

AMENDED

APPROVED BY THE BOARD
AT ITS MEETING HELD ON

Dec. 8 2017 *deu*

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

DATE: THURSDAY, NOVEMBER 9, 2017
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Stanley Roehrig
Keone Downing

Thomas Oi
Chris Yuen

STAFF

Russell Tsuji--LAND
David Smith--DOFAW
Maria Carnavale--DAR

Alton Miyasaka--DAR
Ross Smith --Airports

OTHERS

Tom Heinrich (L-1)
DeMont Connor (M-9)
Ronald Tam (F-1)

Andrew Wilson (K-2)
Anita Bice (D-2)
Jesse Schiel (C-2)

Thirty-one people testified on item D-5. Please see attached spreadsheet for list of names.

Meeting called to order at 9:51. Chair Case noted that the delay was caused by technical difficulties.

Item J-1 will not be heard. Mr. Koehne has requested a contested case hearing through e-mail, and understands that he needs to submit a written request within ten days. The ten-day period starts today.

Chair Case read the standard contested case statement.

A. MINUTES

1. Approval of September 8, 2017

Board Discussion

Roehrig-Page 3 or 14. Noted that in Na Wahine o ke Kai the kahakō should be added: “Nā Wāhine.”

Public Testimony-None

Motion

Approve minutes with correction (Oi/Roehrig). Unanimous.

Item L-2

Request Authorization for The Chairperson to Enter Into an Agreement with the City & County of Honolulu to Enter and Construct within City & County of Honolulu Property, a Use & Occupancy Agreement with the University of Hawai'i for Construction Staging and Storage, Enter into A Tri-Party Letter Agreement to Construct Improvements in both University of Hawaii Property and City & County of Honolulu Easement, and Authorize the Chairperson to Enter into any other Agreements for the Mānoa Stream Improvements at Woodlawn Drive Bridge, Mānoa, O'ahu, Hawai'i, Tax Map Key: (1) 2-9-26:01; (1) 2-9-26:02; (1) 2-9-26:46.

Carty Chang presented for Engineering. Under the bridge the stream elevation is lower than upstream and downstream creating a bowl effect. This causes sediment to collect in this area. Project will modify area upstream and downstream of bridge, as well as under bridge to make it safer and decrease maintenance.

This area is complex with regard to jurisdiction so there are various agreements that the Chair will need to sign before this project can move forward. Recommendation is to authorize the Chair to sign the various agreements as noted in the submittal.

Board Discussion

Oi asked if this area had flooded in in the past. Chang clarified that in 2004 this was the area that overtopped and flooded Hamilton Library.

Public Testimony-None

Motion

Approve L-2 as submitted (Roehrig/Oi). Unanimous.

Item L-1

Request Authority to Submit the Final Environmental Impact Statement (FEIS) for Acceptance by The Governor for the Ala Wai Canal Dredging and Improvements Project, Waikīkī, Island of O'ahu, Hawai'i

Carty Chang summarized the submittal for Engineering. DLNR has jurisdiction over the canal and walls of the canal. Scope of work includes maintenance dredging of the canal and repairing damaged areas of the wall including stairways. Last Dredging occurred in 2002. If this project

is not done, sediments will continue to build up affecting water quality, flood carrying capacity and recreational use. Requirements of Chapter 343 were satisfied. Engineering will come back to the board for award of construction contract.

Board Discussion

Downing ask if the project could start in fall or winter to minimize disturbance to the paddling season. Also asked if they could use the Honey Bee site as a staging area, rather than Magic island. Ensure that contract require contractor to pay attention to the silt curtain being used for the transfer of sludge to the barge. Any spills will affect the surf sites. Would like these to be included as amendments. Chang said that they can accommodate the timing request. Will also coordinate with the canoe clubs to minimize impacts. Can look into use of the Honey Bee site, but cannot commit to it. Agreed to look into it.

Public Testimony

Tom Heinrich, testified in support of moving this forward. Also noted that Senator Brian Taniguchi is also in support of moving this project forward.

Motion

Approve Item L-1 as amended (Oi/Downing). Unanimous.

Amendment:

On page 3, under the heading Project Timeline and Cost, change the first sentence to read:

The DLNR proposes to commence dredging operations and construction of repairs upon approval of all required environmental permits, anticipated to be in Fall 2018.

Item L-3 Delegation of Authority to the Chairperson to Select and Contract Consultants for Projects in Support of Hawaii Revised Statutes (HRS) Chapter 179D, Dams and Reservoirs to: (1) Procure, Negotiate, Approve, Enter, Sign, and Execute Contracts and Agreements for HRS Chapter 179D Projects; (2) Negotiate, Approve, Enter, Sign, and Execute Supplemental Contracts to address unforeseen conditions for these HRS Chapter 179D Projects; and (3) Declare these HRS Chapter 179D Projects Exempt from the preparation of an Environmental Assessment or Approve an Environmental Assessment and Issue a Finding of no Significant Impact, if appropriate.

