

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

DATE: FRIDAY, DECEMBER 09, 2016  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAI'I 96813

Chair Suzanne Case called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

**MEMBERS**

Suzanne Case  
Thomas Oi  
Stanley Roehrig  
Sam "Ohu" Gon

James Gomes  
Chris Yuen  
Keone Downing

**STAFF**

Russell Tsuji-LAND  
Barry Cheung-LAND  
Curt Cottrell-PARKS

David Smith/DOFAW  
Ed Underwood/DOBOR  
Maria Carnevale/PMNM

**OTHERS**

Linda Chow /Deputy AG  
Summer Sylva/D-11  
David Schulmeister/D-11  
Micah Mnikat-DOA/D-11  
Dale Sandelin/D-11  
Heidi Watanabe/D-11  
Justin Texeira/D-11  
Bryan Miyamoto/D-11  
Adriane Raff/ D-11  
Zack Williams/D-11  
Mikiala Pua'a-Freitas/D-11  
Tiare Lawrence/D-11  
Tyler Greenhill/D-11  
Daniel Anthony/D-11  
Laura Grey/D-11  
Trent Furtado/D-11  
Dylan Lee Davis/D-11  
Hoolea Kaleo/D-11

Camille Kalama/D-11  
Rick Volner Jr./D-11  
Garrett Hew/D-11  
Alex Franco/D-11  
Kayla Broe/D-11  
Brendan Balthazar/D-11  
Tom Blachford Rodriguez/D-11  
Wayne Tanaka/D-11  
Mary Ann Kahukoa/D-11  
Lilian Kong/D-11  
Albert Perez/D-11  
Kupa'a Luahuleo/D-11  
Jeff Kim/D-11  
Margret Matsuda/D-11  
Kayla Broe/D-11  
Cameron Sato/D-11  
Keolanui Kalama/D-11  
Keali'i/D-11

*as amended*  
APPROVED BY THE BOARD  
AT ITS MEETING HELD ON  
MAR 10 2017

Senator Gill Riviere/D-11  
Noe Lopes/D-11  
Ed Wendt/D-11  
Dave Arakawa/D-11  
Alan Okamoto/D-6  
Gill Riviere/C-1  
Pete Manaut/C-1  
Ross Smith/DOT-AIR  
David Hafner/M-1  
Athleen Clark/F-2

Asami Kobayashi/D-11  
David Frankel/D-11  
Pomaikai Kala/D-11  
Aaron Armstrong/D-11  
Stephanie Pascual/D-21  
Mike Cutbirth/C-1  
Kent Fonoimoana/C-2  
Greg Kugle/J-4  
John Mesina/M-2

Chair Case announced that items G1 and J2 were withdrawn and told everyone that items D3 and D4 would be heard after lunch.

**ITEM G-1 Request for adoption of amendments to Hawaii Administrative Rules Chapter 13-16. (Rules Relating To Conveyances)**

**Withdrawn**

**ITEM J-2 Request Approval to Initiate Rule-Making Proceeding, Including Public Hearing, to Amend Title 13, Hawai'i Administrative Rules (HAR) Sections 13-230-4 Penalties and prosecution, 13-230-8 Definitions, 13-230-25 Particular categories, 13-231-3 Use permits; issuance, 13-231-6 Revocation of use permit, 13-231-13 Joint and several liability; non-transferability of use permits, 13-231-15 Boat owner required to report change of ownership, address, and other changes, 13-231-26 Use of a vessel as a place of principal habitation, 13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor, 13-231-29 Vessel used as a vacation site, 13-231-45 Marine inspections, 13-231-56 Definitions, gross receipts, 13-231-70 Water taxi operations, 13-232-8 Marine toilets - restrictions, 13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited, 13-232-30 Fire signal for vessels in small boat harbors, 13-232-57 Dogs, cats or other domestic pets, 13-232-58 Sleeping or camping prohibited, 13-232-60 Serving, sale, and consumption of liquor in state boat harbors and boat launching facilities, 13-233-13 Operation, parking, or storage of bicycles or play vehicles, 13-233-29 Eligibility for parking permits; fee per vehicle, 13-235-5 Owners required to report change in ownership, address and other changes, 13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area, 13-242-1 Duty to render aid and give information, 13-242-3 Immediate notice of accident; when required, 13-242-4 Written boating accident report; when required, 13-243-4 Mufflers, 13-244-15.5 Operation of power driven vessels, 13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition, 13-244-29 Makapu'u ocean waters, 13-244-37 Zone A, Zone B, Ingress/Egress Zones, and Ingress/Egress Corridors, 13-245-9 Diver's flag, 13-251-57 Waikiki ocean waters, 13-253-1.3**

Gross receipts, 13-255-1 Purpose and scope, 13-255-6 Waikīkī beach uses and activities; restrictions, 13-256-3 Commercial use permit or catamaran registration certificate requirements, 13-256-5 Commercial use permits; public auction, 13-256-7 Business transfer fee, 13-256-8 Owner required to report change in ownership, address and other changes, 13-256-12 Gross receipts, 13-256-16 Thrill craft operations; general provisions, 13-256-17 Recreational thrill craft operations, 13-256-21 Ultralight float equipped aircraft, 13-256-22 Tow-in surfing, 13-256-56 Wailua River restricted area, 13-256-63 Sharks Cove, Three Tables and Waimea Bay ocean waters, 13-256-73.5 Large snorkel tour permit restrictions, 13-256-74 Kailua Ocean Waters Restricted Zones, 13-256-88 Maunalua Bay waters, 13-256-91 Waikīkī Ocean Waters Restricted Zones, 13-256-112 Maui Humpback whale protected waters, 13-256-128 Baldwin Park-Paia Bay Restricted Area, 13-256-162 Makaiwa Bay Swimming Zones; and to amend Title 13, HAR to add new Sections 13-232-57.1 Feeding of wildlife or feral animals prohibited, 13-232-57.2 Animal abandonment and creating or contributing to colonies prohibited; and to repeal HAR Sections 13-230-21 Definitions, 13-240-5 Definitions, 13-243-5 Recognition of marine examination decals, 13-245-2 Definitions, 13-250-5 Definitions, 13-254-1 Definitions, 13-255-5 Definitions, 13-256-35 Owner required to report change in ownership, address and other changes.

The rules can be reviewed online at: <http://ltgov.hawaii.gov/the-office/administrative-rules/> or <http://dlnr.hawaii.gov/dobor/draft-rules/> or can be reviewed in person at any small boat harbor from 8:00 am to 3:30 pm, Monday through Friday, except holidays. Location and contact information for DOBOR offices is available online at: <http://dlnr.hawaii.gov/dobor/contact/>

*Written testimony was submitted by James E. Coon, Misty Christo, Katie D. Lisnik, and Peter J. Wolf.*

**Withdrawn**

**ITEM A-1 Approval of September 9, 2016 Minutes**

Member Gon recused from voting on this item, he was not present.

