

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

DATE: FRIDAY, AUGUST 14, 2015  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Acting Chairperson Carty Chang called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

**MEMBERS**

Carty S. Chang  
Stanley Roehrig  
Christopher Yuen  
Keone Downing

James Gomes  
Thomas Oi  
Ulalia Woodside

**STAFF**

Russell Tsuji-LAND  
Sam Lemmo-OCCL  
Curt Cottrell-PARKS  
Jason Redulla-DOCARE

Maria Carnevale-PMNM  
Pam Matsukawa-LAND  
Dan Quinn-PARKS

**OTHER**

Linda Chow/Deputy AG  
Linda Kydra/D-8  
Dr. Randall Kosaki/F-2  
Ann Shiigi/DOT-AIR  
Dan Morris/D-7  
Kaylene Kauwila Sheldon/D-7  
Terri Kekoalani/D-7  
Marti Townsend/D-7, K-3  
Howard Hanzawa/K-1  
Moses Rapoza/K-1

Ethan Tomokiyo/DOT-AIR  
Dr. Charles Littnan/F-1  
Dr. Brian Bowen/F-3  
Bill Wynhoff/D-7  
David Frankel/D-7  
Candice Fujikane/D-7  
Healani Sonoda-Pale/D-7  
Peter Young/K-1  
Dean Hanzawa/K-1  
Cindy Yong/D-3

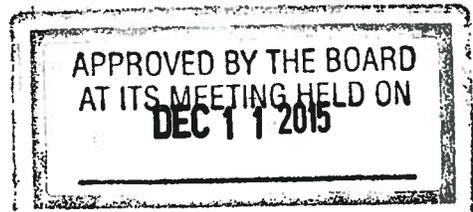
**ITEM J-1 Issuance of Right-of-Entry Permit to Hawai'i Fueling Facilities Corporation for Construction, Access, and Maintenance of Monitoring/Recovery Wells and Interceptor Trench at the Ke'ehi Small Boat Harbor, Tax Map Key No. (1) 1-2-025:024.**

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**Withdrawn**

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**ITEM M-6 Issuance of an Airport Land Lease to Aeko Kula, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01: 19 (Portion).**



**ITEM M-7 Issuance of a Revocable Permit for Aircraft Parking, Dan Landis and Rae Landis, Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

**ITEM M-8 Issuance of a Revocable Permit for Aircraft Parking, Paul Rambaut, Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

**ITEM M-9 Issuance of a Direct Hangar & Facilities Lease, Pacific Pump and Power, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 003.**

**ITEM M-10 Issuance of a Revocable Permit for Ramp Office and Storage, Oxford Electronics, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.**

Ethan Tomokiyo Property Manager for the neighbor island airports of the Airports Division-DOT-AIR asked for the Board’s consideration and approval of items M-6 through M-10.

For M-9, Member Yuen asked why it was done by a direct lease and if there are any other operators interested in the site.

Tomokiyo stated that there are none and that is why it is a direct lease. When there is a high demand and scarcity of land, DOT-Airports would go through public auction. This land which is located on south ramp Kona airport, which has been vacant for many years, airport management has tried very hard to rent it out. Finally, Jeremy Leonard from Pacific Pump and Power has stepped forward and wants to develop it and place a large hanger to serve the general aviation community.

**Unanimously approved as submitted (Gomes, Yuen)**

**ITEM D-8 Issuance of a Right-of-Entry Permit to Waikiki Roughwater Swim Committee, Inc. for a Swim Race Event to be held on Saturday, September 5, 2015, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:por. 21.**

Russell Tsuji Administrator for Land Division-LAND had nothing to add to this submittal

Member Yuen suggested delegating to the chair the events that had been repeated over the years. In addition, uneventful events from the canoe races in Molokai had on-going issues due to the pier facilities being inadequate; this has caused issues twice last year. Chair could make the cut that if there is something of consequence that the chair could weigh in on, the chair could defer it and bring it to the board.

Linda Kydra is with the Waikiki Roughwater Swim. Kydra is appreciative of their approval of request. About a thousand swimmers from all over the world participate in the Roughwater Swim. 300 volunteers participate, 75 in water, 25 paid lifeguards. Very well known, safely run, and is ran in 5 waves from 200-250 people each. Kydra asked in issuance is at the finish line.

There are doctors from Straub, t-shirt pickup, clothing pickup and refreshments. Setup at 5:30am and run until 1:30pm.

Member Gomes asked if the 25 paid lifeguards are C&C Lifeguards. Kydra explained that they are with Aloha Lifesaving (Independent Organization). Kydra added that they are mandated from the C&C to have them.

Member Roehrig asked how far is the swim. Kydra answered, 2.4 miles from Kaimana Beach, out in the open and back to the Hilton channel. Kydra added that they have coordinated with the people that operate boats (boat tours) in and out of the channel to not have boats running from 8:00am to 12pm.

**Unanimously approved as submitted (Gomes, Oi)**

**ITEM D-6 Grant of 65-Year Term, Non-Exclusive Easement to Department of Transportation, Highways Division; and Issuance of an Immediate Management and Construction Right-of-Entry onto State Lands for Honoapiilani Highway Shoreline Protection Improvements, Vicinity of Olowalu, Maui Project No. 30C-02-04 and Federal Aid Project No. NH-030-1(052), Olowalu, Lahaina, Maui, Hawaii, Tax Map Key: (2) 4-8-003: Seaward of 006.**

Staff had nothing to add and the Board had no questions.

**Unanimously approved as submitted (Gomes, Oi)**

**ITEM D-2 Consent to Assignment of 20% interest in General Lease No. S-3611 from the Hiraoki, Elaine and Lawrence Kono Foundation, as Assignor, to Hawaii Planing Mill, Ltd. dba HPM Building Supply, as Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-032:021.**

Tsuji-LAND had nothing to add, the applicant was present. The Board had no questions.

**Unanimously approved as submitted (Roehrig, Yuen)**

**ITEM D-10 Consent to Sublease under General Lease No. S-5261 by Sand Island Business Association to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Utility Purposes, Sand Island Business Association, Lessee, Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041: various.**

Tsuji-LAND detailed that this was part of the sub lessee's request and LAND is in support of this. Hawaiian Electric had nothing to add.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Charles Littnan, NOAA**

**Fisheries, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Marine Mammal and Marine Debris Assessment Activities.**

Maria Carnevale Co-manager for the Papahānaumokuākea Marine National Monument-PMNM explained that this would be the 2<sup>nd</sup> year that UAS would be used on the monument. This is an important new tool when working at scale in remote areas to see what level of resolution could be found with wildlife populations and assessment for threats in the region. The tool has been successful last year and has been through a MMB agency review. Recommendations is to approve the special standard conditions.

Member Woodside asked what the native cultural review was that was conducted. Carnevale replied that there is a subset of the native Hawaiian cultural group that evaluates and reviewed permits, last year they reviewed UAS application, they were comfortable with the level of activity last year. Member Woodside recommended that it should be inputted that the cultural review conducted by the working group supports.

Member Woodside mentioned viewing the pictures and comparing mission objectives as to if the tool (camera) had been useful. Dr. Littnan answered that the camera system used last year was poor in resolution but successful to a degree. Age and condition is identifiable; this being a useful tool to the “white ships” and assess damages that could be caused from natural disasters ie. Tsunami. Newer camera system has better zoom capabilities, thus being able to fly at same altitudes with more detail, but there will be other tools such as, photogrammetry, which will be able to determine which animals need to be rehabilitated and most beneficial being the terrestrial services and assessment with a higher resolution cameras enabling restoration of vegetation and wild life to its native state.

Member Woodside asked if the reason why they were not having bird interactions because they were flying at a higher altitude and that they would have more bird interactions if they flew at a lower altitude. Dr. Littnan replied, they were operating at a low altitude (200 ft) and that is where they are going to operate. Factors are that it is slow moving and looks like a bird. Hexacopter is more stationary and has possibility of attracting more birds. The Hexacopter is not an essential tool and will not be utilized if there is a risk of harming wildlife.

Chair Case asked if there were any live view images or how quickly the images could be processed. Dr. Littnan replied, they can see it live but do not have the capability to streaming it to the world. In addition, the observer has a live feed constantly recording in order to capture pictures as well as, observe for potential bird interference.