Chang presented for the Engineering Division. This submittal is in support of the Dam Safety program, HRS Chapter 179D.

Board Discussion

Page 2 of 4, number five regarding the purchase of drone. Downing believes that the DLNR should purchase a drone and train a staff person to use it, and have the drone available for the entire DLNR.

Amendment:

On page 2, Item 5 change the first sentence to:

The Division desires to purchase a consumer pro-grade drone aircraft and related software to update the aerial photography of selected regulated dams and reservoirs.

Public Testimony-None

Motion

Approve Item L-3 as amended (Roehrig/Downing). Unanimous.

Item D-1 Rescind Prior Board Action of April 25, 2014, Item D-1, *Extension of Lease Term for General Lease No. S-4259, (Contract No. DACA84-5-70-16) to the United States of America Department of the Air Force, Waimea, Kauai, Hawaii, Tax Map Key: (4) 1-2-001:009;*

Withdrawal from Governor's Executive Order Nos. 1509 and 1510 to the Division of State Parks and Reset Aside to the Department of Accounting and General Services, Information and Communication Services Division (DAGS/ICSD), for Microwave and Radio Communication Site Purposes;

Grant of Perpetual, Non-Exclusive Easement to DAGS/ICSD for Access and Utility Purposes; and Issuance of Immediate Management Right-of-Entry to DAGS/ICSD for Public Safety Microwave and Radio Communication Site Purposes at Kukui and Pohakuwa'awa'a, Kōke'e, Waimea, Kaua'i, Tax Map Keys: (4) 1-2-001:009, and (4) 5-9-001:016 por. & 023.

Russell Tsuji presented for the Land division.

Tsuji noted that they would like to amend recommendation five (5) to add utility in addition to access. Tsuji noted that Chris Kinimaka is present if there are questions.

Board Comments

Yuen asked if one of these is the golf ball looking thing, to which Tsuji answered "no."

Public Testimony-None

Amendment

Page 5, Recommendation 5 is amended to read:

Authorize the issuance of a perpetual, non-exclusive easement to DAGS/ICSD, covering the area identified as a road right-of-way on TMK (4) 5-9-001:016 por, for access and utility purposes .

Motion

Approve Item D-1 as amended (Oi/Yuen). Unanimous.

Item D-7 Issuance of Right-of-Entry Permit to Hawaiian Electric Company, Inc. on Lands Encumbered by Governor's Proclamation dated December 31, 1918 for Mokulē'ia Forest Reserve and Unencumbered Lands, Mokulē'ia, Waialua, Wai'anae-Kai, O'ahu, Tax Map Key: (1) 6-7-003:018, 024; 6-8-001:001, 8-5-006:001.

Russell Tsuji presented for Land Division. This is a right-of-entry (ROE) request for HECO to do research on a new alignment for utility purposes in the Mokulē'ia Forest Reserve. After consultation with the NAR Commission and the Hawaii Invasive Species council they are developing a plan to relocate existing lines and poles to minimize future environmental impacts.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-7 as submitted (Yuen/Downing). Unanimous.

Item K-1 Conservation District Use Application (CDUA) OA-3802 by Dr. Clayton Honbo & Nanaina O Pali Ku, LLC for After-The-Fact Approval of an Existing Concrete Seawall, Located on Kaneohe Bay in the Ko'olaupoko District, Island of O'ahu, seaward of Tax Map Key: (1) 4-6-001:019.

Tiger Mills presented for the Office of Conservation and Coastal Lands (OCCL) for an after-the-fact seawall. The property is surrounded by a residential subdivision in which most of the neighboring properties have hardened shorelines. There are no beaches along this section of the shoreline. Access is either through the water or through privately owned parcels. A previous owner had tried to rectify the situation by applying for a CDUA for the seawall, however the BLNR denied the application without prejudice for "further investigation into the possibility that any land use violation that may exist in addition to the seawall." Nothing further was done for 35 years. The current owner would like to legalize encroaching seawall. No additional work is being proposed. Staff requests an after-the-fact authorization of the seawall. Staff would also like to add one amendment to Item K-1:

Amendment—include a deed recordation condition that the permittee will place the location of the seawall in recordable form as part of the deed instrument of his property.

Staff had not actually checked if the submerged portion of the seawall goes down 7 feet as alleged. Downing said he questioned applicant's motives. Mills said she will share his concerns with applicant. Downing indicated that he was not requesting a change in the submittal.