Member Yuen and Member Roehrig had amendments.

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

**ITEM A-3 Approval of October 14, 2016 Minutes**

Member Yuen had corrections.

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

**ITEM D-11 Holdover of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.**

**Pursuant to Section 92-5(a) (4), Hawai‘i Revised Statutes, the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board’s powers, duties, privileges, immunities and liabilities.**

*Written testimony was submitted by Lawrence Carnicelli, Scott E. Enright, James A. Jones, Mary Lacques, Darren Strand, Heidi Watanabe, Melanie Abecassis, Ellen Abrams, Galuta Aga, Jennifer Noelani Ahia, Hii Aiona, Jeff Akinaka, Nancy Aleck, Terez Amato, Lauren Ampolos, Lynn Anderson, Damina Antioco, Jhianna Aweau, Gaylene L Barron, Barbara Barry, Elif Beall, John Bickel, Mike Biechler, Hannah Blue, Denise Boisvert, Nathan Leo Braulick, John Bruce, Andrea Buckman, Alan B. Burdick, Cara Burklin, Paulo Burns, Ka`ala Fay K. Camara, Ana Castillo, Wailea Collins, Jason Coughlin, Kamana`opono Crabbe, Nicole Carbonell, Will Caron, Thomas Craig, Lauren Carter, Sylvia Cenzano, Kevin K.J. Chang, Jade Chihara, Randy Ching, Gabrielle Constantino, Joyclynn Costa, James Crowe, Chris Cruikshank, Nakota Kai Crumbo, Sheri-Ann Daniels, Christine Davis, Mark Deakos, Kimberly DeCambra, Anthony Kawika Deluze, David Deragisch, Michael de Ycaza, Kelcy Durbin, Carin Enovijas, Deborah Eudene, Cadence Feeley, Arianna Feinberg, Florence Fines, Lloyd Fischel, John Fitzpatrick, Kailea Frederick, Pono Fried, John Gelert, Kyra Glover, Laura Gray, Malachy Grange, Tulsi Greenlee, Debra Greene, Gregory S.P. Gushiken, Isaac Davis Hall, Julie Hamilton, Michelle Hamilton-Golis, Hana Highway Regulation Authority, Reyna Ramolete Hayashi, Jennifer Henderson, Jocelyn Hueu, Kupono Hueu, Angela Huntemer, Robert G. Hollingsworth, Jacqui, Choon James, J. Umiokalani Jensen, Jessie, Gabe Johnson, Jeannine Johnson, Kim Jorgensen, Kale Kaalekahi, Kyle Kagimoto, Kamanu Kaikala, Claudia Kalaola, Judith L.S. Kapohakimohewa, Jennifer Karaca, Tamara Paltin, Justin Kekoa Kekiwi, Keolalani Koaloha, Joesph Kohn, Lilian Kong, Lawrence Koss, Jana-Nicole Laborte, Mary Law, Erika Lechunga Disalvo, Penny Levin, Naomi Levit, Christina Lizzi, Carol Lem, Joesph Kualii Lindsey Camara, Leilani Lindsey-Ka`apuni, James Long, Amanda Lorenz, Nancy Lorenz, Kupa`a Luat-Hu`eu, Brandon Luke, Kapono Makahanaloa-Antunez, Sunnie Makua, Ihilani Marchello, Martha Martin, Marty Martins, Shannon Matson, Melia Mattos, Sarah McCallie, Ashlie McGuire, Amy McKee, Beth McLachlin, Chris Mentzel, Madeleine Migenes, Micah Miller, J. Mitchell, Shelley Muneoka, Brian Murphy, Catherine Nall, Joanne Nall, Matthew Nall, Leonard Nakoa, Toby Neal, Debra K Norenberg, Tracen Oania, Bill Oldham, Marla Owen, Mary Ann Pahukoa, Tamara Paltin, Rebecca Pomaikai Paresa, Lucas Park, Albert Perez, Amy Perruso, Paula Phillips, Ann Pitcaithley, Caitlin Pomerantz, Megan Powers, Margaret Primacio, Adriane Raff Corwin, Aimee Rice, Anne Rice, Kate Righter, Joe Ritter, Ciera-Jean Rodrigues, David Rose, Shannon Rudolph, Jordan Rudias, Simon Russell, Molly Sanborn, Heidi Sarkozy, Sunny Savage, Rosalie Schreiber, Mark Sheehan, Kaylene Kauwila Sheldon, Karen Shishido, Shane Sinenci,*

*Steve Sipman, Teri Skillman, Jette Slater, Safia Slater, Steve Slater, Preston Smith, Jody Soltau, Chris and Becky Speere, Mele Stokesberry, Ananda Stone, Rebecca Sydney, Team `Aina, Nicholina Tompkins, Stacey Torigoe, Val Toro, Kat Tracy, Annjulie Vai, Catherine Velasquez, Susan Vickery, George Vierra, Ross Villiger, Jessica Waiau, Colleen Wallace, Reese Walleit, Bobbie Ward, Edward Wendt, Shannon Wianecki, Moana Wetecha, Evern Williams, Jim Williams, Mary Wishpering Wind, Nathan Yuen, and Majorie Ziegler.*

Chair Case said there was a petition that was filed yesterday afternoon for a contested case proceeding. She asked the petitioner and the applicant to present testimony only on the request for a contested case.

Member Gomes recused because he manages Ulupalakua Ranch which gets water under these revocable permits, they also have a pasture lease on A&B land. Member Roehrig commented that there was some very important testimony that was received by the Native Hawaiian Legal Corporation just today. Chair Case confirmed, that was the petition. Member Roehrig requested that they get this stuff earlier than the day of the hearing; it's impossible for him to digest all of this information the day of.

Camille Kalama introduced herself and Summer Sylva attorneys for Healoha Carmichael, Lezley Jacintho, Sanford Kekahuna, Lurlyn Scott and Nā Moku Aupuni O Ko'olau Hui. They couldn't be present because they are on Maui (where they feel the meeting should be held). Their clients are part of an ongoing contested case before the Board which contrary to the staff submittal, the permits that are being held over here are part of that contested case hearing as well as the long term lease application. They have moved to a contested case to cover their bases.

Kalama understood that the Board has not had time to read their testimony; what they are here today on the request by A&B for another holdover. They read over the staff submittal, on page #3 it states that Judge Nishimura's order, which invalidated the 4 permits as well as the practice of holding them over for 13 years. Her order has been stayed with respect of the County of Maui, so there is no threat at this time that the County of Maui's water supply will be shut off. Kalama was explicit in saying that the Board and A & B had not shown at the time of that order, that there was a stay as far as them. She also explicitly said that A & B was welcome to file a stay before her so that her order could be stayed pending appeal. Until this time A & B has not moved for a stay of enforcement of that order. Kalama told the Board they should be asking them why.