**Unanimously approved as submitted (Gomes, Oi)**

**ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Randall Kosaki, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Surveys of Deep Coral Reefs.**

Maria Carnevale-PMNM indicated that Dr. Kosaki has been assessing the mesophotic ecosystem that en-characterizing the first time for his group. They have added dive technology over a period of several years, this year, for the first time, they will be diving on sea mounts. Dr. Kosaki has published in the previous years the initial aspect of his work and is here to continue the characterization of the aspect of our org.

Member Woodside asked what type of drilling or dredging might be expected to be done. Dr. Randy Kosaki replied that technically there will be no drilling or dredging. They will be attaching temperature loggers to some gear that will be deployed under other permits and are receivers for acoustic tags on sharks. Since they are deploying gear, they will be putting temp loggers on it. There is a limited amount of requests that can be checked out on the application, doing so we had to choose the closest one. Member Woodside mentioned after reading the application and did not notice specific drilling. Carnevale mentioned it was an official firmer regulation and that it was a regulated activity.

Member Woodside acknowledges the natural and cultural resources and wanted a brief synopsis on mesophotic reef systems and what they were looking for. Dr. Kosaki answered, most research on coral reefs are done at comfortable scuba depths (25-90 feet) but coral reefs themselves go down to up to 400 feet, only the shallow one-third is being observed. These deeper explorations are being done on coral reefs that have never been explored before. They return with unprecedented levels of endemism on these deep coral reefs. These reefs are completely dominated 90% by fishes only seen in Hawaii. There are several new species, sea cucumbers, urchins, and over 70 new species of algae. We work with Dr. Heather Spalding at the University of Hawaii, and in conjunction work with our native Hawaiian cultural working group and kupuna to come up with Hawaiian names, so the formal scientific name will come from the Hawaiian naming process. We are trying to link the science to culture to place which sets precedence worldwide scientifically, which makes scientist accountable to the place and people and how to deal with specimen and data from areas where there is an extent in culture.

Member Gomes asked, of the studies conducted how often they discover new species. Dr. Kosaki replied, every trip they discover a dozens of new species that are completely new to science. Even unidentifiable to Kupuna due to the capabilities of only discovering shallow water species such as “limu lipoa” a common food alga; a sister species has been discovered in the deeper coral reefs, exploring deeper waters and further north they discover temperature comparable to California weather in November with similar to light, nutrient, and temperature levels. We have observed that these new species have temperate affinities rather than tropical affinities

Member Gomes asked if they come across any springs. Dr. Kosaki replied, they occasionally see places that look like fresh water sea pitch but it could also be a temperature anomaly because of cold and warm water giving a diffraction effect.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Brian Bowen, University**

**of Hawai‘i, Hawai‘i Institute of Marine Biology, for Access to State Waters to Conduct Genetic Survey Activities.**

Maria Carnevale- PMNM mentioned Dr. Brian Bowen initially placed a permit request years ago on a full suite of species, with their associated collection amounts. Each year the permit request is amended to reflect the collections of the previous year, so essentially the initial request is being drawn down.. His students in Hilo had discussed some of the genetics in relations across the archipelago and in relations in the deep and shallow reefs in the northwestern islands; which will help understand the fish populations and what is being managed.

Dr. Bowen added, they are doing companion studies to Dr. Kosaki’s. When discovered in deep reefs, the organisms can be evaluated how different they are and which species they are related too.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM M-2 Issuance of a Revocable Permit for an Equipment Staging Area Along Northern Portion of Aolele Street for the Honolulu Rail Transit Project, Airport Utilities Volume 2 – Utilities & Landscaping, NAN, INC., Honolulu International Airport, Tax Map Key: (1) 1-1-03: 01 (Portion).**

**ITEM M-3 Issuance of a Revocable Permit for the Storage of Aircraft Cleaning Equipment, Western Pacific Aviation Management Corporation dba Wespac Air, Inc., Diamond Head Concourse, Honolulu International Airport, Tax Map Key: (1) 1-1-03: 065: Portion.**

**ITEM M-4 Amendment No. 3 to State Lease No. DOT-A-80-0006, Request to Include Additional Premises to the Lease, Bradley Pacific Aviation, Inc. dba Landmark Aviation, Honolulu International Airport, Tax Map Key: (1) 1-1-72: 14.**

**ITEM M-5 Issuance of a Revocable Permit for Aircraft Parking, Kenani Air LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.**

Ann Shiigi property manager with the Department of Transportation-Airports Division-DOT-AIR presented items M-2 though M-5. Shiigi had no changes.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM D-7 Discussion with the Department of the Attorney General regarding the status of *Ching v. Case, et al.*, Civ. No. 14-1-1085-04 GWBC that relates to GL S-3849, Koahe, Hamakua and Puuanahulu, North Kona, Hawaii, Tax Map Keys: (3) 4-4-015:008, (3) 4-4-016:005, and (3) 7-1-004:007.**

**The Board will go into 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 and to engage in attorney-client communications. (No Staff Submittal)**

*Written testimony was submitted by Jim Albertini, Cheryl Burghardt, Williamson B.C. Chang, Kamana'opono Crabbe, Laurel Douglass, Jerry Ferro, David Frankel, Candice Fujikane, Donna Grabow, Rachel Harbottle, KAHEA Board and Staff 2015, Mary Maxine Kahalelio, Joe Kassel, Dana Keawe, Amy Marsh, Karen Murray, Calley O'Neil, M. Healani Sonoda-Pale, Lorrin Pang, Shannon Rudolph, Kaylene Kauwila Sheldon and Toni Auld Yardley.*

Attorney General Bill Wyhnoff explained that this is a lawsuit regarding a piece of property up on the slopes of Mauna Kea that the Board entered into a lease with respect as to the Army. The Army uses the property as a training range and have been using it for a training ranges for about 50 years. In the last year or two a lawsuit was instituted by a Native Hawaiian and beneficiary of the ceded lands trust claiming that the Board and Department has not properly overseen the lease and the Army has not complied with the terms of the lease.

Attorney General Dan Morris, who is handling this case directly, explained that the Lawsuit was filed by Clarence Ching and Mary Maxine Kahalelio. It's set for trial September 28<sup>th</sup>. These lease lands/ ceded lands and the complaint are centered around an alleged breach of the public trust duty with respect to ceded lands. The area in question is 22 thousand acres; it's almost the size of Kahoolawe. The lease expires in 2029. Recently there was a meeting with the court, and the court has asked that the AG's communicate with the Board and explore ways that this can be resolved, which is why we are here today.

Wynhoff added that this is the first time this has come to the Board. Staff and the Chair are closely involved but the court has asked that this be brought to you. This is not an action item; it's a briefing so that you can hear from members of the public.

Chair Case said that the Board could go into executive secession. The Board asked to hear from the public and the plaintiff's attorney before going into executive secession.

Member Roehrig said he would like to see what the lease says, and what the Board's obligation. Morris said he did have a copy of the lease, which was Exhibit A of the document he handed to Member Roehrig. Morris summarized that the case focuses on two paragraphs 9 and 14. Paragraph 9 refers to training exercises by the military to the extent reasonable within their budget, a reasonable effort to clean up after training exercises. Paragraph 14 is the disposal of trash and how that is handled. The lawsuit focuses on those two paragraphs primarily and alleges that those are ongoing violations of the U. S. government and the breach of trust alleged in the complaint relates to the failure to make sure that the U. S. is complying with the two paragraphs of the lease in particular. In terms of the standards that apply, the allegation of the complaint is that there is a public trust imposed upon ceded lands and that the duties of a trustee are established by the law, the court will have to decide the parameters of those duties.

David Frankel with Native Hawaiian Legal Corporation commended the Board for putting this item on the agenda. They don't believe it's appropriate for the Attorney General's office to keep

the Board in the dark. They have attached a copy of the complaint as exhibit A to their testimony. The military has failed to clean up ordnance, and they should not be allowed to do the same at Pohakuloa. There are two provisions in this lease that help protect ceded trust lands; paragraph 9, "The U. S. Government is required to make every reasonable effort to remove or deactivate all live or active ammunition upon completion of a training exercise or prior to entry by said government, if not sooner" and paragraph 14 also requires the U. S. Government to "remove or bury all trash, garbage or other waste materials." In their complaint they are saying the DLNR and BLNR have breached their trust duties to protect ceded lands from derogation. BLNR and DLNR has the duty to "Malama Aina". In the last 5 decades DLNR has done nothing, after this lawsuit was filed DLNR did the first real inspection of the land (Exhibit B). On the back of Exhibit B there are photos that shows what the military has done with the land that they are required to clean up. Even though the inspection was done last December, the only thing the military has done is remove the vehicles. The Army published a legal notice in West Hawaii today in March 2015 where they said the public will have available a docket of a formal bazooka range. The Army never sent the document to DLNR and DLNR never requested it (attached as Exhibit C). Frankel read the docket. He said the plaintiffs are not asking for any money in this case, the attorney general's response undermines the Board's interest and the public's interest. The State has the right to refuse the U.S. to use these public trust ceded lands once the lease expires. The Attorney Generals argue that the U.S. has a legal interest in this property after 2029. Frankel said that was inconsistent with the law, similarly the Attorney General has demonstrated more concern for the U.S. Army then for the ceded lands trust. The Attorney Generals have also argued for an interpretation of the lease would allow the U.S. to avoid cleaning up its mess for 15 years. They have also attached as Exhibit D correspondence regarding settlement.

