chairperson Aila and Mr. Palama further discussed the process for Royal Patents, and an existing road easement on Mr. Palama's property. Mr. Palama noted that almost all of his personal items were removed from the State land, to which Chairperson Aila encouraged him to get the rest of his belongings removed. Chairperson Aila noted that the Department works with other groups and encourages them to grow taro on State land. He said that the Department would be willing to work with Mr. Palama, but first he had to take care of all of his violations.

Woman, a Federal Postal Judge, representing Mr. Palama testified on item D-1.

Chairperson Aila, a woman representing Mr. Palama and Mr. Palama further discussed Hawaiian rights and how the State recognizes them. Chairperson Aila recognized that Mr. Palama has kuleana rights to farm taro; however, before those rights can be recognized, he has to cure all the violations on State land. Mr. Palama expressed his concern that the State agents wouldn't work with him, and Chairperson Aila pointed out that the State agents could not help him or issue him a permit until all the violations against the State are cured.

Mr. Palama asked Chairperson Aila if he could help with aggressive land agents. Chairperson Aila said that Mr. Palama needed to cure the violations first, or the State would come in with bulldozers. He then directed everyone back to the agenda item, which was whether or not to deny Mr. Palama's contested case hearing.

No one testified as to the contested case.

Unanimously approved to submitted (Smith, Gomes)

**Item J-1 Authorize Issuance of Tenant Subleases at the Waikiki Landing Project;
Confirm Refined Boundaries of Submerged Lands to be Leased; Request**

Approval of Declaration of Exemption pursuant to HRS Chapter 343 for use of Submerged Lands; Grant Non-Exclusive Access Easement; Approve Construction Right-of-Entry Permit; Delegation of Authority to Chairperson; Honolulu, Oahu, Hawaii. Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-37:020.

Ed Underwood, Administrator for the Division of Boating and Ocean Recreation (DOBOR), conveyed some background on item J-1.

Member Gomes noted that the lease is \$15,000 per month. With the revised boundary, the lease will be about \$6.00 per square foot. Since the State will not be taking a percentage of the subleases, should this fee be increased? Also, if submerged lands under the lease are going to be expanded, should the flat fee be increased?

Keith Chun, representing DOBOR, said that the cost is \$6.00 per square foot, so if the acreage increases, the lease fee will go up. He noted that currently there is no lease, because they are under a pre-development agreement and are paying \$15,000 per month. When the lease is issued, Honey Bee can fully occupy the site and the lease rent (\$6.00/sq. ft.) will kick in.

Board members asked if the subleases will meet the state requirements. Mr. Chun said that they are asking for Honey Bee to provide the Division copies of the leases after-the-fact to make sure that they are in compliance with State requirements. The representative for the developer also said that they would work to ensure the leases are in compliance, but that it is costly to come before the Board for every sublease.

Unanimously approved as submitted (Kishinami, Gon)

Item D-6 Issuance of Right-of-Entry Permit to Hilton Hawaiian Village, LLC for Staging Area and Safety Zone Purposes between October 1, 2013 and March 31, 2014 at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.

Mr. Tsuji presented item D-6.

Unanimously approved as submitted (Kishinami, Gon)

Item D-2 Cancellation of Revocable Permit No. S-5113 to Abraham Kailikini and Issuance of Revocable Permit to Travis Kailikini for Pasture Purposes, por. of Hanapepe Valley, Hanapepe, Waimea (Kona), Kauai, Tax Map Key: (4) 1-9-002:031.

Item D-5 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on September 29, 2013 Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).

Item D-7 **Consent to Sublease General Lease No. S-4644, Vallejo Venture 99 LLC, Lessee, to HI Energy Alternatives Inc. dba Solar Wave Hawaii, Tax Services of America, Inc. dba Jackson Hewitt Tax Service, Mimi Nails and Spa Inc., El Tres Burros Ltd. dba Chez Sports Bar and Grill, Hawaii Dental Group, Inc. and American Dental Alliance, Inc., Kazi Food Corporation of Hawaii dba KFC, Royal Trading International Inc. dba Toys N Joys II, Calvin K. W. Lau dba Superior Jewelry, Kim Chee Restaurant #7, LLC, Mihn To dba JP Serrato Pasta, Pho My Lien, Ltd., Hawaii State Federal Credit Union, as Sublessees, Aiea, Ewa, Oahu, Tax Map Key: (1) 9-8-013:014.**

Mr. Tsuji said there were no changes to items D-2, D-5 and D-7.

Items D-2, D-5 and D-7 were unanimously approved as submitted (Pacheco, Gon)

Item C-1 **Annual Renewal of Right of Entry Permit for Kawainui Marsh State Wildlife Sanctuary: #OA-459-06; TMK: (1) 4-2-016:015; (1) 4-2-013:022 and 005 Kailua, Koolaupoko, Oahu.**

Member Gon was recused from item C-1.

Unanimously approved as submitted (Kishinami, Gomes)

Item L-1 **Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. H10C620B, Kahana Valley State Park, Renovate Coconut Grove and Orientation Building Comfort Stations, Kahana, Oahu, Hawaii.**

Item L-2 **Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. J45CO41D, Kaluanui Stream Flood Mitigation, Oahu, Hawaii.**

Item L-3 **Certification of Election of Herbert M. Richards, Jr. as Mauna Kea Soil and Water Conservation District Director.**

Item L-4 **Certification of Elections of Oliver English and Ron Nickel and Appointment of Dave Schell and Randy Cabral to Serve as Directors of the Puna Soil and Water Conservation District.**

Item L-5 **Appointment of Lani Petrie as Kau Soil and Water Conservation District Director.**

Item L-6 **Certification of Election of Sheldon Takajo and Appointment of Amy Bugado to Serve as Directors of the Waiakea Soil and Water Conservation District.**

Alyson Yim, representing the Engineering Division, said there were no changes to items L-1, L-2, L-3, L-4, L-5 and L-6.

Items L-1, L-2, L-3, L-4, L-5 and L-6 unanimously approved as submitted (Gon, Gomes)

Adjourned

There being no further business, Chairperson William Aila adjourned the meeting at 1:36 p.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,



Marlou Lamblack
Land Board Secretary

Approved for submittal:



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