Kalama went on that another misstatement in the staff submittal was that the permits have been going on a valid holdover since 2001, but that directly contradicts Judge Nishimura's order.

At this time Kalama orally requested a contested case on behalf of their clients. They have submitted their written petition. In their testimony they make clear the legal barriers to granting the request of A&B. Kalama told the Board that if they grant the request to A&B they will fail to protect traditional and customary practices.

Kalama expressed that A&B is asking for water to maintain the integrity of the ditch system, they don't tell exactly how much water it takes to maintain the integrity of the ditch system. By granting them these permits, the Board is continuing to allow them access while excluding others.

Kalama asked that if the Board does approve this, then approve it with certain conditions. The holdovers have been open ended with no restrictions. In the event that the Board does grant this that the Board explicitly bar A&B from obstructing Native Hawaiians to engage in their traditional and customary practices. They also ask that A&B give their clients the keys or combination to the locks that block them from accessing the 33,000 acres of public trust lands. They ask that the Board have A&B clean up these lands. They also ask that the Board ask for basic information for diversion and ask them how much water it is that they actually need. Kalama referred to the December 2015 BLNR meeting.

On behalf of their clients Kalama said that they ask that the Board fulfill their trust duties, get the information that they need, proceed cautiously and follow the process.

Chair Case asked if the Board members had questions to limit their questions to the contested case request, not to the substance of the agenda item.

Member Yuen said he was trying to understand what this potential conflict between the desires of taro growers and the request that divisions is still an issue. He said he read through all the written proceedings at the water commission and it appeared to him that in July of 2016 the water commission ordered the full restoration of all streams that feed taro growing areas identified by Kalama's clients or Maui tomorrow.

Kalama said that was not correct, the commission did not order full restoration of the taro streams. A&B has said they would restore the 7 streams that are relied on for taro. They are in the process of obtaining permits to abandon diversions on those streams. It is not an order by the water commission. The water commission's interim order was to take the hearing officer's recommended decision for restoring 18 million gallons per day to the various streams. Kalama said no, it was not complete and A&B has not restored all of its streams at this point. She reminded the Board that it wasn't only the taro growers that were involved here, it was also their other clients that rely on the streams and the watersheds for gathering practices.

Member Yuen said he was trying to focus on the taro issue, he had the July 2016 order. He started at the bottom of page 3 and read; the commission orders that the streams that are no longer being diverted shall remain undiverted unless and until further ordered by the commission. Member Yuen listed the streams in order of the streams being undiverted. The order then listed 5 more streams and read that the commission understands the urgency to restore stream flow to the streams and provide connectivity mauka to makai as soon as possible. Balance to this urgency is a need for A&B to follow all applicable laws in connection with the restoration. It went on to say that the commission orders that A&B coordinate its efforts to permanently abandon or remove all diversions structures on the all identified streams with commissions and staff. Basically it was saying that there are permitting requirements that need to go through to remove all diversions from those streams. To member Yuen it seemed to him that the water commission has already ordered the full restoration of all taro streams and there are just some permitting requirements that need to happen.

Kalama said that what the order says they are saying you've restored these streams for now and do that unless further authorized.

To Member Yuen he said it sounded to him like they won in the water commission and on the taro streams, but he wasn't seeing what the issue was. Any order can be reversed but as of right now the water commission has ordered that all of the streams be restored; pending a few permits that had to be obtained.

Kalama said the commission's authority is to set the flow standards; the Board is the one that has the authority to permit the use of water. The commission's interim order is to preserve what's happening right now so they can proceed with the remainder of the hearing but in that hearing the commission's authority is just to set the minimum flows. It is not able to regulate the water use.

Member Yuen said this Board could only authorize the amount of flow authorized by the water commission. If the water commission authorizes no diversion of a stream, then there would be no diversion no matter what the Board feels like doing.

Kalama said that the standards allow the water commission to only set the minimum flows. If A&B were to appeal an order saying go ahead and restore it. Everything will need to be restored without a finding that the minimum flow is all the flow then that decision is going to be overturned.

Sylva commented that that specific order is interim in nature pending the water commission contested case hearing. This Board has taken the position before to refrain from acting on matters implemented by that contested case hearing until it concludes. She asked that the Board take the same precautions here.

Chair Case wanted to focus on the contested case issue. She said that what they were trying to determine was if the petitioner has a right to a contested case.

Rick Volner Jr. the General Manager of Hawaiian Commercial & Sugar Company introduced David Schulmeister their counsel.

Schulmeister said would defer to the AG if this has a right to a contested case hearing. He did note that the comment from Kalama that if this does go to a contested case, it should go as a part of the original contested case, he would concur if it gets to that point.

Member Roehrig asked who should be the parties to the contested case. Schulmeister said if it's granted it would be the petitioners and anyone who feels like they have standing, also the County of Maui.

Chair Case 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 Gon seconded.

09:50 AM EXECUTIVE SECESSION

10:16 AM RECONVENE

Member Yuen made a motion to deny the request the request for a contested case hearing on the grounds that it's not available as a matter of law and more specifically that to have a contested case hearing before making this decision on a 1 year holdover of a revocable permit would frustrate the legislative intent of Act 126. Member Roehrig seconded.

All were in favor.

Chair Case called up the applicant, A&B.

Rick Volner Jr. the General Manager of Hawaiian Commercial & Sugar Company introduced himself again and read his written testimony requesting a holdover of these RP's.

Chair Case asked if their water use was decreased, where was that water going. Volner said the water was staying in the East Maui Watershed, they are not diverting.

Member Gon asked if there were any numbers of water flow to account for proper maintenance of the ditch system. Volner explained that it was hard to determine how much was needed for the maintenance, they tend to focus more on the end use.

Member Gon asked if the current flow was 20 million gallons per day. Volner said it could be verified with the Water Commission but in the last 2 months, they average between 15 and 20 million gallons of water per day.

Member Downing asked where the excess water was going. Volner said it stayed in the watershed, in the streams, it's not diverted.

Member Yuen asked what streams were in what general areas of the diversions.

Volner introduced Garrett Hew, President of East Maui Irrigation who was an expert on the water system.

Hew explained that they have 4 license areas. In the Nahiku area and in the Keanae area they have stopped all diversions. All of the water in those 2 license areas is going back into the stream. They are currently only diverting water from the Honomanu and Huelo area right now. They control the flows with various gates within their ditch system.