Member Roehrig was concerned about discussing correspondence. Chair Case seconded what Member Roehrig said, the agenda item is for discussion about the litigation and some documentation Frankel submitted does have confidentially notices in it.

Member Roehrig asked what the military does elsewhere about cleaning this stuff up. Frankel said in Kahoolawe it was cleaned up not very well, in Makua some people got injured because of the ordnance left there, in Waikane condemned because the military refused to clean up.

Member Roehrig asked if Pohakuloa was open now for the public. Frankel said parts of it was, his client Ching stopped along the saddle road and was able to walk along there and was able to see military debris on the ground. Member Roehrig wanted to know how to go about this, he said this wasn't going to get resolved today because the Board has no documents to figure this out.

Member Yuen asked if there was any relation between this lawsuit and the Lani Stemmerman lawsuit. Frankel said there was no relation; their lawsuit now is only with the State not the Federal Government.

Member Roehrig asked Morris why the Federal Government should be involved in this dispute. Morris explained that any interpretation of the lease by court generally requires all parties of the lease to be a party. The U.S. Government has a right to have their say in what a reasonable cleanup is, they have a right to their say in the importance of this land for national security

purposes. The law says a legal interest isn't all you need to be a party, a beneficial interest. In talking about the U.S. being a party, they didn't join because their sovereign immunity.

Wynhoff commented that they felt it would be more appropriate to have the federal government in this case.

Member Woodside asked if there was a representative of the Army present. Wynhoff said they were asked to come but they were unable to. Member Woodside suggested bringing this back to the Board when they are able to come. She had questions for them but wasn't sure if the AGs or staff would be able to. She wanted to know what the extent of the inspection was.

Member Roehrig asked Frankel what he thought the State should do right now. Frankel said the most important thing is for the Board to agree that they will not extend or enter into a new lease with the Army until the Board has determined in writing that the U.S. is complying with the lease, that's what they would like. Member Roehrig asked Wynhoff if the Board had the authority to squeeze the Federal Government to what they do or what they don't do as of 2029. Wynhoff said no because this Board is not able to decide what a future Board will do in 2029. Frankel didn't agree.

Kaylene Kauwila Sheldon from Kahuku testified that there have been high traces of uranium in people's urine near Schofield. She was present to testify for Pohakuloa. The military needs to reoccupy. She said would be happy to clean up the mess if the equipment is given. Something can be done if everyone works together.

Candice Fujikane representing KAHEA read KAHEA's testimony and testified as KAHEA and as an individual asking the Board not to renew the lease.

Terri Kekoalani read testimony written by Issac Heart, a resident of Kamauela asking the Board to protect the lands by not renewing the army's lease. Kekoalani mentioned that she got permission to go to the back of Schofield and she had to sign a waiver of liability acknowledging that she may be exposed to uranium.

M. Healani Sonoda-Pale representing herself and her ohana from Hawaii Island testified that the military doesn't need this facility on a sacred mountain on sacred sites.

Mari Townsend Director of the Sierra Club outlined her testimony pointed out that the main issue is that Pohakuloa is contaminated. The future should be set up for success; we are in this situation because previous State agency officials did not take seriously the drafting of these leases.

Member Roehrig asked if Russell Tsuji talked to the Army. Tsuji said his involvement was after the lawsuit was filed. He inquired of the Army in letter form and has been up there several times for inspection. There have been correspondence on 3 sites, one was with the removal of the vehicles, and there are two other areas of concern. There is a letter counsel can provide that indicates the planning for the cleanup.

Member Oi asked if the Government was in compliance with the lease. Tsuji said there were things on the ground that the asked them to pick up or have a plan on picking up. He added that the funny thing about this lease was that it allows the burial of trash in the ground.

Morris added that there is no allegation that the military has breached the lease. In the complaint itself it says there is no breach of the lease.

Member Yuen made a motion to go into Executive Session pursuant to Section 92-5(a) (4), Hawai'i 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 Gomes seconded.

### **Non-action item**

10:51AM EXECUTIVE SECESSION  
11:15AM RECONVENE

**ITEM K-1 Conservation District Enforcement OA-14-62 Regarding the Alleged Unauthorized Re-Construction of a Shoreline Erosion Control Structure by Grand View Apartments, Inc., located in the Waiālua District, Island of O'ahu, Upon Submerged Land Makai of Tax Map Keys: (1) 6-8-001:011; (1) 6-8-010:012 & (1) 6-8-010:013.**

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands-OCCL indicated that someone will be testifying on behalf of Mr. Kelly Laport that expresses concerns in Mokule'ia.

Lemmo noted that this item was brought up twice in the past On April 25<sup>th</sup> 2014 the item was deferred because the owner wanted more time. Then in November 14<sup>th</sup> 2014, again being deferred because it was requested that the land owner to get a survey, a pre-construction survey comparing the conditions of before and after the work was done and also you wanted him to go talk to the county. The survey is completed and attached they have been speaking with the county.

Lemmo participated in one meeting with the county. Also concluded in the report was an engineering analysis of various costs and alternatives which was also issued before the board. In the end, this item has brought up before the board twice, the staff report has not changed, and nothing has occurred or submitted before us that would cause us to change our original recommendation, which in the conclusion page states that grand view parks be fined twice 15,000 dollars; once for placing concrete and rocks across the county public beach right of way and one time for putting concrete and rock in front of the two parcels. Also a 1000 dollar penalty for admin costs for a total suggested fine of 31000 dollars. Also recommending IAW to their practices, to no tolerance, to have the structure be remediated and removed within 120 days of the board's decision being made. Therefore based on these recommendations, Grandview apartments providing a cost analysis of various alternatives of either modifying, leaving it in place, or rebuilding it.

Member Downing asked where their property line ends. Lemmo replied that the property meets inbounds but way out in the water. Member Downing asked if that was their original property line. Lemmo replied that he believed that is correct based on the map.

Member Downing asked the walls going down heading westward, are those legal or illegal walls. Lemmo replied that the neighbors (Suttons) and are actually involved in a contested case regarding illegal work in front of their property.

Member Downing pointed out that all the way down as you get to the bay, there are different walls, and asked if those were legal. Lemmo replied that those were legal. Member Downing asked about the fueling house with sandbags in the front. Lemmo replied that, that house is Karen Mitsunaga's home and it was authorized via emergency permit. The neighbor between Mitsunaga and Grandview has also installed sandbags. OCCL is in the process of authorizing the person further down that lost their yard, with a jutebag structure, if the chair were to approve. Chair Case asked, what makes these legal. Lemmo got permits from the city for those structures. He said they also had to come to the state due to waves washing atop so they had to get an easement for the parts of the structure that were wave washed. There is a one person up there with a ramp that had to remove boulders but also got an easement for a section of the wall.

Member Downing thought they suffered the same thing that happened to the rocky point area in the north shore, a same swell that devastated them. He's not interested in building something illegal; his next concern is to have them remove it to build something, if it is the right thing to do. He said he was not against the fines because they built something illegal, but when viewing the wall, there is still going to be problems with the bottom half cracking without enough boulders protecting it from the sand eroding underneath. At this point the concern is the right of way to the beach which was blocked.

Chair Case asked if the wall could be built mauka. Lemmo believed that it is technically feasible that the wall could be built Mauka of the shore line.

Member Roehrig asked, if there was any way of anticipating what is going to be the affects if the remediate the wall. Lemmo responded, related to the Grandview situation, the structure as it is currently built would tend to cause more severe flanking on each side of it since it protrudes. If it is remediated, it would be more aligned with the other walls which would prevent the flanking. It is common formula in the corps of engineers. If you build a structure that protrudes it will cause a down drift effect (flanking).