Roehrig noted that this property is part of a land court subdivision and asked if the AG looked at HRS 501 relating to how Land Court property deeds are changed. Since the AG had not, Roehrig suggested it be done before the Board passes this item.

Yuen clarified that OCCL's no tolerance policy on seawalls, adopted in 1993, does not apply to this seawall because it was built prior to the adoption of the no tolerance policy. Mills agreed.

Applicants' representative was asked to come forward.

Mills confirmed for Roehrig that the wall is not in the registered title area of the owner. She noted that the certificate of title will include the metes and bounds survey. Exhibit 6 shows the surveyed area and shows that the wall is on State Land in the accretion area. Oi noted that he had checked the original land court application, and there were no calls for a wall along the property. That means that the wall is not on original map.

Jennifer Lindberg for current landowner approached the board and noted that they are working with Calen Miyahara, from Land Division to get an easement for the encroachment. However, they first have to get a certified shoreline and then they can apply for a lease of the easement area. Right now, they are working on the shoreline survey.

Roehrig noted that the Land Court judge is the correct party put the easement on the map, not the land board. Lindberg said they are working with the Land Division, and are aware its long process. She also noted that they need the after-the fact CDUP for the seawall before they can go to land Court.

Mills offered to strike the amendment because the land disposition should cover OCCLs concern about the recording the land disposition. There was a short discussion on whether land dispositions would be recorded.

Public Testimony-None

Motion

Approve K-1 as submitted (Roehrig/Yuen). Unanimous

Item K-2 Time Extension Request for Conservation District Use Application (CDUA) MA-3746 by Andrew P. Wilson for the Installation of an Above Ground Waterline Located Along Mākena-Keone'ō'io Road in Honua'ula, Makawao, Maui, Tax Map Key: (2) 2-1-004:046, 068, 073, &113.

Tiger Mills presented for OCCL. This is a time extension request by Andrew Wilson for an above ground waterline along the road that goes through the 'Āhihi-Kīna'u NAR. Mills detailed reasons for the request for extension. In 2015 the staff recommendation was to deny the permit, but the board passed the permit. Staff recommends approval of time extension for 2 years.

Roehrig recused. He was Co-counsel with Mr. Wilson on this matter. Withdrew as counsel when he joined Land Board.

Chair Case noted that she had originally voted against this permit, and so she will again vote against this item. There was discussion on how many votes would be needed to pass this item.

Public Testimony

Andrew Wilson noted he was available for questions. He pointed out that the original request was in 2015. In August 2016, there was an extension granted by the chairperson, which did not go before the board. This request is for a second extension.

There was a discussion on whether this item could pass with three votes. Member Yuen stated that he had looked up HRS §171-5 and he believed that the motion could pass with three votes.

Motion

To approve Item K-2 as submitted (Yuen/Oi). Motion passed 3-1, Case opposed, Roehrig recused.

Items M-1 to M-15

There was a request to withdraw Item M-15.

1. Issuance of a Revocable Permit for Aircraft Parking, Lani Lea Sky Tours LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.
2. Issuance of a Revocable Permit for a Field Office, R. M. Towill Corporation, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 085 (Portion).
3. Issuance of a Revocable Permit for Aircraft Parking, Anthony Serna, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
4. Issuance of a Revocable Permit for an Office Space for Administration, Briefing, Training and Breakroom for United States of America, General Services Administration for an on Behalf of U.S. Department of Homeland Security, Kapalua Airport, Tax Map Key: (2) 4-3-01: Portion of 68.
5. Issuance of a Direct Fixed-Base Facility Lease to Keāhole FBO I LLC, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 003.
6. Issuance of a Revocable Permit for an Office Space and a Greeters' Station, MC&A, Inc., Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.

7. Issuance of a Revocable Permit for Aircraft Parking, David A. Osterholt, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
8. Issuance of a Revocable Permit for Temporary Office Space, U.S. General Services Administration for Transportation Security Administration, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
9. Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, Mauna Loa Helicopter Tours LLC, Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8
10. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.
11. Issuance of a Revocable Permit for Temporary Office Space, U.S. General Services Administration for Transportation Security Administration, Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
12. Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, Mauna Loa Helicopter Tours LLC, Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8
13. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.
14. Issuance of a Revocable Permit for Equipment Parking, Ramp Office, Ticket Counter, Curbside Check-In and Baggage Claim Office, United Airlines, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Ross Smith from HDOT-Airports was present to answer questions.

Board discussion.

Item M-13: Oi asked if the helicopter will only be stored at the T-Hangar? Smith said yes, they will fly out of their space at the heliport. Yuen asked Smith to confirm that FAA's position is that public auction of these fixed base operations would put any Federal Grants HDOT has in jeopardy. Smith confirmed.