Member Yuen said to him according to the Water Commission interim order, almost all the streams in the Nahiku and Keanae license areas were ordered to be restored. He asked if they planned on maintaining the system in that area. Hew said yes, they plan on maintaining that system to have it as an option.

Member Yuen asked Volner to explain how access into the watershed was controlled now and what the basis was for doing that. Volner deferred to Hew.



Hew explained that right now they have several access points going into the watershed from the main government road. They are controlled by locked gates at the Hana Highway because of this area is in the highway area. Maintaining access assures them that no one will go in that area to vandalize or tamper with the water.

Member Yuen asked what if people want to gather native plants or catch opae.  
Hew said they would just have to go to their office to get a permit, it wasn't a problem with them.

Member Downing asked if the diversions have gone dry.  
Hew said yes, for the most part.

Member Yuen asked what the conditions were now. Are the streams now flowing to the sea.  
Hew said most of the streams are flowing to the ocean, during the dry periods, they dry up so the only source of water there is ground water coming out of the ground.

Member Yuen asked if they were currently diverting Honomanu.  
Hew said no.

Member Yuen asked if they were diverting Puaohokamoa stream.  
Hew said they were diverting that at the top level only.  
Member Yuen asked about Haipuaena.  
Hew said Haipuaena was not being diverted.

Member Roehrig asked for the streams that they are not diverting, how does the streams that they are no longer diverting, how does the flow approximate 64% that's mentioned in the hearing officer's order.  
Hew thought they exceeded that 64% on numerous occasions.

Member Gon asked who was monitoring the flow of the streams were diversions have ended and natural flow has restored.  
Hew said the Commission Staff have been monitoring.

Member Gon asked if there was any biological monitoring.  
Hew wasn't sure.

The following testified in support of this item: Micah Mnikat on behalf of the Department of Agriculture (DOA), Alex Franco with Maui Cattle Co., Dale Sandelin with Hawaii Cattlemen's Cattle, Darren Strand with Maui County Farm Bureau (brought a petition of signatures) Kayla Broe on behalf of the Maui water supply, Heidi Watanabe, Brendan Balthazar, Justin Texeira (108 signatures in support from residence of Maui), Tom Blachford Rodriguez (submitted testimony on behalf of Kelly Delacruz), Bryan Miyamoto on behalf of the Farm Bureau.

The following testified in opposition of this item: Wayne Tanaka on behalf of the Office of Hawaiian Affairs (OHA), Adriane Raff with the Sierra Club Maui, Mary Ann Kahukoa, Zack Williams, Lilian Kong, Mikiala Pua'a-Freitas, Albert Perez with Maui Tomorrow Foundation,

Tiare Lawrence, Kupa'a Luahuleo, Tyler Greenhill, Jeff Kim, Daniel Anthony, Margret Matsuda, and Laura Grey.

The following testified offering comments on this item: Kayla Broe on behalf of the Maui water supply, Trent Furtado, and Cameron Sato.

01:08 PM RECESS

01:32 PM RECONVENE

Chair Case announced at this time items D2, D3, D4 and D22 would also be withdrawn.

Public testimony continued.

The following testified in opposition Dylan Lee Davis, Keolanui Kalama, Hoolea Kaleo, Keali'i, Senator Gill Riviere, Asami Kobayashi, Noe Lopes, David Frankel, Ed Wendt (testimony was read on his behalf), and Pomaikai Kala.

Dave Arakawa with the Land Use Research Foundation of Hawaii testified in support.

Aaron Armstrong offered comments on behalf of farmers on Maui.

There was no further public testimony, Chair Case closed public testimony.

Member Yuen called the applicant back up. Member Yuen said they testified earlier that water was not being diverted from Honomanu, but a testifier showed a video of what she said was a diversion.

Counsel for A&B said he didn't see the video, but he knew they weren't diverting Honomanu.

Member Roehrig questioned the diversion structures in the stream. A&B counsel said they did have diversion structures in the stream, but to get the water back into the stream, they have a gate made out of steel about 36' wide by 3-5 ft. high. When that gate is open, there is connectivity throughout the whole stream. He wasn't sure if it was deep enough for the fish to swim, it depended on the flow in the stream at that time.

Volner added that the Water commission has indicated that they will require some form of fish passage as well.

Member Oi felt like a lot of problems could be solved if the taro farmers had enough water going to their farms and had enough water to expand their farms.

Member Roehrig suggested a committee that could settle these issues.

Member Gon asked what the status was of the EIS.

Meredith Ching with A&B testified that they are planning on getting it out in January; they are working on a draft that is being reviewed. The study was taking a long time.

Member Yuen commented that he wanted to wait before the Board made any serious decisions on this matter before; wait for the IIFS to be concluded, but here we are. He felt it was important to recognize that a lot of this has been investigated at great length at the Water Commission, so the Board received the hearing officer's recommended findings of fact that, Member Yuen said he also passed around the exceptions to those filed by Na Moku, Maui Tomorrow and HC&S also, Minute Order No. 18 and the July 2016 Water Commission Order. Member Yuen wanted to incorporate these documents as part of the record of this proceeding. He went on to detail that the July 2016 order requires the full restoration of all of the taro streams. He emphasized this because every news story frames this as a conflict between taro growing and A&B. That was true with some points in the past, but with this July 2016 order, there is no longer that conflict. Member Yuen felt like many of the interests that were being expressed had been dealt with in CWRM's orders.

Member Yuen made a motion to approve with conditions (motion below in bold); Chair Case suggested that if A&B gets close to the cap number, they come back and give a report.

Member Roehrig suggested a committee; Chair Case suggested an open line of communication and suggested two people exchange numbers; she wanted to be sure the Board wasn't inadvertently delegating authority here.

Member Gon commented given the lack of information given on his questions on flow, he took that into account on his vote. If conditions were imposed on this RP that limited diversions, that seemed to be a positive thing to him. To him it's not a matter of the real needs of agriculture and domestic water use, but it was the lack of information to properly assess all of the public trust kuleana that this board is charged to maintain. To Member Gon, if the Board decided to deny the holdover today, it would not really affect the ditch maintenance, nor upcountry water use, nor protected agriculture uses currently supplied by the ditch. In order to encourage the acceleration of the legal, environmental, cultural, public trust considerations, he felt he needed to vote against this until enough information is associated with the proposal for the holdover that supports the public trust requirements adequately in his mind.

Member Downing agreed with most of what Member Gon said.

He said these diversions/ditches can be redone at a time when it's needed.

A&B didn't give any data on how much they were going to use, when they were going to use it and what they are going to use it for. For him, it should be a common belief that's good for all. He would be voting no.

Chair Case said she appreciated both of those comments. To her they really point out the aspect of looking at this from a procedural perspective because there are big pieces of information that are in process. Chair Case said she was supporting this motion and felt it was consistent with the legislative intent of Act 126.