Member Roehrig asked if this was just a theory. Lemmo answered that it is confirmed by decades of observations and how coastal structures affect the shoreline area and the adjoining structures. Member added if they had the capacity to do the study themselves because we are addressing one yard at a time over and over again.

Chair Case interjected and asked if this proposal here to put the property back into original condition. Member Roehrig's concern is that as soon as they take state action to move an item from A to B and there has been no study done via computer etc. the state is liable when a next large wave hits. In the case done in our office, it needed to be determined what would happen at

a 25, 50, or 100 year storm came because we are representing people in a subdivision where a flushing on the hill in Kona had created a hole in the side of the road, 15ft deep, destroyed all frontage, several houses, we had to hire a prof. from the mainland that created a scale model to figure out what would happen. This established reasonable scientific probability with validated accuracy. Member Roehrig's concern was that we do these studies in a careless way without establishing some sort of scientific model than we are getting ourselves in harm's way unnecessarily; he had reservations.

Chair Case added that you could look at it in a different way that if you take an affirmative state action or with a private party with the particular study, the shore line is a problem everywhere and comes with risk living near a shoreline in addition to rising sea level, and so what this does, it brings it back to the original state before the un-authorized action.

Peter Young gave slight background on the previous presentation, November 2014, subject property in foreground in hardened shoreline the whole way. What is unobservable the public right of way was sand only and all these rock walls. There is a subject property two of them, between them is a public access way, in an older Google image to a new one, the sand is not there anymore. Also presented is other images that will look across from private party point of view and the public access way. Richard Sutton (Resident) added, our property is the wall and two properties from the subject property and is also subject to proceedings as well.

Young added that this was a reminder as to why we were here and what is there now is currently working too, if you take out what is working now, we are unsure if it is going to work. Member Roehrig asked if there were comparable high wave situations similar to 2013. Young does not know but explained that whatever wave action has happened is not causing the same issues that happened before. He had a tide gauge relative to the area from March 2015.

Member Downing asked, when they were first building this property and the stone wall was first built, was it built into the sand or on top of the sand.

Young said the right of way was not part of the original sub division; it was acquired by the city as a public access to the beach. Member Downing asked, did the city build these walls. Young responded that the private property built the walls and built as side walls on the public access and not re-enforced seawall on the sea side.

Member Downing asked if the sea wall was built on sand or did they dig into the sand because the wall stands 12 feet high. Young responded that the owner will come and further explain. What the pictures show as process and Sam said that he was in multiple meetings with state and city. He had a meeting with the planning department and several divisions within. Then a joint meeting with planning, public works, parks, court council. One thing that happened, was that we sent a draft after the application. The draft has not been submitted to OEQC, still considered pre-submission. It was originally submitted to city then state. Amendments have been made and still have not heard back from the city.

Chair Case asked if they were all after the fact permitting from the city. Young replied that they were from the city, the same permit that we are attempting. They had walls and were getting

after the fact permits. These walls were built in the 70s. In addition 3 properties received easements from DLNR because there were encroachments in the walls, back in 2013. This is part of the submittal that we are party of the easement for these 3 properties, in the same land board action, Sutton received the same letter and approval for easement. This is from OCCL and it is their expression relative so should the easements happen and effect on removal of encroachment. The effect on beach resources, therefore in removing their encroachment would not result in substantial improvements in beach resources fronting property. Public access, OCCL staff has determined that no improvement would be gained from removing encroachment properties on seawall because of the adjacent properties are fronted by similar sea walls and their old beach. This is a consistent situation for subject properties. The effect on adjacent prop. Removal of encroaching portions of the sea wall may destabilize sea walls of adjoining properties, it has been the general policy and practice of OCCL to support this position request that has no discernable effect on beach and rec. resources, and does not detriment public access. Young said they are asking for is for the opportunity to do the same thing of getting an after the fact permit and get an easement for the encroachment area.

Chair Case asked that the difference were that the walls were put in the 70s for all of those. Mr. Young responded that it is a different situation but effectively, the prior wall that collapsed was built around and in a pond. He said they are not asking DLNR for a permit to build the sea wall but asking for the opportunity to continue the process, which in November you encourage us to do, to get a shore line mapping and talk to the city about permitting.

Member Roehrig asked so this is land court property. Young said the survey says it calls it land court.

AG-Linda Chow said no, that is not the case whether it is a land court property or not, that the boundary of state and private line is the shore line.

Member Gomes asked, the subdivision or grand view apartments built when. Young answered, in the 1950's.

Member Gomes then asked if they were they on a cesspool. If their backyard is like that, where is the cesspool. Young answered: in the front yard, by the road. If you got your after the face permit.

Chair Case felt like what is missing from this is what is the long term effect of further hardening the shoreline, the sand has eroded away, the water is coming in. She said they are buying time for the land owner, but this is a problem which is increasing for shore owners. Every additional piece of hardening reduces the beach further.

Young responded there are 3 other properties that have after the fact beyond the sub division. I am not a coastal person, but that is what the nature is of this frontage now. It is the nature of what it has been.

Member Yuen added, so you want a setback variance from the city for the wall that was put in for the lot that did not have a wall. Young responded, this board in 3 cases, after the city gave

and after the fact permit for the walls and it was determined that there was then an encroachment of state property, these boards gave easements to these 3 properties.

Member Yuen asked Lemmo what was the story with the situation. Lemmo added, two were vertical walls that were there in the late 60s there were non-conforming as far as conservation district rules goes. But because of the wave wash, maybe some going over or under, they had to get an easement from the state. Because as you know, the state claims jurisdiction seaward of the shore line. There was one case, Michaels and Sutton. Michaels had a lot of boulders, we made him remove many but allowed him to keep the ramp part that was non-conforming. The ramp added to the structural integrity to the wall. So really these were things that occurred decades ago, were not violations, just became encroachments on public properties. They were not the same as the current case of Grand View Apartments.

Member Yuen asked, how he would deal with the fact that legally, as far as the land court is concerned, these lots extend into the ocean, an agency in the state of Hawaii different from the land court. It says these lots extend into the ocean. That is where the boundary is, which defies reason because it is below the high wash of the wave, so if they went into for shore line cert. it would be moved. By the time the big waves came in 2013 the front of the lot is in front of the water.

Lemmo responded said he was told that regardless if it was land court, regardless of its regular system, that where the shoreline goes, the title automatically reverts to the state. That is what I was told.

Member Roehrig didn't think that is correct, because lawyers are forces to go to court, he was addressing the fact that when the wave come, this was beyond the place where they place the rock, was legal, according to land court which guarantees your title, land court guarantees you own the property. Chair Case added that is not the issue here.

Member Oi said he thought the state AG should look into the situation, but in the future see what the legal term shoreline certification is. From my understanding when at the surveyor office doing inspections, it was basically only to set back on shoreline property and not to determine property. AG Chow said that is correct for shoreline certification, but that is not the same as the shoreline which is the title boundary.

Dean Hanzawa with Grandview Apartments, we would not be here if it were not for the public right of way. If c & c came and did what they were supposed to do, I called them twice in 2013,2014 for the fact that the big waves were coming in the right of way and coming up to the properties. I think at the time, 45 foot waves were coming from the swell. He called Moki Rapoza who is knowledgeable in the construction industry and has sensitivity to the environment because of his Hawaiian ancestry, his family lineage dates back to Kamehameha the third, I called my brother because of his knowledge, and his ties with city gov. and private sector, and he would not do anything out of ethics. Main concern was safety, someone would have been hurt or killed, for the fact that the walls were budging in the right of way. Later after the fact, I called Council member Ernie Martin's office, talked to his representative, Reid Matsuura, who has retired. He approached me and stated that it was a c and c right and was supposed to take

responsibility. But when I called his office, they stated that they had no jurisdiction. He called DLNR and stated the same. But both entities came down and looked, off the record, and said “do what you gotta do” but my main concern is the safety of the public. If we you see a wall like that and you don’t do anything about it and someone gets injured or killed, then I am sure that myself, c and c, and state could have had a liability lawsuit on our hands. And I don’t know law, but because people let me do what I had to do, they were worried about any civil lawsuit, if the case if anyone were hurt or killed. That is my main concern, as to no one got hurt or killed. That is why I did what I did. Because by the time DLNR gave us the violation letter, we were done building. It was not a simple procedure as to drop rocks right off in the right of way to tie in the two properties, we did sand bags, and burritos etc. they tried to keep the waves out but nothing worked. That is why we got damage. We tried as much as possible to keep out of state lands. We want to keep the right of way open, but safety is the most important issue.