Public Testimony

DeMont Connor of Ho'omana Pono, LLC, testified in support of Item M-9. He said that these efforts will help to create jobs for the Big Island, which needs an economic boost.

Approve Items M1-M14 as submitted (Roehrig/Oi). Unanimous.

Item D-5 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.

Ian Hirokawa presented for the Land Division. These revocable permits are in the 2nd of a 3-year holdover authorized under act 126 SLH 2016. An EIS preparation notice was published earlier this year and an EIS is in process. He noted that there are several testifiers.

Board Discussion

Roehrig stated that he believes that DLNR should aggressively hire consultants to determine rent and charging structure so that the state maximizes its revenue for the sale of water in the East Maui Watershed. Roehrig suggested that it might be best to have multiple leases for the water. Hirokawa said that this will be a part of the EIS process.

Public Testimony

30 people testified on this item. See attached spreadsheet for summary of positions.

Rick Volner, Jr. General Manager, A&B, with Garrett Hew, retired former EMI manager. Mr. Volner asked the board for approval this year. He was here to provide an update for the Board: Over the past year A&B has develop an initial diversified agriculture plan with input from nearly 200 parties interested in farming the former sugar lands. There is a total of 36,000 acres of agricultural lands. Volner provided maps that showing planned uses of their lands. The overall goal is to establish diversified agriculture on the former sugar lands. Each use should use less water than when it was in sugar.

Proposed uses:

- 8000 acres of livestock operation (initially).
- 1,500 acres for mechanically harvested row crops.
- 800 acres with county for smaller plots.
- 5,000 acres for larger diversified operations.
- 2,000 acres for Pongamia.
- 1,000 for beverage crops.
- 800 acres for biogas feedstock.

Orchard crops, pastures and dairy initiatives have not gone as well. They are looking for new uses and farmers for these lands. Over 15,000 acres under active negotiations. A&B has made significant progress on the EIS. The EIS preparation notice was put out in February 2017. A&B held meetings on the proposed EIS which were attended by 270 people. Additionally, 145 comment letters were received. EIS studies are in progress. However, the Interim Instream Flow Standards (IIFS) recommendation is a critical pathway, so both A&B and potential partners are waiting for the IIFS decision.

Exhibit 5 of the board submittal shows status of compliance with the 2016 conditions.

In addition to Mr. Volner, 29 people testified on this item. Fifteen (15) testified in support and fourteen (14) testified in opposition. Seven of the testifiers also sent in written testimony, and two people sent in only written testimony, one in support, and one providing comments. A petition with 300 signatures in support of the holdover was also received.

People who testified in support cited the following issues:

- Need to support agriculture on Maui, specifically diversified agriculture, and in turn this would support the economy of Maui (13)
- The EMI ditch provides water critical to the residents of upcountry Maui. The head of the Maui Board of Water Supply noted that Maui county does not have alternate plans if water from the EMI ditch is not available.
- Investors will not invest in farming or in the water infrastructure if they don't have guarantees of to water for the long-term.

Those in opposition noted the following issues:

- More water should be returned to the streams for the native ecosystem and taro, particularly since A&B is only using about 20 MGD of its 80MGD allocation. This includes about 6MGD for the county (11).
- A&B has not provided enough information to show that 1) they have met the conditions required by the board in the 2016 renewal, and 2) to show that they need all 80MGD (5).
- A&B's uses and structure of use does not meet the criteria of the Public Trust Doctrine, noting that water is held in the public trust for public use before private use (6).
- Use of more sustainable farming methods would require less water, and therefore allow more water to go back into the streams. (2)
- Additional conditions are needed to ensure the equitable use of the water and access to the streams (6).
- Diversions are causing hardship to the people who rely on Hanehoi stream for water (2).
- Water is being wasted (2)

Roehrig asked David Taylor (MBWS) how is water allocated when a residential subdivision is developed. Who makes the decision on who gets or does not get water? Taylor provided the county process for allocating water. Roehrig followed up by asking who decides if water goes to increasing residential opportunities or to farming or cattle operations? Taylor responded that the County Council has made that decision through a series of ordinances, specifically in how water meters are allocated.

Downing-asked the representative from the Cattlemen's Association how much water is used per day for a ranching operation. The response was that there is a lot of variability and no good estimate.

OHA asked for a deferral and proposed the following conditions.

1. Condition of 80 MGD maximum should be revisited, especially if they are using less water. They can always come back and ask for more.
2. No reason for diversions from Nahiku and Keanae areas.
3. Formal conditions of access for traditional and cultural purposes. Appreciate informal accommodations, but the formal agreements will ensure traditional and cultural practices over time regardless of the personalities involved.
4. Allow for community members to monitor stream conditions. Waikapu provides an example.
5. Require water meters at the diversions to facilitate compliance.
6. Periodic updates for outstanding and holdover conditions.
7. Still have dry streams that were ordered to be restored. The delay has been caused by the rejection of permits. Require information on the status of this condition.