Member Gon felt this shouldn't be viewed as black and white, it's a complex issue.

Member Downing was not in favor.

Member Gon was not in favor.

5:2 vote.

Item approved.

**The Board amended the staff submittal by adding the following conditions in the recommendations section: (3) To require the holdover of the revocable permits to incorporate the July 18, 2016 order of the Commission on Water Resource Management (CWRM). There shall be no diversion from the streams listed in the CWRM order, and the timing for stopping the diversions shall be in accordance with the aforesaid CWRM order; (4) There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use; (5) Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted; (6) A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of additional water if necessary during the term of the permits; (7) The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams; and (8) The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of-contact for the other group.**

**Approved as Amended (Yuen, Roehrig)**

**3:08 PM RECESS**

**3:18 PM RECONVENE**

**ITEM D-6 Consent to Lease of Lands and Declaration of Easements under Governor's Executive Order No. 4224 to County of Hawaii, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001:177, 184, 185 & 186.**

Russell Tsuji-LAND conveyed item D-6.

Member Gon asked counsel if they were okay with the staff recommendations.

Alan Okamoto said his clients were okay with the recommendations.

Member Roehrig disclosed that Alan Okamoto has done estate planning for his family.

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

**ITEM D-1 Cancellation of Governor's Executive Order No. 1715 and Re-Set Aside to the County of Kaua'i for Public Purposes; Issuance of Management Right of Entry to County of Kaua'i, Kapa'a, Kawaihau (Puna), Kaua'i, Tax Map Key: (4) 4-5-015: 005.**

Member Gon asked if OHA or anyone else made comments on this.

Tsuji didn't see any.

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

**ITEM D-16 Consent to Assign Applicant's 1/3 undivided interest in Certificate of Occupation No. 90-A, Carinthia Judd, Assignor, to William H.K. Judd and Raymond M. Judd, Assignees, Wai'ōma'o, Pūkele, Pālolo, O'ahu, Tax Map Key: (1) 3-4-003:009.**

Counsel was present for questions.

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

The Board began discussion on item M-11, but Member Yuen asked to defer this item until later. He had lots of questions.

The Board later returned to this item.

**ITEM D-15 After-the-Fact Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on December 5, 2016, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 (Portion).**

Tsuji-LAND requested to amend the submittal to delete the \$250 late fee

**The Board amended the staff submittal to delete the \$250 late fee.**

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

**ITEM D-21 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. from December 30, 2016 to January 1, 2017 for Aerial Fireworks Display on Encumbered State lands off Ko Olina Beach on New Year's Eve 2017, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward (see Exhibit A-1 and A-2 for location).**

Member Downing asked why they were only being charged for 1 site if they are using 3 sites. Also, they are sending 3 and 4 inch shells and 5 and 6 inch shells.

Stephanie Pascual with Hawaii Explosives said that since this has been turned in, they have eliminated one site.

Chair Case asked if they were amending the sites and doubling the fee. Pascual confirmed.

Member Downing thanked them for firing inland.

**The Board amended the staff submittal to delete the third firing site, and imposed an additional \$500 exclusionary zone rent.**

Unanimously approved as amended (Gon, Oi)

**ITEM C-1**    **Petition for Contested Case Hearing from Keep the North Shore Country Regarding Board Action of November 10, 2016, Agenda Item C-1, Request for Approval of Incidental Take License and Habitat Conservation Plan for Na Pua Makani Wind Energy Project on the Island of Oahu, Hawai‘i.**

**Pursuant to Section 92-5(a) (4), Hawai‘i Revised Statutes, the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board’s powers, duties, privileges, immunities and liabilities.**

*Written testimony was submitted by Michael Cutbirth, John P. Manaut, and Tetra Tech.*

David Smith Administrator for the Division of Forestry and Wildlife-DOFAW gave the background on item C-1.

Gill Rivere President of Keep the North Shore Country highlighted his petition. Mike Cutbirth manager of Na Pua Makani said they submitted written testimony and a memorandum. Cutbirth detailed why they felt Keep the North Shore Country was not entitled to a contested case hearing.

Pete Manaut Counsel for Na Pua Makani disclosed that they submitted an extensive legal letter that set forth their position on the fact that there is no right to a contested case hearing under chapter 195D.

Member Gon 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.

**4:00 PM        EXECUTIVE SECESSION**  
**4:32 PM        RECONVENE**

Member Yuen made a motion to approve the request, determine that the petitioner has standing, and delegate the chair authority to appoint a hearings officer. Member Gomes seconded.

Chair Case said that if a contested case was required, it did not make sense to her because there was ample opportunity to engage in the public process that went on for two years with many stages and public meetings. It bothers her because she didn’t think having a contested case on this matter meets the need that was absent in the process.

Member Gon stated that when a habitat conservation plan is put together it has to pass the Fish and Wildlife Service and the DLNR. The suggestion that the habitat conservation plan is fatally flawed or inadequate researched its problematic in his mind.

Member Gomes said he agreed with Member Gon.

Chair Case, Member Gomes and Member Gon were in opposition.  
4:3 vote.

**Approved as submitted (Yuen, Gomes)**

**ITEM C-2 Request for Approval of Incidental Take License and Final Habitat Conservation Plan for Na Pua Makani Wind Energy Project by Applicants Na Pua Makani Power Partners, LLC and the former Champlin Hawaii Wind Holdings, LLC; Tax Map Key Nos. (1) 5-6-06:018 and (1) 5-6-08:006, Koolauloa District, Island of O‘ahu, Hawai‘i.**

Chair Case stated that since item C-1 was approved, item C-2 would be withdrawn.

Kent Fonoimoana questioned how it was that his contested case was denied but this was approved.

Chair Case told him to leave his contact info. Since his item was not on the agenda today, the Board would not be discussing it.

**Withdrawn**

4:36 PM Member Roehrig left.

**ITEM D-12 After-the-Fact Consent to the Transfer of Grant of Easement recorded in Liber 9925, page 408 from Standard Oil Company of California, Assignor, to Chevron U.S.A. Inc., Assignee; Aiea, O‘ahu, Tax Map Key: (1) 9-9-003:061.**

**Consent to the Real Property Interest Assignment and Assumption Agreement (Recordable Rights of Way) and (Unrecordable Rights of Way) regarding Grant of Non-Exclusive Easement S-5931, Grant of Easement No. S-4692, Grant of Non-Exclusive Easement S-5638, and Grant of Easement recorded in Liber 9925, page 408; Chevron U.S.A. Inc., Assignor, to IES Downstream, LLC, Assignee; Honolulu, Kalaeloa, and Aiea, O‘ahu, Tax Map Key: (1) 1-2-025:011; 9-1-031:seaward of 002, (1) 1-1-003:239, and 9-9-003:061. (1) 1-1-003:239.**

Nothing to add, no public testimony.