Member Gomes asked Dean how long did it took to construct this wall, after the wave action. Dean stated, it was not a construction, he and Moki had to break down off the tile slowly and drop boulders in front of the tile wall to prevent it from falling.

Member Woodside asked, could you describe the walls on the 2 properties prior to the wave event. Dean stated, the walls were solid. If one neighbor does not keep his property intact, the neighbor next door will suffer damage.

Unidentified Testifier commented that they are all bound together along the sea shore; it was all original cmu walls. Member Woodside asked when the walls were constructed. Dean said in the 90’s.

Howard Hanzawa, an engineer, licensed to practice in Hawaii, in structural and civil field, stated, it was interesting to hear discussion on reverting the situation back in time, but, how far back in time do you revert it too. One point in time the property was out farther. Back in the 80s there were cmu vertical walls, from parcel 13 and northward. Beyond that there was deans other property, other right of way and couple of other properties not protected. Dean asked him to do some plans to protect parcel 11, which is on the other side of the right of way in the 80s. He worked on some plans; ultimately approved my understanding by the agencies is that they would not approve the vertical wall. Since there were studies done that vertical walls would reflect waves back and create possible damage to adjoining properties. Howard designed a sloped boulder revetment which would allow to waves to wash up and roll back down. It was approves and the wall was built in 1990. It worked all those year fine, the problem was that the right of way in between was not protected, when high wave events occur, the waves washed up in the right of way, and it was all sand and washed it out, ultimately if you look at the photos, it was a 12 foot vertical drop in the right of way, the waters was washing out, undermined the sidewalls and sucked the sand out from the back yards from the 2 adjoining properties. In the pictures the water would apply pressure from mauka side of revetment, the vertical wall are not designed to have pressure from the back side. The boulders from the revetment rolled out the wall on parcel 13, and bowl down and create damage. This was all take place in the high wave events. If they have not taken the action of what they did, who knows how badly the wash out would have been. He ultimately lost a concrete deck in one house, a wall that was inside of the back yard that had to be redone after stabilization. If he had not taken action, those structures would have been lost

and the right of way could not be used because of the vertical drop and maybe the sand would have got on the road. He thought the situation was very dynamic with high waves and was not like "something happened and he did the action" He thinks someone that is prudent and wanted to save his structures/homes.

Member Roehrig asked what percentage was problem created by the county. Howard responded, the water entered 10 foot right of way, which was all the way to the sandstone, which is very deep. Parcel 11 and 13 would have been fine if the same protection or similar was provided to parcel 12, that is where the problem arose from. All these years from the storms, the revetment and wall was performing as it should have been until the sand from the right of way disappeared.

Dean stated, the C&C came in and condemned it for the fact that some of my neighbors wanted a right of way, some did not have. HH- added that he did do an engineer report that covers a brief history of what happened after the late 80's, a design of a revetment. He did take a look at the situation after the event as to what did happen, what could be done. He did come up with various scenarios, and talking to a contractor that deals with work along the shore, he gave me some numbers and came up with these 4 scenarios.

1. Remove the boulders on parcel 12, the county right of way. Because if we are going to provide safe access. Those boulders would need to be removed. The best thing to do would be to build a stair. Right not the C&C fenced off the right of way because it was not safe. In these scenario, I put in a concrete stairway, which should be done. Not only would provide access but protection from preventing this from happening again. There has been some discussion to put it the way it was we would probably be back here again.

2. Remove any loose boulders that was outside parcel 11, 12, 13, and to construct stairs. I can see that it would be more problematic to do more work than necessary, to lift boulders out. Heavy machinery would be needed, more damage would be done than necessary.

It is sad that the county is not helpful in this regard.

3. Remove the loose boulders and reconstruct revetment and sea wall to original state. This would be the most intense, some estimated number based on what the contractor told me. We don't know what needs to be done until the work starts. Then we might uncover a lot of things that is not visible.

4. Remove any loose boulders outside, remove cemented boulders deemed non-structural, and try to move the revetment closer mauka. In all of these scenarios. I think concrete stairways should be constructed, otherwise it would be no-good.

Member Downing asked if the stairway going forward into the ocean, is that not just another way to get water into the right of way. Dean responded the top of the stairway would be ground level. Then there would be sidewalk behind it, so it would be all concrete to the road, at least half way to the road, it would be protected from washout.

Member Downing what happens if you put the walk way to the ocean, parallel to the revetment to parcel 11. Dean said the concrete sidewalk behind the stairs would be important and prevent the water from spilling in the back yards.

Member Gomes said all of this project is C&C, they own the easement and not us. The agenda item is for the reconstruction of the wall. The easement is what caused it.

Member Oi I think we are losing track of what we are here for, the agenda item is on the fines and removal. I think that should be addressed.

Moses (Moki) Rapoza- Retired construction worker, had my own company, when this incident happened, dean called him 3 days before the big waves came. The sand was at least 10 ft. out from the wall. The next day it went down to the sandrock. When he looked at the sandrock, he stated to Dean that there was an issue with the wall falling; his suggestion is to go inside, take half the wall and brace it. Ala Moana has similar break walls at a 45 degree angle. He asked how far the property goes out and to find out what the legal right is. They built rocks, not concrete and brace the wall. They had to go into the Suttons property with his permission because the right of way was 12 ft. deep. Nothing could be done, we took out the existing sand and put it in the right of way, they made a temporary walk way while the wall was constructed. Water came into the right of way, into the property, and in the back and undermined the existing sand wall. They could see the sandrock. Went 15ft down and put 4 to 5 ft. boulders so the water could not go down further, the felt to protect his existing property, we never touched his wall yet but lined it to make it even, then placed rocks and fixed it. Then came out from the right away and that is what you observe today. They didn't route the rocks on the outside; only at an angle to protect the hollow tile, you move it now, the tile will fall off. To get that we have to get through the right of way, but you cannot until the summer time. The sand was 10 ft. out, next day we never had sand, if we never address that, he would have lost everything, we went down 5 ft., they fixed the inside first to the work bench and address this, I placed rocks, last year to this year the rocks moved because he built it like the break wall, the waves was going over his house. Built at a 45 degree, the waves stopped. All properties had problems. You cannot stop the waves.

Edmond Staffery, attorney for Grandview, it is your discursion to word fines. He asked what purpose d the fines serve. It generally serves to punish or deter, they have a situation today when a person going out asking the responsible parties to get things done. ie. C&C to find a solution. Does it serve a purpose to fine a person that takes reasonable action to protect lives and property. In this circumstances the fine is not warranted, he also would ask to consider the fees options that has been placed here, as they are trying to fix the situation, the negotiations is slow with the C&C. Staffery would prefer not to be in litigation with the city. The city has to get involved. The right of way is the cause of much of this problem. If there is going to be a solution that is recognized here today, the city needs to be involved. His hope is that with Young's assistance, and what funds are necessary so that their property will not cause damage to my client's property and neighbors.

Chair Case asked, it seems this wall construction happened months after without getting permit. Why would a fine not be appropriate so the public review process could take place. Staffery said they are trying different measures in dropping boulders, having received no promises and no assistance, they continued the process.

Chair Case asked if did they contacted OCCL Member Gomes said it was said earlier, Dean contacted the county and DLNR, but not specific to whom in the department.

Lemmo said his staff went out and observed the work, he was not there but my instruction were to observe, take pictures and note violations. And that is what we did.

Member Gomes asked if the work continued after the notice of violation.

Howard added the work was all done; they got pictures of Moki Rapoza on the excavator. Then we received the violation.

Member Roehrig asked if they contacted anyone in DLNR, if so who did you within the department. Hanzawa answered, he didn't know which office but Andy something came down. Dean answered, he called them prior to starting work, DOCARE came down and observed us.

Steve Hoitowich a resident in Lau Paina place, the street just before Hoomana, I have lived there for 25 years. I used to be able to walk from the front of my area all the way down the bay where the rocks and walls down to mokuleia church camp. Those walls are vertical walls. In 1975, scripts oceanographic institute of tech. did a study where vertical walls eat away at shorelines. His purpose here today is to assist Dean; he is very honest and straight forward. The fact that the property lines along the stretch of 20 properties their lines are in the water as the map indicates. If they became legalized or not in relation to land court, he didn't know but in view of the fact that the man was working under emergency situation, had tried to stay in property lines. There is no way to get to the shoreline unless you paddle or kayak, there is not walkway or access to the beach. To remove rocks from any properties, it would not make sense. The more boulders place in shoreline areas would benefit the property owners and slow wave action as to vertical walls. Those properties experience sink holes with vertical walls. Fines are not warranted, it is punitive and the owner has suffered to his determine, he has paid hundreds of thousands of dollars. The Sutton property has been pouring money into their properties.