Oi asked if OHA is in support of the revocable permit or opposed to them. OHA responded that there is not enough information to evaluate the submittal for either the BLNR or OHA. Oi then asked if OHA benefits from any funds that DLNR collects from A&B? OHA acknowledged that they do get some funds. However, their primary concern is that the water permits meet the public trust document.

Downing asked the representative from the Hawaii Farm Bureau what he expected to happen in the third year. The response was that they would like a long-term permit for water to ensure stability for farmers. However, there is a point at which irrigation cost more than farmer is willing to pay, so the value of the water is somewhat dependent crop value.

Roehrig questioned why each of the parties isn't asking for a long-term lease, instead of only A&B? He noted that there may need to be legislation or county ordinances passed to facilitate the systemic distribution of water.

Justin Texeira, in response to a question from Yuen stated that he grows zucchini, cucumber, Maui onion, and green onion. He grows other crops depending on weather and bugs. On the flower side he grows orchids, tuberose, 'ilima and other flower crops that need to be re-planted every several years.

Paul Reppun in opposition to the permits. He encouraged the state to ensure that Central Maui stays in farming forever. He suggested that the state should own the land. Case noted that he is opposed to the permits, but testified in support of farmers. Yes, he said that any of the water that is not being used, should be returned to the streams.

Camille Kalama representing (Na Moku Aupuni o Koolau Hui (Na Moku) testified in opposition and asked for the following conditions:

- provide explicit rights of Native Hawaiians to access 32,000 acres, including keys to locks on gates. Currently there is a working relationship but there should be an explicit condition in favor of practitioners (Na Moku).
- Require A&B to clean-up debris. There is old machinery and equipment alongside the streams. Restoration of streams should include restoration of watershed.

- A&B should meter diversion areas so that it can report on how much water it diverts out of each stream that it diverts.
- Monthly reporting of water uses on the plantation, by category of use:
 - 6 mil to Maui county.
 - How much to existing operations on A&B,
 - How much to reservoirs.
 - How much is going to farmers.
 - How much is wasted?

Yuen asked if the RP is denied does that require that water transmission out of East Maui be stopped? Kalama did not believe it did because the County and other parties requested an interlocutory appeal. She noted that the second part of the appeal would have been injunctive relief, but the court proceeding did not get that far. Yuen still questioned what authorizes any water in the ditch at all if there is no RP?

Yuen asked Kalama how much water could be diverted if CWRM adopted the hearing officer's most recent recommendation. She replied it was not one set number but generally, about 100 MGD.

There was a discussion on how much water can be diverted. It was agreed that the amount varies, depending on conditions, and it will depend on the decision of the Commission on Water Resource Management.

David Frankel testified in opposition and pointed out some issues with the staff submittal regarding the conditions required in the 2016 permit (page 2):

- There is no one in DLNR checking to see if there is compliance with conditions. The staff submittal does not include the status of 2016 conditions. He suggested that the board ask the Chair to assign someone at CWRM work with someone at Land Division to check up on conditions.
- There should be studies on stream aquatic life. Suggested that A&B pay DLNR to do the study. He noted that there is more water in the stream compared to 3 years ago and it would be good to know if that has a positive effect on stream life.
- Condition 5 does not make sense. It references a DAR report but does not give a name or citation and the report is not included in the submittal. The issue is not erosion, but that A&B needs to remove barriers that prevent aquatic life from going upstream. There are structures that need to be removed, and DLNR needs to check with A&B on what they have done to comply with the intent of this condition.

Frankel suggested conditions similar to the Na Moku conditions above including:

- Reduce the amount of water to 10-mgd, after A&B pumps 70-mgd from their own land.
- Give A&B a deadline to complete the draft EIS.
- Include a detailed progress report that discloses status of each stream diversion, including date a diversion became or will become inoperable.

- Don't holdover Nahiku and Keanae. If they are needed, A&B can come and ask for water from those streams.

There was a discussion with A&B about how much ground water they would reasonably need. A&B calculated that they would ultimately need about 80 MGD. Yuen asked why the delays in restoration of the streams. Volner noted that it depends on the status of the stream and the level of restoration. A&B submitted a permit for stream abandonment and was asked for additional information, which they also submitted. They have not heard back from permitting agencies but they will request get a status report and report back to the Board.

Regarding the lack of a designated POC, Volner noted that he and Mr. Hew have been working with the community and that seems to be working. However, if necessary, A&B can designate a POC.

Yuen asked what happens to 60mgd that you are not using? Volner noted that its staying in the watershed. While the majority of water is staying in stream of origin some divisions go into ditch systems that do not get returned to the same stream, but stay in the watershed. Volner noted that this is a small percentage of the water that does not return to the same stream.

In response to a question from Roehrig, Volner noted that the 20MGD that A&B uses is the amount that is measured at Maliko Gulch and includes the County of Maui amount. Roehrig asked what would be a fair number for the Board to allow A&B for next year? Volner said that A&B is waiting for a ruling by the hearings officer on the IIFS. If there is an artificial limit before that ruling, then investors in the proposed diversified agriculture projects will wait until they have guarantees that water is available. During that time, prices will go up and it will just make it that much harder to keep the land in agriculture.

Roehrig noted that the history of trying to find something new for sugar has not been successful. Volner agreed but stated that if A&B doesn't have the water to keep Central Maui in agriculture they may not even have a chance to try to find a crop or crops to replace sugar.

Motion

Yuen moved to approve Item D-5 with amendments.

1. The holdover permit shall comply with all conditions required by the Commission on Water Resources Management's Interim Instream Flow Standards decision.
2. Reword condition 5 so it addresses the ability of stream biota to move upstream.
3. Need a more specific report on progress regarding removing diversions and fixing pipe issues before the end of holdover period.
4. A&B needs to clean up their debris starting with more accessible areas and along streams.

Oi seconded the motion noting that in the future he wanted staff to provide more detailed recommendations. For example, rather than just saying that A&B met the public trust, he would like to know how A&Bs activities met the public trust doctrine.

Downing noted that he would vote for the holdover this time but he was not pleased with A&B's reluctance to willingly provide information on the amount of stream diversions, and their use of the water. He does not feel that A&B should be banking water. He would like A&B to report on what this water allows them to do for Maui as well as to have the taro farmers say how much water they need. He also would like to know from taro farmers how much water they need, as well as A&B. Maui needs to take care of ALL Maui. Suggested that the water lease go to a cooperative where everyone would have a voice in how it was used.

Roehrig commented that the situation is better than last year. However, A&B needs to show due diligence in cleaning 'opala off land. He also doesn't believe that A&B should not own the water forever. He noted Mr. Reppun's testimony and encouraged the County to develop infrastructure for water and for farmers in Maui county. He stated his concern that the county approves subdivisions for developers without thinking about the water needs. He admonished the county to start taking care of the upcountry people and develop water infrastructure before allowing more development. Roehrig noted that he is not in favor of 80MGD and would prefer 50MGD. He thanked everyone for coming and sharing their input.

Vote

Unanimous

Item D-2 Authorize a One-Year Holdover of General Lease No. S-3722, Hawaii Pacific Baptist Convention, Lessee; and Authorize Staff to Prepare and Publish a Request for Interest to Gauge Whether there is Interest among Prospective Developers in Conducting an Environmental Assessment to Rezone State Lands to Commercial Use and Facilitate the Issuance of a Long-term Lease for Commercial Purposes, Waiākea Cane Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-057:023 Baptist Church Item

Russell Tsuji presented for Land Division. This is a request for a 1-year holdover of a General Lease of a parcel which is ideally situated for a use associated with the University of Hawai'i. The year hold-over would allow the Land Division to test the water for a higher yield opportunity and give the Baptist Convention time to search for an alternative location.

Board Discussion

Yuen said that the property is small for student housing, but the location is very good, and may have better uses.

Public Testimony

At the time this item was heard, no one indicated that they wanted to testify, so the vote was taken without public testimony. Toward the end of the meeting, 2 people indicated that they were there to testify on Item D-2. The Board allowed them to testify although the vote had already been taken.

The first testifier provided no name. She indicated an interest in the property and was referred the Land Division staff.

Anita Bice, Director of Hilo Baptist Convention Mission (BCM). They agree that Land Division should put the land to highest and best use, but they want the board to make sure that whoever gets the lease has a concrete plan to use it, rather than allowing it to sit empty while they make decisions. Bice noted that they provide an important service for UH students who are suicidal or need counseling. She gave some examples of students they have successfully counseled and what those students are now doing with their lives. She noted that the BCM is making positive changes in people's lives every day.

Motion

Approved as submitted (Roehrig/Yuen). Unanimous.

Item F-1 Request Approval to Adopt Amendments to Hawaii Administrative Rules, Chapter 13-74, Amending Section 13-74-20 (Commercial Marine License) and Adding Section 13-74-46 (Commercial Marine Dealer Report).

Alton Miyasaka presented for DAR. This submittal is for a rule amendment to increase commercial use license fees upon approval of the Governor.

Board Discussion

Miyasaka noted that DAR had tried to increase fees for non-residents and was challenged because non-resident fees were \$200/year and residents were \$50. The issue was settled out of court by agreeing to charge the same fees for residents and non-residents. In the meantime, DAR has lost income and so now is raising fees for everyone to \$150.

The Board Members expressed concern that weekend fishermen who sell a part of their catch would be most affected by this fee increase because it would apply to all of the people on the boat, regardless of whether or not they were fishing. They noted that commercial fishermen did not seem too bothered with the fee increase.

Miyasaka said to address the concerns of weekend fishermen, DAR would like to create a vessel license, which would be the equivalent of a commercial license for everyone on the vessel. The key will be how much is charged for the license. DAR plans to further discuss this in December, and hopefully have a rule package ready for the Board at the January meeting.

Miyasaka noted the vessel license is a way to get fishermen more compliant. He pointed out that even at \$50 a person, people don't want to pay the fee. It's a different thing from the commercial license fee, which is being increased to make up for lost revenue.

Miyasaka clarified that they want to move forward on these rules before moving the vessel license because they need to make up a funding shortfall. There was a short discussion on how the fee would work.

Downing asked if the forms can be simplified? Miyasaka explained why they could not be simplified.

Roehrig noted that he needed to leave for his flight.

Public testimony

Ronald Tam testified that he is not opposed to the fee increase, but does not believe that funding for the scientific management of fisheries should come from Commercial Marine License holders. He thinks it should be funded out of general funds. Also submitted written testimony.

Motion

Approve Item F-1 as submitted (Yuen/Downing). Roehrig and Oi opposed. The motion did not pass. After a discussion with the deputy attorney general, it was decided that a motion to defer was not necessary. The issue would be deferred to another meeting.

Roehrig left the meeting.

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustees: the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and the Office of Hawaiian Affairs for Access to State Waters to Conduct Conservation and Management Activities and Authorize General Conservation and Management Activities by the Department of Land and Natural Resources, Divisions of Aquatic Resources & Forestry and Wildlife.

Maria Carnavale presented for the Papahānaumokuākea and provided the board members with the 2016 Annual Report on Permitted Activities. She noted that page 37 of the report gives 2016 permit data.

Board Discussion-None

Public Testimony-None

Motion

To approve item F-2 as submitted (Oi/Yuen). Unanimous.

Item C-2 Request Approval to Settle Claim Between DOFAW and Fee Owner Sharon Jensen to Reduce Easement While Still Providing Access to Forest Reserve, Mānoa Valley, Honolulu, Oahu – TMK No. (1) 2-9-072-012.

David Smith presented for DOFAW with Marigold Zoll.

Board Discussion

Yuen asked if the applicant's representative was available?

Jesse Schiel of Kobayashi, Sugita and Goda, indicated that he was present to represent the landowner.

Yuen noted that he found it strange that this situation came about and asked how it happened. Mr. Schiel was not sure and noted that his client acquired the lot after it was subdivided. He noted that the owner has approved plans. There was a discussion on restrictions on lot.

Zoll said the original easement was for a road, but the topography makes a road improbable. There was a discussion on the small lot sizes and the purpose of the subdivision. Yuen said it seems to him that this was set up so the lots would not be built on.

David Smith agreed that the lot probably wasn't meant to be built on. However, on the advice of deputy AG Linda Chow, he was advised to allow the owner to build. The parcel is not usable by DOFAW anyway. Case asked if there was notification to the neighbors? Yuen wanted to insert a clause that the state is not liable for rockfall onto the property. He asked Schiel if he had any objection. Schiel agreed the request was reasonable. He suggested the AG draft the language.

Public Testimony-None

Motion

Approve Item C-2 with a clause stating that the state is not liable for any rockfall that would affect the property(Yuen/Oi). Unanimous

Item E-1 Amend Prior Board Action of August 26, 2016, Agenda Item E-3, Issuance of a Revocable Permit to Mary Thronas, Trustee of the Mary Thronas Trust for Pasture Purposes, Lot 23-A and 23-B, Wailua Rice and Kula Lots, Wailua, Lihue, Kauai, Hawaii, Tax Map Key: (4) 4-2-003:003.

Curt Cottrell presented for State Parks. He stated that Parks has 3 RPs. Kauai DOFAW is interested in taking this parcel, but in the meantime, this RP is a patch. The submittal is to Issue a new RP to the successor of last RP holder and correct deficiencies.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-1 as submitted (Oi/Downing). Unanimous.

Item E-2 Approve Amended Submittal of December 9, 2016, Agenda 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.

The purpose of this Amendment is to (1) Correct the Statutory Authority under which the Board is acting in Granting the Lease, (2) Correct the Leased Acreage, (3) Request that the Board declare that the Project is Exempt from the preparation

of an Environmental Assessment, and (4) Clarify the Relationship between Ke'ehi Memorial Organization and Disabled American Veterans, Department of Hawai'i, and Delegate Authority to the Chairperson to Consent to a Future Sublease between these parties.

Curt Cottrel presented for State Parks. This submittal corrects four deficiencies in the original submittal and delegates authority to the Chairperson to Consent to any future sublease between the parties.

Board Discussion-None

Public Testimony-None

Motion

Approve Item C-2 as submitted(Downing/Yuen). Unanimous.

Item C-1 Amendment to the Lanai Cooperative Game Development and Management Agreement with Lanai Resorts, LLC to Extend the Agreement to February 28, 2021.

David Smith presented a summary of the item for DOFAW.

Board Discussion

Oi noted that the game management area on Lanai supports the whole community. People rent rooms in their residences to make money. Hunting season also generates income for restaurants and others.

Public Testimony-None

Motion

Approve Item C-1 as submitted (Oi/Yuen). Unanimous.

Item C-3 Request Approval to Enter into a Memorandum of Agreement Between the Hawaii Tourism Authority and the Department of Land and Natural Resources, Division of Forestry and Wildlife for \$47,000 in Grant Funds to be Provided for Public Outreach Related to Rapid 'Ōhia Death on Hawai'i Island for Fiscal Year 2018.

David Smith presented a summary if the submittal on behalf of DOFAW.

Board Discussion-None

Public Testimony-None

Motion

Approve Item C-3 as submitted (OI/Downing). Unanimous

Item D-3 Set Aside to the Division of Boating and Ocean Recreation for Small Boat Harbor and Related Purposes; Issuance of Immediate Management Right-of-Entry to the Division of Boating and Ocean Recreation, Kealakehe, North Kona, Hawai'i, Tax Map Key: (3) 7-4-008:071.

Russell Tsuji presented on behalf of Land Division. This area is part of the Honokohau Boat harbor. A former Chairperson asked that this parcel be held for an interested developer (Jacoby). However, the development didn't work out. In the meantime, DOBOR thought this was their property and started using it. This submittal is to correct the oversight of not returning the property to DOBOR.

Board Discussion

Yuen pointed out that this is a large piece of property and a potentially large decision, but we don't have any plans for the property at this time.

Public Testimony-None

Motion

Approve Item D-3 as submitted (Yuen/Oi). Unanimous.

Item D-4 Issuance of Right-of-Entry Permit to the United State Geological Survey on Lands Encumbered by Governor's Executive Order No. 2577 to the County of Hawai'i, Wai'ōhinu, Ka'ū, Hawaii, Tax Map Key: (3) 9-5-002:065.

Russel Tsuji presented for Land Division.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-4 as submitted (Downing/Oi). Unanimous.

Item D-6 Amend Prior Board Action of October 28, 2016, (Item D-6), *Issuance of Revocable Permit to Kwock Nam Lau Trust and Eunice Y.M. Lau Trust for Parking Purposes; Termination of Revocable Permit No. 7544 issued to Kwock Nam Lau Trust; Nu'uaniu, Honolulu, O'ahu, Tax Map Key: (1) 2-2-010: portion of 021.*

An Amendment to Change the Applicant to Lorraine Lau Young Trust and Liana Lau Benn Trust due to the Recent Change in Ownership of the Private Property, Tax Map Key: (1) 2-2-010:015.

Russell Tsuji presented for the land division. He noted that this is an amendment to note a change in ownership.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-6 as submitted (Yuen/Downing). Unanimous.

Item D-8 Set Aside to City and County of Honolulu for Fire Station and Allied Purposes, Pearl City, 'Ewa, O'ahu, Tax Map Key: (1) 9-7-020:004.

Russell Tsuji presented for the Land Division. This item is to correct the lack of a set-aside for the Pearl City Fire Station.

Board Discussion-None

Public Testimony-None

Motion

Approve Item D-8 as submitted (Downing/Yuen). Unanimous.

Item M-16 Extension to December 31, 2018, the Right-of-Entry to D.R. Horton Hawaii and Royal Contracting Co., LTD, at Kalaeloa Barbers Point Harbor, O'ahu, Tax Map Key: (1) 9-1-014, portions of 024 and 039.

Russel presented for DOT-Harbors.

Board Discussion-None

Public Testimony-None

Motion

Approve Item M-16 as submitted (Yuen/Downing).

Motion to Adjourn (Downing/Oi). Unanimous.

Meeting Adjourned at 4:47 pm.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:47 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the

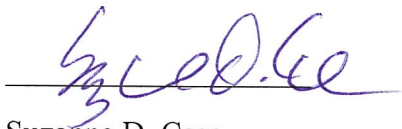
Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case

Chairperson

Department of Land & Natural Resources

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

Defendant A&B/EMI's Exhibit AB-69

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____