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

**ITEM D-13 Consent to Assignment of Duke Kahanamoku Beach Concession Contract, Hilton Hawaiian Village LLC, Assignor, to Hilton Hawaiian Village Lessee LLC, Assignee, Waikiki, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037:021.**

Tsuji-LAND explained that this would be a sister entity, Hilton would still be the operator. He said the Board has the right to an assignment, they just can't unilaterally assign.

Member Downing asked if there was any effect on us.  
Tsuji said no, the rent would stay the same.

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

Chair Case asked if there were any further questions on the LAND items.

**ITEM D-14 After-the-Fact Issuance of Right-of-Entry Permit to Waikīkī Beach Activities, Ltd. for Beach Activities Purposes on December 5, 2016, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:Portion of 021.**

Member Downing asked if it was that hard to be on time.  
Barry Cheung-LAND said normally it would come on time, but since there is only 1 November meeting and 1 December.

**Unanimously approved as amended (Gon, Oi)**

**ITEM D-5 Approve a 3-Year Term Extension of General Lease No. S-3698, Bank of Hawai'i, Lessee, Pursuant to Act 207, Session Laws of Hawai'i 2011; Lot 7, Waiākea House Lots Extension, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:022.**

Member Downing asked if there should be a reopening rent.  
Tsuji-LAND thought they were previously advised that there wouldn't be an immediate reopening, there would be an evaluation.  
Member Downing proposed amending the staff submittal to add the appraisal.

**The Board amended the staff submittal to clarify that the rent for the extended term shall be determined by an independent appraisal.**

**Unanimously approved as amended (Gon, Oi)**

The Board had no questions on any of the other LAND items.

**ITEM D-7 Cancellation of General Lease No. S-5569, Mark Allen and Jonaliza Allen, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-049:001.**

**ITEM D-8 Set-Aside to the County of Hawai'i, Department of Public Works for a portion of Manawale'a Street, identified as Lot 37 of the Villages of La'i'opua, Phase 1 (File Plan 2128), and Construction Rights-of-Entry onto Tax Map Keys: (3) 7-4-021: Portion of 020.**

*Written testimony was submitted by Neil Kuyper.*



- ITEM D-9** Set-Aside to the County of Hawai‘i, Department of Public Works for a portion of Manawale‘a Street, identified as Lot 37 of the Villages of La‘i‘opua, Phase 1 (File Plan 2128), and Construction Rights-of-Entry onto Tax Map Keys: (3) 7-4-021: Portion of 020.
- ITEM D-10** Issuance of License Agreements by the Board of Land and Natural Resources to the Department of Defense for Installation, Operation and Maintenance of Civil Defense Warning Sirens on Land under the Direct Management of the Department of Land and Natural Resources, Statewide, at the following Tax Map Key Nos: (1) 1-5-041:006, (1) 8-2-001:001, (1) 4-6-005:009, (1) 5-6-001:024, (1) 5-3-011:009, (1) 4-1-015:016, (1) 2-3-037:012, (2) 2-1-006:030, (2) 1-3-005:009, (2) 1-4-007:009, (3) 6-6-002:005, (3) 1-3-007:026, and (3) 8-9-004:008.
- ITEM D-14** After-the-Fact Issuance of Right-of-Entry Permit to Waikīkī Beach Activities, Ltd. for Beach Activities Purposes on December 5, 2016, Waikīkī, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037:Portion of 021.
- ITEM D-17** Amend prior Board Action of August 26, 2016, agenda item D-11 for the Annual Renewal of Revocable Permits on the Island of O‘ahu.
- The purpose of this amendment is to correct the rents for the following two permits: Revocable Permit No. S-7056 to Kapolei People’s, Inc. identified by Tax Map Key: (1) 9-1-016:120 and Revocable Permit No. S-7560 to Mount Wilson FM Broadcasters, Inc. identified as Tax Map Key: (1) 3-6-004:026.
- ITEM D-18** Amend Prior Board Action of November 10, 2016, Item D-13; Set Aside of Various Properties on Island of O‘ahu to the Department of Agriculture for Agriculture Purposes Pursuant to Act 90, SLH 2003. (See Exhibit A for List of Properties).
- The Amendment is to Add State Parcels (1) 4-1-008:054 and 059 for the Proposed Set Aside.
- ITEM D-19** Request to Close Portions of the Kawainui Canal and Unencumbered State Lands from December 14, 2016 to January 3, 2017 (inclusive); Issuance of Right-of-Entry Permit to United States Secret Services to Support Any Appropriate Activity Related to the Security of the Protectee(s) in United State Secret Services Charge; Kailua, Koolaupoko, O‘ahu; Tax Map Key (1) 4-3-022:Seaward and Portions of 002, (1) 4-3-083:Seaward of 003, 004, 008 to 010.
- ITEM D-20** Grant of Term, Non-Exclusive Easement to Martha K. Bush for Pier Purposes; Termination of Revocable Permit No. S-6546; Kaneohe, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-5-058:121.

**ITEM D-21 Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. from December 30, 2016 to January 1, 2017 for Aerial Fireworks Display on Encumbered State lands off Ko 'Ōlina Beach on New Year's Eve 2017, Honouliuli, 'Ewa, O'ahu, Tax Map Key: (1) 9-1-057:seaward.**

The Board approved items D5, D7, D8, D9, D10, D14, and D17-D21.

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

4:49PM Member Oi left.

The Board went back to discussions on item M-11.

**ITEM M-11 Issuance of a Direct Fixed-Base Facility Lease to Trinity Investments LLC, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.**

Ross Smith Property Manager with the Department of Transportation Airports-DOT-AIR explained that there was a requirement at the FAA grant assurances that for fixed based operators at the airport they shall be subject to the same rates, rentals and other charges are uniformly applicable to all other fixed based operators making the same or similar use of such airport use. That's why they're saying in this case the only way they can follow that particular rule is if they use their schedule of rates and charges. He added that their attorney general told them to make sure they are compliant with this because the FAA will come down very hard.

Member Yuen asked what other types of leases were subject to this.

Smith said air carriers that come in within a time frame. It does not apply to necessarily all other rentals.

It doesn't necessarily apply to a flight school.

Member Yuen felt like this appeared to be setting up a conflict between the State Statute that says to only approve direct leases in the case that it encourages competition and the federal grant assurances.

Smith confirmed there was some tension between the two. He said they were warned that they need to be aware of the FAA conditions because there could be repercussions.

Member Gon asked if there was any way to make a negotiation with the FAA.

Smith said that the FAA is not normally receptive to local jurisdiction. All it would take for the FAA to react to this was for one of the two lessees to complain to the FAA.

Chair Case asked if anyone else wanted that space.