Member Downing asked if all those properties were built on sand dunes. Hoitowich answered, yes, unequivocally.

Bill Nations, the first owner at Hoomana Place. Bought my home in 73. Originally the sand went half way to the reef. In the 60s after the homes has been built, the flood came through there and moved lanai furniture onto Farrinton Highway, Regina Constatino told Reno either you fix it or I am going to leave. Reno put up the first sea wall on 1969. It was made of imported artificial railroad ties, with backing. That worked fine until summer the next surf came. The walls deteriorated. In the 70s you could hop across the walls such as they were. He has no interest of fining the Hanzawas, but do what you can to re-open the beach right of way.

Unidentified Testifier testified that he lived down the street from the Hanzawas and Mr. Nations. I have known him all my life. The weekend of that surf, we paddled out to the rock that weekend, before his wall started to detach. They jumped down the right of way. It was clear that, that was the cause of the undermining. He was not present for the conservations with state or C&C, but he did talk to Dean. The system is flawed, when bad things to happen. It is not easy for a home owner to work through a system. You make phone calls, at the end of the day there is no solution. He observed Hanzawa scramble. To him, the solution is that you allow him to tie the left and right sea wall in one motion so that the water moves back and forth. It is better than what

is there now. He knows it is not a decision you can make but however you can help him to succeed. At the end of the day we move forward.

Greg Kugle, representing Sutton family introduced Mr. Sutton.

Mr. Sutton explained that they have been at the board last year. Subsequent to DLNR finding deans problem, we have taken some emergency action, we were cited after dean did, but because of his process with the city, he was able to not proceed in the same fashion. So we went first in front of the board. The recommendation from OCCL, a fine and removal, which was upheld by the board, we have asked for a contesting hearing, that is pending. We have asked for consolidation with dean, one thing we noticed was when member downing came to visit the site. His observations of the flanking action. Once deans protective action was emplace, the big waves came and thrust over into our area. As indicated we had an existing easement in process for the area in our property, so we took emergency action and place protection, which became the subject of the action. One of the difficulties of the nature of this process is that it is difficult for something this involved to be brought in front of the board and get considerations and get resolution to satisfy all parties. One of the things he suggested previously was that the authorization of statutes was you can order matters to mediation, a matter can be mediated while it could be decided similarly before the board. Since we have several parties involved. It would be nice to get the city to participate in a mediation so we could get this resolved and get it done by a settlement rather than by contentious proceeding which would result in court proceedings.

Young said what is different between our situation and the Suttons situation is that they are in a contested case and we are not, we would prefer not to be in a contested case. They would like to move forward with the permitting that you gave us guidance back in November. We are looking for guidance as what might be a preferred alternative; you herd from Howard the alternative. Like all the other properties. They went to the city and get a permit. If there is an encroachment we would like to deal with the board. He did not think a fine is necessary, if the Board does believe there should be, he was aware that in the past the board has allowed the fine to be attributed to remediation work. If you do a work, rather make it punitive, make it attributed to remediation. Allow us to move on with the permitting.

Lemmo said OCCL's our primary purpose is protecting the beaches; we are doing anything to ensure the beaches are protected through regulatory and non-regulatory process. So what they are doing in this case, they have a violation in conservation land and bringing it before you to enforce action. They are trying to establish a practice of bearing in favor for our beach, his job is not city, not developer, his job is to protect beaches in the state. Lemmo understood there are mitigating circumstances, ie. the access way. Whose responsibility that is, is something for you to judge, we have a lot of cases at various stages, from enforcement to contested, court litigation. It is important to stay consistent to our cause. Lemmo is open to ideas but didn't feel he need to defend what we have done to in terms our action as to bring this before you as enforcement of conservation district rules.

1:52PM      RECESS  
2:03PM      RECONVENE

Member Oi asked, when you guys went out to the property, was it finished or not. Lemmo mentioned our shoreline specialist that works may have been out there at some time. The planner who ran the enforcement case was on site as work was being conducted, there is photos depicting the work that was happening.

Chair Case asked if it was weeks after the storm. Lemmo said there were several events and not just one, he couldn't recall what time I was there when there was work happening in the yard, the wall had not collapsed yet.

Member Roehrig made a motion that the Board does not follow the staff recommendations based on all the testimony presented and that the Board enter an order which provides for the payment of the modest fine and also provides the utilization of the fine money for remediation of the right of way. They provide a years' time owner to work with the C&C to have them approve the after the fact permit and to have the C&C allow and permit the modification of right away to strengthen it along the lines of the number 1 proposal from Hanzawa's brother, he have not said the exact amount of fine, he wasn't sure what is fair, he had his own feelings, and would like other board members input if the motion is finalized.

Member Yuen, seconded for discussion purposes.

Chair Case said she would like to frame a path in terms on what I think are theories. 1) I am concerned about work being done without permits over a period of times. She also thought in the long run we have to protect our beaches, hardening of seawalls is part of our problem with beach erosion; it is an important principal to hold. For that Chair Case recommend the fines as listed here, but did think that there are significant equities here, 1. There was a wall there already, there is already hardening, particularly, the angle is better for reducing erosion, she hears it is a complicated situation with the C&C and the right of way was the major cause of undermining. based on that she would go ahead would apply the 30k fines to the cost of remediation along the lines of #2, take out what you can and construct the concrete stairway with city approval. Use the 30k as credit towards that and go ahead with the 1k admin cost come to the department. That would be her framing.

Member Yuen said they do not know what scenario; it depends on the future permitting. He thinks it should be left open.

Chair Case remediation on the DLNR piece of it and not the right of way, she would think at least you would remove the loose boulders and leave the slant wall. You want to minimize as much as possible for room for beach.

Member Roehrig said when you mean remove loose boulders, the concern he had is, you won't know until you get on the job what it is you are talking about. It could be loose depending on how much force applied. You could use a good size back hoe, you could remove it but it is more detrimental than leaving it. He assumed there will be some judgement involved in that process and that rather than loose boulders, best practice to make the revetment on the side of the property keep its integrity so it won't deteriorate. He asked if that appropriate language engineer. Howard was concerned that this is problematic unless it is really spelt out, maybe the boulders are covered with sand now, are they lose or not.

Member Roehrig said what if they remove the boulder where it is reasonable safe. If it is not than it isn't, but you make an onsite decision. It would be an engineer judgement, is that correct. Moki said it could be done.

Member Yuen said he was wondering if where this is going , if the idea is to give them a chance to apply for a after the fact permit with C&C and he thinks it is going to wander back here as well. The Board ought to have the work done in one crack, so now we have a motion to remove the loose boulders and apply for permit. Having 2 different work events and they may not fit very well. Maybe we should look at actual remedial work after. If Member Roehrig's motion is to apply for permit, that is where the scope of work should be wrapped up as to how much should be removed, left. Maybe they could get denied completely. Member Yuen rather get it done in one crack only.

Member Gomes agreed with that too. The scope of the work when you see the boulders there, you are going to be with an excavator and not a back hoe. There are going to be issues, what about the coral reef, if there is a reef. I agree with the overall remediation with the state and the C&C. The C&C has to be involved.

Member Downing asked if the Board would become liable to this because they gave the okay.

Member Yuen said he understand this motion is that we are not approving the wall stay there; they are giving them a chance to apply for the permits, not giving the permits now. He didn't think that is the part of the responsibility if these things are allowed to stay. What he heard Peter Young is to not order immediate removal so that they can apply for a permit with the C&C that would involve building concrete steps and removing boulders, how that plays out. He's willing to give it a chance in approving the seawall.

Member Oi thought what is going to happen, after they get the permit the permit would be for everything, including loose boulders .

Young said it would be a variance for the building permit of the wall.

Member Yuen thought they are going to have to come to the Land Board.

Member Oi said the State would be responsible.

Member Woodside commented that thinking of the discussion of scenario, of what we want to do today, we would look like we would accept recommendation 1 through 3 and not 4,5,6. 4 would be applied to the mediation work sometime. That is not on another way to look at the motion on table. The scenario contemplates the stair. An important conversation with the city is needed.

Member Roehrig suggested rewording the motion, we accept the staff recommendations on 1 through 3 on the understanding that we would allow the fines to be used towards remediation process that has been discussed in the presentation between landowner, engineer, lawyer, and planner, and others. We would allow years' time for land owner to work out an agreement with

C&C to have an permit for the wall the same as numerous other land owners has done as presented today, it is anticipated the cost at the present time uncertain for the remediation. Could be option 1 or 2 or altogether. The understanding is the land owner will attempt to work out an agreement with C&C to repair and strengthen the right of way so the right of way can be open again for the people in the neighborhood in the last dockets and the last one to open it up the understanding is we are anticipating this matter will come back to the board intentionally to give an easement to the conservation district which is under the ownership of state. It is prudent to work out the land court where the land boundary is in the C&C. Because land court has to move order to move boundary and it should be moved in this process so there is no dispute as where the boundary is and there is no gray area on legal boundary. So land court guarantees your title. That is an undetermined problem that needs to be resolved.

Member Yuen thought they had to pay administrative cost in 60 days. The other parts being a year to seek necessary permits to finalize the situation with no guarantee on the state of C&C that his is going to be granted. The 30k applied to remediation of site.

Lemmo wanted to be clear that the Board is accepting staff recommendation. Land owner fined 1k for admin cost. Paid in 60 days. Next action is land owner is fined 30k for violations to be used towards remediation. Finally given a year to come up with a remediation plan and permit approved from C&C and come back to Board for finalization to conservation district.

Lemmo recommended having them come back in a year with a clear picture of what they want to accomplish and what permits is necessary. Since the permitting process could take some time

Member Yuen was fine with that but I would like to see more than that, at least an application in writing.

All Board Members were in agreement.

Member Woodside suggested that when they come back there is an indication from the city that the application has been files. Something to show there has been dialogue. That they obtain the authorization from C&C to get necessary approval to fix the situation subject to within 1 year.

Lemmo added that the city is going to make them do a shoreline certification because the law states they need a certification if they submit a shoreline setback variance application, they cannot get as long as the structure is in place. So an affirmative statement might be needed that allows the state and, department and you surveyor to consider a certification as one of the precedence to them submitting a shoreline setback variance application.

Member Roehrig suggested suspend the violation on the understanding that they go to the C&C, so there is no outstanding violation.

Chair Case asked they need to waive the normal process for shoreline certification in order for them to move on with their permit. Lemmo just wanted it to be reflected on the record and if the certification process is done properly, then they can move forward in the process.

AG Chow asked Member Roehrig if he wants them to do the petition to note erosion for land court.

Member Roehrig asked if they have to go to the land court to get the certified certification because it is land court property.

AG Chow told Member Roehrig in your motion he wanted them to go to the land court to get the shoreline position changed.

Member Oi said that would take too long of a process.

AG-Chow said they do a petition to note erosion; we do them all the time because we get copied on all the time.

Chair Case didn't think that is necessary.

Member Roehrig said to take that one out. That step is gone, no land court.

Member Yuen told Lemmo he was with him on this issue. He saw pictures when this subdivision was made, and there was a beautiful beach in front, you could see where the shoreline is certification was, then you see a problem with high waves and people started building seawalls. Now you only see seawalls. The difference is we are dealing with property. The revetment was legal, seawall was legal. If this was a perfect world. They could have come in to repay the revetment. We would have looked at it different with someone coming in with a new seawall revetment. Almost all the lots have existing legal shoreline hardening.

**Unanimously approved as amended (Roehrig, Yuen)**

2:35PM RECESS  
3:01PM RECONVENE

**ITEM D-3 Approve Mediated Settlement of Rent Reopening Dispute in General Lease No. S-4201, David S. De Luz, Sr., Lessee, 75 Pohaku Street, Hilo, Hawai'i, Tax Map Key No. (3) 2-2-058:033.**

*Written testimony was submitted by Josephine R. Deluz,*

Chair Case mentioned The Nature Conservancy received a donation of conservation easement 5 years, she had no conflict.

Russell Tsuji-LAND told the Board they should have received a packet from Josephine De Luz, he apologized for the confusion. The other side was represented from counsel Frank Jung, there was some confusion as to authority for an individual to sign for David De Luz, he is not able to because he was incapacitated. Josephine was holding power of attorney and got her to execute the settlement. Cover letter should be received in support for the tentative settlement. This submittal explains that the mediation took several days, mediated from Esther Price, who

assisted us, the parties belief is a fair settlement for this area. Tsuji asked Pam Matsukawa and Cindy Young to attend today in case there are any questions. All 3 of them participated in this mediation with the state.

Member Downing asked how much the sublease was paying. Tsuji didn't specifics on that, he said member Member Yuen had called me on it several days ago. They were not aware of the sublease until the mediation and assumed that the used car sales operations at Big Island Toyota. What would need to happen, we would come back to the board for consent on sublease and will have all information on the sublessee. Question comes down to, should we know that before we agree before the lease rent. They do not believe we need to because they are reopening a ground rent, releasing the ground, tenant release the improvements and releases the property. And what we are trying to determine is the fair market rent. Under the sublease which we will bring later to the board. On a consent to sublease, there is an opportunity to evaluate the rents charged under the sublease and make a determination of whether it is fair or appropriate to add or not add. Something that will be brought to the board.

Member Roehrig made a motion to approval, subject to change that the successor trustee, have recommendation as successor, this being amendment. Member Yuen seconded.

**Unanimously approved as submitted (Roehrig, Yuen)**

**ITEM D-1 Amend Prior Board Action of May 9, 2014, Item D-2, Term Extension of General Lease No. S-5187; Aloha Petroleum, Ltd., Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-009:042. And**

**The purpose of the amendment is to change Condition 1.B. by including "improvements required by applicable law or regulations" as a permissible basis of the lease extension, and extending the due date from December 31, 2015 to December 31, 2016, for submitting receipts of the expenditures of the proposed improvements.**

Russell Tsuji-LAND had no changes. The dollar amount was done at prior Board meeting. Board approved as amended. Originally requested for a 20 year term but reduced to 10, decided in May. Today is moving this back to December 2016.

**Unanimously approved as submitted (Roehrig, Yuen)**

**ITEM K-3 Delegate Authority to the Chairperson to 1) Issue Findings of No Significant Impact for Environmental Assessments Submitted in Connection With Conservation District Use Applications; and 2) Delegate Authority to the Chairperson and the Administrator of the Office of Conservation and Coastal Lands to Declare Exempt Those Actions Within the Conservation District Which Are Included in the Department-wide Exemption List.**

*Written testimony was submitted by Kamana'opono Crabbe.*

Sam Lemmo-OCCL said there were comments from OHA, they oppose what we are trying to accomplish. He told the Board not feel pressure for the Board to make a decision today. There are people that are probably around that would want the item deferred, as you know we are a regulatory office, we function differently from other divisions in DLNR. They write a lot of letter, we are coming to you for 2 primary reasons. 1. Expediting the function in providing services to community. Creating a more efficient system. Rather than having environment assessment that we process is part of CDUPs is comes to you that that function be delegated to the chair. 2. OCCL reviews hundreds of actions every year in exemptions. If anyone asks anything in the conservation distribute triggers 343, we have to issue an exemption, we are asking to delegate to the chair or OCCL administrator, to work the exemptions of the EA.

Member Yuen told Lemmo he has been issuing exemptions for a long time and EA's so someone can make an inquiry on a conservation district, you may be permitted outright as an action so to tell them it is exempt from an EA or a non-board permit like a site plan approval, you have been making a determination it is on the exempt list and it should be on the EA.

Marti Townsend with the Sierra Club, appreciated that this is coming from the board. I do a lot of work that follows the OCCL, CDUP. The problem we are having that the agenda item is framed is the public notice is insufficient. Even though this is attempting to bring current practice and authority in line with each other, I would like the board to figure out a way for public notice. Exemptions as a concept are not bad. We support the idea of the gov. operating efficiently, the issue is when the notices of exemptions are given. The issue is notice when the exemptions are given. Now you have to know when the exemptions are given, and then file a uniformed information practices act. To request an exemption to see what the justifications are. Townsend proposed the Board consider modifying the two recommendations to either. 1. If the actions say or add another line or element such as all CDUP exemptions and fonsis would be noticed in the environment bulletins that is issued by OAQC, that is one option.