Smith said they have been trying to lease this for a long time.

Chair Case said their job is to encourage competition and there was none.

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

**ITEM M-17 Issuance of a Direct Fixed-Base Facility Lease to Keahole Enterprises LLC, Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 003.**

Smith explained that this was the same request as the previous only a different location and a different tenant request.

Member Yuen asked if there was no other interest.

**Unanimously approved as submitted (Case, Gon)**

**ITEM M-18 Issuance of a Revocable Permit for Cargo and Maintenance Operations, Hawaiian Airlines, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.**

Ross Smith made a request to withdraw item M-18.

**Withdrawn**

**ITEM M-9 Issuance of a Direct Lease to Aviation Academy Hawai‘i LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-76: 3.**

Ross Smith detailed that this was a case where they did attempt to auction, but they got no responses. They now have a tenant who is being forced to move out of an existing location and would like to rent the space that they had tried to auction but had no takers.

Member Yuen was concerned that the upset was much higher than what was being presented as the direct lease, then that would be a good reason why no one would bid on it. Smith apologized for not having that info.

Member Yuen asked if this could be postponed. Smith thought it was okay to wait.

Member Yuen said he would like to defer the item if he couldn't get a figure on the number.

**Withdrawn**

**ITEM M-3 Issuance of a Revocable Permit to the U.S. Department of Agriculture, Animal and Plant Health Inspection Services, PPQ, for an Employee Breakroom, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 053 (Portion).**

**ITEM M-4 Issuance of a Revocable Permit to U.S. Army Hawai‘i Replacement for a Reception and Service Desk, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 057 (Portion).**

- ITEM M-5 Issuance of a Revocable Permit to Index Builders, Inc., for a Field Office and Staging Area for Construction Materials and Equipment, Honolulu International Airport, Tax Map Keys: (1) 1-1-003: 65 (Portion) and (1) 1-1-003: 001 (Portion).**
- ITEM M-6 Issuance of a Revocable Permit for Drive-Thru Passenger Check-In, Hawaiian Airlines, Inc., Inter-Island Terminal, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 073 (Portion).**
- ITEM M-7 Issuance of a Revocable Permit for a T-Hangar for Aircraft Storage, John G. Manganaro II, Honolulu International Airport, Tax Map Key: (1) 1-1-76: Portion of 20.**
- ITEM M-8 Issuance of a Revocable Permit for a Tour Service Desk and Office Space, Galaxy Tour Incorporated, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 195 (Portion).**
- ITEM M-10 Issuance of a Revocable Permit for Aircraft Parking, Eduardo S. Acuna, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.**
- ITEM M-12 Issuance of a Revocable Permit for a Fixed-Base Operation (Area/Space Nos. 004-107, 004-109 and Bldg. Rooms Nos. 242-100, 243-100), Bradley Pacific Aviation, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.**
- ITEM M-14 Issuance of a Heliport Lease by Notice of Public Auction (Space No. 820-101B), Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**
- ITEM M-15 Issuance of a Heliport Lease by Notice of Public Auction (Space No. 820-101C), Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**
- ITEM M-16 Issuance of a Revocable Permit for Storage of Trailers, Kuwaye Trucking, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

The Board approved items M3, M4, M5, M7, M8, M10, M12, M14, M15 and M16.

No questions, no public testimony.

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

**ITEM J-4 Request Approval of the Division of Boating and Ocean Recreation Sublease Rent Participation Policy.**

*Written testimony was submitted by Rick Gaffney.*

Ed Underwood presented item J-4.  
They modeled their guidelines on Land Division's.

Greg Kugle representing GKM Inc. read Tina Prettyman's Testimony.

Kugle said that his opinion was that what they were being asked to adopt was really a rule and should go through chapter 91 rule making. Doing that would address the fact that no one else knew about this.

Kugle asked that the Board deny this and suggested it be looked at for rule making.

Chair Case asked Underwood asked if this was intended to be a guideline for prospected leases, did he think he could apply this to leases already in affect or going forward.

Underwood said both; the GKM lease now already has a sublease participation policy and does state that the Board can assess additional participation with a sublease if they come in with subleases. Their recently appraised reopening was based just on the land value. Their current sublease rents total just about \$600,000. DOBOR also asked them to provide what they are generating in the boat haul out, the boat storage buildings and they have not provided any of that information. Underwood said that all DOBOR is asking is to partake in sublease rents now that they are able establish their business and amortize a lot of their money. DOBOR didn't have a guideline to calculate a number, they looked at the way OHA and Land Division did theirs as a guideline.

Member Yuen said he had lots of questions but felt it would be better to defer this so the rest of the Board members can have an opportunity to weigh in on this.

Chair Case was fine on deferring this so that the other lessees have a chance to submit testimony and digest this.

Member Downing said he wanted more time to see how this was going to fit and be fair.

Member Yuen's questions were; when does this kick in and do all DOBOR leases have a clause in them that says that the state can participate.

Underwood said he would have to go back and look, a lot of these where inherited from DOT but all of the new leases will be including a sublease participation policy.

**Unanimously moved to defer (Yuen, Downing)**

**ITEM M-1 Request Approval to Execute a Right of Entry Agreement with Verizon Wireless for the Placement of a Cellular Base Station to be Constructed at Adjacent to the Birkhimer Tunnel State Emergency Operations Center Located at the Diamond Head State Monument Tax Map Key (1) 3-1-042-006.**

David Hafner a telecommunications manager with the Hawaii Emergency Management Agency which is a division with the State of Hawaii Department of Defense-DOD presented item M-1. Hafner noted that there would be foliage at the base of the system. The project is needed to ensure critical communications for State and Federal management activities.

Chair Case 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 Gon seconded.

**5:30 PM EXECUTIVE SECESSION**

**5:45 PM RECONVENE**

Chair Case announced that this item was going to have to be withdrawn; she didn't think it was a sufficient submittal to act on.

Hafner commented that this was the second time he's been here and the AG's office has called for a withdrawal 3 days before his appearance. On the first appearance they modified the submittal to satisfy their conditions but received no comments. He was frustrated as a public employee and private citizen because he has not clue how to go forward.

Member Gon said the Board outline solution orientated outline.

Hafner asked what the problems were.

AG Linda Chow said that this was in a conservation district and you need a permit or some kind of approval from OCCL. There is an issue with the 343 compliance, in one section it says that a preliminary environmental assessment was performed by Verizon Wireless, and then in another section, DOD asks the Board to make an exemption declaration; so those two are inconsistent. The exemption declaration they asked the Board to make was not a proper exemption declaration. They are also asking for a 5 year right of entry, right of entries are temporary uses that are usually not as permission to build a building.

Chair Case suggested DOD work with State Parks. She said she understood that DLNR AGs did communicate with DOD AGs. She apologized to Hafner that he had to be there so late. It can't be approved until it's done right.

Curt Cottrell said that the EO and set aside is joint, they already have an EO and Set Aside so its odd that they would ask for some form of approval. The CDUP element and 343 should be addressed yes.

AG Chow explained that anytime you do a disposition of land, you have to get prior approval of the Land Board.

Cottrell asked what the approval would be if he did that. AG Chow said if PARKS was doing it would be fine, but it's Version.

Chair Case asked PARKS if they would be willing to work with Hafner and the AGs. PARKS and AG Chow agreed.

Member Yuen asked Cottrell if there was a CDUP for PARK itself.

Cottrell said they did a master plan EIS, but didn't know offhand. That happened before he became administrator.

Member Yuen apologized to Hafner.

AG Chow told Hafner that when she spoke with DOD's AG, Mike Vincent he was saying that Verizon might look into a mobile trailer instead and hooking it to an existing antenna. Hafner said that's what is done now.

**Unanimously moved to withdraw (Yuen, Gon)**

**ITEM M-2 Consent to Lease of Lands under Governor's Executive Order No. 3504 to Hina Mauka, Kaneohe, O'ahu, Tax Map Key: (1) 4-5-023:02 (Portion).**

John Mesina with the Department of Health-DOH conveyed item M-2.

No changes no public testimony.

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

**ITEM J-1 Authorize the Revocation of Revocable Permit ("RP") No. 33 (formerly Referred to as RP No. S-5867), Executed July 21, 2016, to Wilson Keahi for Boat Storage, Public Boat Trailer Parking and Other Activities at Mala Wharf and Surrounding Areas, 'Alamihī, Lāhainā, Maui, Hawai'i, Identified by Tax Map Key: (2) 4-5-005: portion of 001.**

**ITEM J-3 Issuance of a Revocable Permit ("RP") to Alvin T. Pelayo, A&K Ventures LLC, for Purposes of Landscaping, Maintenance, Storage of Small Boats and Trailers and Other Activities at Mala Wharf and Surrounding Areas, 'Alamihī, Lāhainā, Maui, Hawai'i, Identified by Tax Map Key: (2) 4-5-005: Parcel 19.**

Ed Underwood-DOBOR presented items J-1 and J-3.

No changes, no public testimony.

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

**ITEM F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Mr. Xie, for Access to State Waters to Conduct Conservation and Management Search Activities.**

Maria Carnevale State Co-manager for Papahānaumokuākea Marine National Monument-PMNM detailed item F-1.

Carnevale asked for an amendment to allow anchoring. The MMB did endorse the anchoring.

Member Yuen commented that there should be a way to allow this without coming to the Board.

AG Chow said it's been a month or more, if it had been done earlier then it might fall under an emergency.

Member Yuen wanted to be sure that if someone was able to hire a private boat to do a search on an emergency basis then it could be done without coming to the Board.

Carnevale said that it would be a case by case basis. This issue was a response of what already took place. This was what DLNR and the Feds agreed on.

Member Yuen made a motion to approve F-1. Member Gon seconded.

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

**ITEM F-3 BLNR Briefing: Papahānaumokuākea Marine National Monument Memorandum of Agreement.**

Carnevale gave a brief briefing on the memorandum of agreement-MOU that PMNM has amongst the agencies. She gave the history of how PMNM was designated. Carnevale explained the management Board, and the committees that are part of PMNM. She detailed ways the monument is protected.

Carnevale next explained the monument agreement.

Chair Case said she asked for this briefing because hopefully the Governor will be signing this amendment as will OHA. The basic purpose is to incorporate OHA into it.

**NON ACTION ITEM**

**ITEM F-2 Request for Authorization and Approval to Issue a Temporary (3-month) Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustee Representatives of the U.S. Department of the Interior, U.S. Fish and Wildlife Service; and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; for Access to State Waters to Conduct Conservation and Management Activities on the same terms as the 2016 Permit (PMNM-2016-001).**

Carnevale-PMNM reviewed item F-2.

Athleen Clark the Superintendent for PMNM explained that they do have an education program where they work with the Bishop Museum and have an education outreach program. All the



information to the schools are available online. This permit report is written not targeted at school children, but they do have it available.

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

**ITEM E-1** Consent to Assign General Lease No. SP-0134, Bank of Hawai'i, a Hawai'i corporation, as Successor Trustee under that certain unrecorded John H.R. Plews Trust dated March 2, 2015, hereafter called Assignor, to Wendy Jeanne Wichman, unmarried, hereafter called Assignee, situate Lots 35 and 36, Koke'e Campsite Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-004:016.

**ITEM E-2** Amendment of General Lease No. SP0157, Charles R. Wichman and Jeanne R. Wichman, Co-Trustees of the Wichman Trust, Lessee, Waimea Canyon State Park, Lot 34, Koke'e Camp Site Lots, Waimea (Kona) Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-004:017. The Purpose of the Amendment is to Correct the Termination Date to Read December 31, 2028; Consent to Assign General Lease No. SP-0157, Charles R. Wichman and Jeanne R. Wichman, Co-Trustees of the Wichman Trust, Assignors, to Charles Rice Wichman, Jr. and Jonathan Goodale Wichman, Assignees, Waimea Canyon State Park, Lot 34, Koke'e Camp Site Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-004:017.

Curt Cottrell Administrator for State Parks-PARKS presented items E-1 and E-2.

Chair Case disclosed that she was personally acquainted with the Wichmans.

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

**ITEM E-3** Issuance of a General Lease to Ke'ehi Memorial Organization for the Operation, Maintenance and Administration Purposes of Ke'ehi Lagoon Memorial (aka Pacific War Memorial), situated at Ke'ehi Lagoon, Honolulu, O'ahu, Tax Map Key : (1) 1-1-03:004.

Cottrell-PARKS handed out testimony in support by Gill Tam, President of Ke'ehi Memorial Organization and detailed the submittal.

Chair Case commended PARKS for the great job they did.

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

**ITEM E-4** Delegation of Authority to the Chairperson of the Board of Land and Natural Resources to Approve Documents and Enter into an Agreement Pertaining to the Grant-In-Aid of \$200,00 to the 501(c)(3) Nonprofit Organization, Pacific Historic Parks, on the Island of O'ahu.

No changes, no public testimony.

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

There being no further business, Chair Case adjourned the meeting at 6:43 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,



Ku'ulei Moses  
Land Board Secretary

Approved for submittal:



Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources

Civil No. 19-1-0019-01 (JPC)

**Defendant A&B/EMI's Exhibit AB-67**

FOR IDENTIFICATION \_\_\_\_\_

RECEIVED IN EVIDENCE \_\_\_\_\_

CLERK \_\_\_\_\_