Member Woodside asked if the fonsis weren't already noticed in the bulletin. Townsend said some are.

Lemmo said all environmental assessments that we publish are noticed. The final fonsis are noticed. The issue on the table is whether or not the OCCL administrator can issue the fonsis or if there has to be a board function. The other issue is the exemptions in the environmental notice. We run a small office. The run mean and lean. The more burdens, the less effective we are going to be doing at the things we do. He understood Townsend as Sierra Club wanting that but didn't think it could be provided at this time. All the exemptions on the file, we can keep a running list of it, but didn't want to add another step to of going to OAQC with our exemption because it is not required. How do you distinguish what is moderately noticeable and totally innocuous. Townsend agreed.

Townsend commented that the other element to keep in mind an attempt to uniform thins among divisions. The land use commission, all fonsis come to the board. So that is something she would like this Board to see if they would like to file the IUC. Townsend agreed with Lemmo that it is hard to figure out that line if I try to figure out a bright line rule that said what is minor and what is not. There is lot of gray area in there.

Lemmo said Maui is the only County where an EA has to go before the commission. He thought EA's were possible by directors on all other islands. What we are doing is what they are doing but people believe that legally you are supposed to issue a fonsi.

Member Woodside made a motion to approve as submitted, with the amendment that for the exemptions staff keep a list on hand in the office (available for public review). Member Yuen seconded.

**Unanimously approved as amended (Woodside, Yuen)**

**ITEM D-4 Amend Prior Board Action of April 25, 2008, Item D-8, Grant of Easement to Benjamin Konshak, Claude L. Harris, Jr., and Greeley West Corporation for Access Purposes, Kaiaakea, North Hilo, Hawaii, Tax Map Key: (3) 3-4-003: Portion of 011. And**

**Purpose of the amendment is to change the name of the grantee consisting of the three original individual landowners (Konshak, Harris & Greeley West Corp) to the Maulua Homesteads Owners' Association, to allow accesses to the other adjacent landowners.**

Chair Case asked what properties does the easement benefit, does this actually do that. Member Woodside said it was in the original submittal EXHIBIT B.

Member Yuen said it didn't make any sense he thought the name was not only being changed but the area of properties that this benefited. If that was what the Board wanted to do, then there has to be something in the document that says that all these properties need to benefit.

Tsuji-LAND suggested pulling this item and bringing down Hawaii Island staff.

**Deferred**

**ITEM D-5 Amend Prior Board Action of December 13, 2013, Agenda Item D-16, Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: 3<sup>rd</sup>/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32. The purpose of this amendment is to: 1. Correct the names of the owners for Lot 2B to include all current owners' names. 2. Update the names for the owners of Lot 6.**

No changes, no questions.

**Unanimously approved as submitted (Yuen, Roehrig)**

**ITEM D-9 Request to Amend Prior Board Action of March 13, 2015, (Item D-8), "Issuance of a Right-of-Entry Permit to the Na Wahine O Ke Kai for a**

**Canoe Race Event to be held on Sunday, September 27, 2015, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.” And**

**The Purpose of this Request is to Amend the Permit Date of the Canoe Race Event to Include Saturday, September 26<sup>th</sup>, 2015 and to Revise the Permit Areas, and Rent, Accordingly, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.”**

No changes, no questions.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM D-11 Sale of Remnant to Wayne C. Travillion and Arlene L. Travillion, Waianae-Kai, Waianae, Oahu; Tax Map Key: (1) 8-5-013:062.**

No changes, no questions.

**Unanimously approved as submitted (Gomes, Downing)**

**ITEM D-12 Authorize Negotiation and Execution of Memorandum of Agreement among the Board of Land and Natural Resources, the Department of Defense and the Department of Accounting and General Services for Civil Defense Warning Sirens on Land Under the Direct Management of the Department of Land and Natural Resources, at Various Locations, Statewide.**

No changes, no questions.

**Unanimously approved as submitted (Gomes, Roehrig)**

**ITEM M-1 Disposition of Surplus Highway Remnant, Interstate Highway I-HI-1 (23), Tax Map Key: (1) 2-4-013:045.**

No changes, no questions.

**Unanimously approved as submitted (Gomes, OI)**

**ITEM K-2 Request Approval to Implement Proposed Natural Resource Beach and Coastal Protection Projects Funded Through Act 117, SESSION LAWS OF HAWAI'I (SLH), 2015, Pursuant to the Hawai'i Tourism Authority Strategic Plan, and Authorizing the Chairperson of the Department of Land Natural Resources to Review and Approve Natural Resource Protection Projects for Beaches and Coastal Areas for Fiscal Year 2016.**

Sam Lemmo- OCCL explained that this has a long history; it essentially comes down to the issue of the legislature appropriating 3 million dollars for DLNR to basically help run programs. There were technical problem encountered. We could not use the money. Last session was an attempt

to fix the language of the flawed bill and there were supposed to fix so we could use the funding from tat. What came out of HD44, relating to beach protection. It was passed and approved by GOV. we seek authorization to allocate the money. Essentially we listed the various of projects that would like to perform between OCCL, state parks, and DOCARE. OCCL, 1.5 million, identify to initiate Waikiki beach restoration, engage in management of Waikiki. To go out and get a sand field for a borrow site for beach projects. We are going to enter in a partnership C&C, some sand could be used for city parks on Oahu. 2 sand fields, reef runway and Haleiwa has nice sand. State parks, 1 million, state parks and rec. areas, remediate and erosion control. DOCARE 550000, patrol coastal areas, they need resources and equipment. Aspect of this bill is the money spent has to be consistent with the Hawaii tourism authority strategic plan. That plan is being amended. HTA is general in nature, it is not detailed. It clearly states beach and parks are important for tourism and Hawaii economy.

Curt Cottrell with State Parks commented that he has worked with HTA trying to get the tourism industry to re-invest in their resources, beaches and parks, but also the infrastructure ie. Bathroom and parks. The Gov. gives the C&C a lot of tat funding, it is a good start for the tourism industry to re-invest in natural and cultural resources they have been promoting since Statehood. We work close with state. Lemmo thought it is a good opportunity for the department to finally put into our special tat funds, and establish ability to base budgeting a base flow of income, it is a good start.

Member Downing commended that DOCARE has the least amount of funding, they are responsible for policing all infrastructure. They only get 500k for headlights? What do we need to do to implement services that they can't handle now, when boats break down, when there is not enough personnel. When we see 3 million coming every year, we should be looking at things that need help the most. For me off-shore sand exploration. Today that is not needed; I would rather have 2 more DOCARE officers that cite individuals doing illegal business. Balance of state parks is important, enforcement is important when you visitors or locals utilizing the infrastructure, that will notice that HTA, city and state alike want to take care of Hawaii's vision of tourism.

Member Woodside asked if you know this funding is coming every year, are we going to work some strategy for the future?

Member Oi asked if forestry and boating be included later.

Dan Quinn- initially the beginning of this was 1million to DLNR, 900k to state parks, and 100k to trails that were getting impacted. We went to couple of iterations and finally because of the title of the bill is beach protection. There is no way to justify beach protection money on mauka trails. That is what is in discussion to have something new in plan. Originally HTA board approved half the plan which was strange protocol for a Department approving another department's policy.

Member Downing wanted to re-iterate that sands are important, but there have been studies on sand. Sea grant has done many studies. When they say they have X amount of money, I feel that the funding could go towards other measure. The problem that occurs when you measure sand.

Waikiki sand that is allowed to be taken, was brought artificially. If you start taking sand like taken from Waimea Bay, this sand is not only to be put on beach; it is to put on land. It starts to affect the natural environment.

Member Woodside thought it was broken all around, we need to do it moderately. We have done it constantly. Beyond the sands term. Coastal areas change constantly. Is it that important? We could further discuss it later.

Jason Redulla, Acting administrator for DOCARE- testified that all of DOCARE officers are trained for aquatic, marine, and land style enforcement. We do have officers that are trained. East Hawaii has 4 officers.

Member Woodside made a motion to approve as recommended by staff with an amendment to number 2 to delegate to chair, to ensure actions and projects proposed in report and consistent with HTA. Member Gomes seconded.

**Unanimously approved as amended (Woodside, Gomes)**

There being no further business, Chairperson Suzanne D. Case adjourned the meeting at 1:03p.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,



Ku'ulei Moses  
Land Board Secretary

Approved for submittal:



Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources