

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

DATE: FRIDAY, AUGUST 26, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:13 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.  
Ron Agor  
Rob Pacheco

Jerry Edlao  
David Goode  
Dr. Sam Gon

STAFF

Paul Conry/DOFAW  
Dickie Lee/ENG

Russell Tsuji/LAND

OTHERS

Cindy Young, Deputy Attorney General  
John Park, D-14  
Randy Cates, D-13  
Phil Hauret, D-12, D-11, M-1  
John Yonegiri, M-1  
Cheryl Nickelson, D-17

Scott Higa, D-8  
Ron Weidenbach, D-13  
Julianne Hughes, D-12  
Ann Shige, M-1  
Tina Coleman, D-17

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      June 9, 2011 Minutes**

Member Pacheco recused from item A-1.

**Approved as submitted (Edlao, Gon)**

**Item A-2      June 23, 2011 Minutes**

Member Gon recused from item A-2.

**Approved as submitted (Goode, Edlao)**

**Item A-3      July 8, 2011 Minutes**

**Item A-4      July 22, 2011 Minutes**

**Item A-5      August 12, 2011 Minutes**

Were not ready for this Board meeting.

**Item C-1      Contested Case Request Regarding an Agreement to Subgrant between the County of Hawai'i and the Board for the pass through of Federal Funds for the purchase of Approximately 550.871 acres, tax map keys (3) 9-5-16:025, (3) 9-5-16:006, and (3) 9-5-17:005, for conservation purposes as per U.S. Fish and Wildlife Service (USFWS) Section 6 Recovery Lands Acquisition (RLA) Grant No. E-17-RL-1.**

Paul Conry representing Division of Forestry and Wildlife (DOFAW) said he was withdrawing this item because staff was unable to get in contact with the applicant, Mr. Lui and provide him with ample pre-notice. When staff did contact him he agreed to reschedule this item.

**WITHDRAWN**

**Item D-15      Issuance of Revocable Permit to Fireworks by Grucci, Inc. for Set-up and Firing of Aerial Fireworks Display on September 10, 2011 at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward of 017.**

Russell Tsuji representing Land Division said he had no changes to the submittal and the applicant was here.

**Unanimously approved as submitted (Goode, Pacheco)**

**Item D-8      Grant of Perpetual, Non-Exclusive Easement to Honolulu Seawater Air Conditioning, LLC for Seawater Air Conditioning Waterlines Purposes on State Submerged Lands off Kakaako, Honolulu, Oahu, Tax Map Key: (1) 2-1-060:seaward of 008.**

Mr. Tsuji conveyed item D-8 to the Board that he didn't have anything else to add. The applicant was here.

Scott Higa representing Honolulu Seawater Air Conditioning testified thanking the Board that this allows the State to reach its renewable energy goals. He asked the Board's consideration to add in Section 171-95 as amended and the second is to revise the consideration section to read "a one time payment to be determined by independent appraisal and/or by direct negotiations establishing fair market rent as provided by Section 171-95, HRS as amended and subject to review and approval by the Chairperson. Third is to revise the applicant requirement section, part 1 to delete the "pay for an appraisal to determine one time payment" and replace that with "we would provide the Chairperson with an evaluation study that establishes a basis for lease rent.

Mr. Tsuji indicated this was the first he heard of any revisions to the submittal and staff is going to object to 2 or 3. It's required by Statute that you are not allowed to negotiate a price. All of our easement leases are at least determined by appraisal and seconded the applicant will need to pay for the appraisal (State's appraiser). It's a process laid out in Chapter 171 which Mr. Tsuji explained. If the applicant disagrees with it he will agree to hire his own appraiser and will have to pay for a second appraiser. If the two can't agree they will need to go forward in arbitration and appoint a third appraiser and the applicant splits the cost for a third.

Mr. Higa asked to clarify his first revision. Mr. Tsuji said what it was and where it was agreed to by Mr. Higa.

Member Pacheco asked whether there nothing in the statute allowing direct negotiations. Mr. Tsuji said direct negotiation versus public auction or public process, but direct negotiation for how much you pay for rent that is appraisal process. What they are avoiding is a public process or a public auction. Mr. Higa acknowledged that he understands.

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

**Approved as amended. Amended by adding the legal reference that the lease be issued also pursuant to 171-95.**

**Item D-14 Authorization to Enter into the Agreement Affecting the Head Start Facility as Part of General Lease No. 5871, Honolulu Community Action Program, Inc., Lessee; Waianae, Oahu; TMK (1) 8-5-002:012.**

Mr. Tsuji said as explained in the submittal there will be a Federal interest attached to improvements and staff recommends passing this through.

John Park representing HCAP agreed with staff's recommendation.

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

**Item D-13 Issuance of Direct Lease over 18 acres, more or less to Hawaii Fish Company Inc. for Aquaculture Purposes, Kaena, Waialua, Oahu, Tax Map Key (1) 6-9-001:002 (por.) and 003 (por.);**

**Approval-in-Principle for the Issuance of Direct Lease over an additional 129 acres, more or less, to Hawaii Fish Company Inc. for Aquaculture Purposes, Kaena, Waialua, Oahu, Tax Map Key: (1) 6-9-001:002 (por.), 003 (por.), and 036; and**

**Amend Prior Board Action of July 8, 2010, Item D-16 Regarding Issuance of Direct Lease to Hawaii Fish Company Inc. for Aquaculture Purposes, Kaena, Waialua, Oahu, Tax Map Key (1) 6-9-001:002, 003 & 036.**

Mr. Tsuji briefed the Board on some background information on item D-13 which was previously approved by the Board. The company was on an RP (revocable permit) for 20 years and the owner did his own 343 compliance on 18 acres, the current operations and not for the larger area. When the 343 issue came up at the AG's office they were not able to process the long term lease for the entire area. He recommended the owner acquire the lease for the smaller area, 18 acres that has a completed environmental assessment (EA). Staff asked that the prior Board approval be amended to reflect that and they will proceed with the smaller 18 acres for now. In the meantime, staff is asking the Board to approve in principle for the larger area, same as on the longer term lease; subject to certain conditions including 343 compliance. Once that is done staff can proceed with documentation of the lease. Last year the Legislature extended the direct negotiation for aquaculture tenants from 35 years to 65 years and the owner asked to be allowed the 65 year term instead of the initial 35 year term. State Parks objected, but this morning they were willing to go with a 65 year term for the 18 acres only and the remaining acres limited to 35 years.

Member Goode asked okaying a 65 year for the 18 acres and 35 for the remainder as approval in principle that we are not approving it. Mr. Tsuji acknowledged that it will come back and it gives the owner some comfort to proceed with the EA that staff will reserve the lands for him because they do get inquiries about the land.

Member Gon asked for clarification on the term of the lease in the recommendation where it was recited by Mr. Tsuji that "staff will amend the submittal to reflect the 18 acres will proceed with a direct lease for 65 years and the remaining acres which is the request to the Board for approval in principle only subject to conditions such as the environmental assessment being completed, etc. be limited to 35 years."

Chair Aila reminded the Board that the lands under this case and the lands under the YMCA was part of the withdrawal for the OCCL agenda item and for the approval for the rules which will be designated at a later time because of the difference of uses – ag and conservation.

Ron Weidenbach testified in appreciation for the adjustment in the recommendation and related some background and history about the site which he is using for aquaculture and education. There were problems with cleaning up the site and to get a loan where a long term lease will give them the ability to do that. They've accommodated Forestry and

Wildlife's endangered plants nursery and as a staging area for the NARS fencing project. He read Bob Matsuda's letter regarding the vision for Kaena Point which they support. Per Land Division staff, the State Parks potential use of the property could be addressed by having conditions in the lease if there were ever a need for a State Park and Mr. Weidenbach agreed to release that portion, the additional 129 acre portion. He assumed that we'll go forward with the 18 acres now that they did do the EA on the entire parcel, the whole 138 acres, but prior to submitting the EA to the Board there were fires out there that exposed remnants of the quarry operation where DOH recommended reducing it to 18 acres that was known to be safe until the EPA completed its investigation. Mr. Weidenbach assured they will be able to meet the 2 year time frame to update the EA for the full acreage. This will tie in with keeping the area scenic for the park that they intend to be good neighbors and asked for support.

Member Gon asked whether Mr. Weidenbach had visions for diversifying. Mr. Weidenbach acknowledged that reporting on the Asian catfish, pongee, and awa that they are a biosecure site and is approved to experiment with various kinds of bass. Their ponds are slightly brackish due to the winter waves and the salt in the air helps the fish and water from the ponds irrigates crops.

Member Gon asked who handles biosecure sites. Mr. Weidenbach said Department of Ag – Plant Quarantine. They oversee all imports.

Randy Cates testified that he is an Aquaculture farmer and was here to support Mr. Weidenbach that aquaculture is farming and that waiting 20 plus years for a lease takes great patience. It took him 3 years to educate the Legislator on what the need was for a 65 year lease and they were able to pass that bill. The Governor supports this. Mr. Cates related his experience of not getting a 65 year lease that it should be for the experienced farmer and encouraged for the 65 year lease.

Mr. Weidenbach read a couple lease points from his submittal, page 4, last paragraph which he supports, but when Act 232 was signed by the Governor part of the Act was to approve accessory uses and he asked whether it was necessary to have an extra step if it's already approved by law or whether it should be amended for things not covered by Section 171-59 as amended would come to the Chairperson. He is comfortable with it either way. Mr. Tsuji asked to be able to do it where Mr. Weidenbach explained that the Board asked whether aquaponics was aquaculture and the Legislature made it clear that it is. If he wanted to put up an aquaponics tank just send a letter to Chair Aila or will it be covered. Mr. Tsuji acknowledged yes to Chair Aila. Typically our standard provision for all of our leases including this aquaculture lease would have a provision that says none of this can be done without first submitting the proposed plans for Chair review and approval, but that does get bumped down to staff to review it in accordance with the terms of the lease, analyze it and make a recommendation to the Chair which is how it works. Mr. Weidenbach had no objection and was just questioning the law. Chair Aila said that staff will review that law.

Mr. Weidenbach asked whether the appraiser could do the work on the entire parcel at one time so he would not have to pay the fee twice for the same work because it would equal to several years rent and would be unnecessary. Mr. Tsuji said what is in the submittal is what will be done. So A is what he is getting appraised and B is still subject to Board approval and would have to come back. Staff is struggling to keep up having lost their appraiser on staff. Member Goode pointed out that after 2 years the appraisal is stale and you might get a CDUP that makes the land less valuable than what it was appraised for. Mr. Tsuji said it won't make it any cheaper because they would have to appraise both sides and we are bond by statute to do it by appraisal.

Member Gon made a motion to approve as amended with regard to the lease terms, Member Pacheco seconded it. All voted in favor.

**The Board:**

**Approved as amended. Amended to provide the Board's granting of a 65-year term Lease for the smaller 18 acre parcel; and the approval-in-principal for the larger 129 acre parcel for only a 35-year term and subject to the conditions noted in the staffs' submittal. Therefore, the Recommendation section of staffs' August 26, 2011 submittal is amended to read:**

**The first sentence in Recommendation A.1. is amended to read:**

- "1. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a direct lease to Hawaii Fish Company Inc. for 18 acres, more or less, for a term of 65 years and under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:**

**\*\*\*"**

**The first sentence in Recommendation B.3 is amended to read:**

- "3. Approve in principle, the issuance of a new direct lease to Hawaii Fish Company Inc. over 129 acres, more or less, for 35 years for aquaculture purposes further subject to the following:**

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

**Item C-2 Approval of a Right-of-Entry permit for the Division of Forestry and Wildlife to enter Department of Hawaiian Home Lands property in Kau, Island of Hawaii, to conduct surveys and remove Axis Deer.**

Mr. Conry reported that this is in response to a crisis for unauthorized illegal production of axis deer over on the Big Island by unknown persons. Staff estimates there are 50 to a 100 deer that are there. First is to get approval from the land owners to get access to the

lands so staff can take measures to eradicate before the deer becomes established on the Big Island and the permit was made under Mr. Conry's signature rather than the Chairperson's. Staff will need at least 5 years to deal with the issue and will make minor amendments to the permit and for the Board to go ahead and authorize the administrator (Mr. Conry) to work with DHHL.

Member Pacheco asked whether there was one confirmed sighting. Mr. Conry said there was a photograph as hard evidence and other reliable qualified people confirmed sightings.

Member Pacheco queried whether the State was investigating since Fish and Wildlife is. Mr. Conry said with staff's urging, some legislators, the Ag Chair, and our Chair were concerned and for staff to get on top of this. Staff is working with the Attorney General's to close any gaps that may exist in the regulations and statutes to beef up our ability to enforce and staff is working with that. In the next meeting or the following, staff will have a rule proposal to seek a request to go out for rules, to strike them and enable DLNR to enforce and prevent future introductions from occurring. Staff is working with AG and DOCARE to get actionable intelligent information because what we've got is hearsay and to get rock solid information. Right now, there is potential violation if it was captured from State lands on either Maui or Molokai and transported without a permit. It was introduced onto State lands without a permit which is a violation. The gap between private property and public property needs to be filled.

Member Gon said he was glad staff was taking action and asked how many deer were out there. Mr. Conry said staff recognized the emergency and with Land Division's special lands development fund as part of what they do to help with these projects with funding and staff hired an axis deer response team on the Big Island. They got a \$125,000 worth of project funded to hire three additional staff to focus on this. The HISS budget that was just approved by the HISS Council set aside an additional \$90,000 funding to implement a control hunt or eradication hunt deer type of program to eradicate this.

Member Goode said he was glad staff was moving so quickly and related the devastation from deer on Haleakala.

Member Gon moved to approve staff's recommendation and was seconded by Member Agor. All voted in favor.

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

**Item D-12 Re-Submittal - Amend Prior Chairperson's Action dated February 22, 2011; Consent to Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement); General Lease No. S-4223, Kahuku Wind Power, LLC, Assignor; Hawaiian Electric Company, Inc., Assignee; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:portion of 024.**

Mr. Tsuji reminded the Board that this came before them two months ago and related that the proposed sub-lease rent exceeds the ground rent under DLNR's lease to Hawaiian Telecom. The lease has been in existence for 40 years and the Sublessee paid up to a \$100,000 for the erection of a brand new antenna that he intends to use in connection with the sublease. It's also using a small portion for storage inside the building which is not a substantial part and is not impacting the operation of Hawaiian Telecom. What he brought before the Board in connection with the sublease rent policy is in place because it had various general guidelines, but also gave staff direction to evaluate cases in accordance with good land management practices, make analysis and recommendations to the Board. The improvements were the building which was approximately 40 years old and the antenna which was being paid for by the new proposed Sublessee. It wasn't the existing tenant giving up its (substantial) improvements and antenna. The sublease rent exceeded that of the ground lease rent being paid to the State of Hawaii and staff thought in accordance to the sublease policy, analyze that and make the recommendation to the Board on whether they should participate and how much based on the information they had we should participate 50% of the sublease rent collected by Hawaiian Telecom. At that meeting, Hawaiian Telecom requested 60 days to further review staff's submittal and come back to make it's argument or proposal. Mr. Tsuji has been communicating since then with Hawaiian Telecom, Ms. Julianna Hughes, and he thought they were to going to submit something whether a rebuttal or a proposal, but he hasn't received anything as of today. The sub-lease is company A which is connected with the wind farm project at Kahuku and they are planning to assign that away to Hawaiian Electric (HECO). The HECO rep. who is the ultimate Sublessee of this transaction is also here.

Julianne Hughes (representing Hawaiian Telecom) testified that they had 30 days and not 60 days since this agenda was placed in July. They are willing to work with Land Division on an equitable and fair assessment which they will do to determine that. Staff's methodology is based on this installation as part of the telecommunications industry and it is not. HECO will tell you the equipment there is part of their wind farm equipment. It was never Hawaiian Tel's intent to have this site become a revenue generating telecommunications site because of its proximity to the Hawaii Air National Guard and the FAA and the HECO equipment needed to be reviewed by them also.

Phil Hauret representing HECO distributed some written testimony and testified that they think the submittal incorrectly identifies the nature of this transaction. This attachment is part of a Hawaiian Tel site as part of a microwave system that was established for the Kahuku Wind Farm that is now in operation. This is not part of the booming telecommunications industry. It is an established technology of microwaves to integrate the Wind Farm into our grid as was said last month and they confirm that now. They wanted to add comments that they were reminded during the approval process for Mt. Ka'ala the Federal Aviation Administration (FAA) said that the only reason they approved the attachment was because it was for regulated utility purpose and wasn't commercial telecom attachment, otherwise, they wouldn't have approved it. They can't support the sublease rental participation formula of 50% because it appears to be based on the telecom standard and if it were to be added to our existing rent it would take it beyond a fair rent. They want to resolve this amicably and proposed a flat rate be



assessed by the State so that the State will participate and bring any subsequent sub-lease to the Hawaiian Tel site. Mr. Hauret described what would happen and asked where would it end. Also, another wind farm will be coming up on the North Shore on Kamehameha lands where there will be discussions. They hope to have additional antennas on the building and propose antennas on their repeater site. HECO is not in support of transferring management of lands, GL 4223 to DOFAW.

It was asked by Member Pacheco what the basis was for Hawaiian Telcom charging the rent that they are charging. Ms. Hughes explained that the PUC compelled them that whenever they encumber access they must perform an evaluation study which was for a working telecommunications site. Kahuku Wind Power approached Hawaiian Telcom since their building was already and it was their intent to cooperate with them to preserve and maintain conservation land by co-locating there. Whenever they do that with a third party, the PUC asked they provide an evaluation study which they did and the sub-lease rent is based on that and the value was approved by the PUC. The value at Mt. Ka'ala is the height. Our evaluation is based on the improvements as a telecommunications facility while the value maybe in the location and land, that's the amount that we feel is participated on with the State.

Member Pacheco said he understands that and questioned that you are there because the place is valuable as a telecommunication site and yes, you put up this infrastructure that HECO is able to take advantage of, but the whole value is not just in the facility, but in the place. I don't understand why you think the State...Ms. Hughes said they are willing to participate, but they had a problem with the methodology of how staff arrived at that amount and is willing to work with them to arrive at something that is fair and equitable.

Member Pacheco asked whether there are carrying costs that Hawaiian Telcom has to bear by having HECO there being covered by this sub-lease amount and Ms. Hughes confirmed there are. They have emergency generator and emergency grids that the site relies on should there be a failure of the electrical grid. There is emergency support equipment there to keep the site up and available for both Hawaiian Telcom and HECO.

Member Pacheco and Ms. Hughes had some discussion on the 30 days and the value amount. Ms. Hughes said Hawaiian Telcom would like some time to work with staff to come to some sort of agreement. Staff said the value was in the land, but Hawaiian Telcom felt it's in the improvements that they own and they talked with HECO which is what they will work with Land Division on.

Member Goode asked you mentioned this is PUC approved arrangement. The value was based on a telecommunications valuation of some sort. Earlier you said that we shouldn't be doing this as a telecommunications that you were only approved to go up there because they were a utility. I am having a hard time reconciling that. The PUC approval received is that a public document or is that something staff has reviewed yet to understand the value that went into that? Ms. Hughes acknowledged that the decision is public. Member Goode asked this is no only for this item and not for general rate cases. Ms. Hughes said she believes it is only on that particular case. Member Goode said it

seems to me that however the PUC values it is how we should value it. I can see the need for more time to resolve this. I'm curious how this was presented to the PUC.

Member Agor inquired that he sensed the reason why they were having a hard time with this was one company sub-let to another company and in that lease the prior lessee is responsible for the improvements to accommodate. Ms. Hughes acknowledged that where Member Agor said you put yourself in a bad position.

It was questioned by Member Pacheco who paid for the improvements where the Board and Mr. Tsuji said Kahuku Wind Farm and HECO agrees that Kahuku Wind Power covers that. Chair Aila asked whether there is a similar situation whereby the repeaters from the second wind power generation facility is expected to be on the same power. Mr. Hauret acknowledged that they are hoping to have it at the same site because it works with the geography. Ms. Hughes said that Hawaiian Telcom already has existing facilities there that they will just attach on an antenna to the existing tower which was done with this first site and she described the equipment room used for HECO.

Member Pacheco referred back to the previous meeting where DLNR would take 50% and Hawaiian Telcom would pass that cost on to HECO. Ms. Hughes agreed that they do support HECO's proposal for the flat rate to put a limit on it. Member Pacheco asked why does Hawaiian Tel need to do that because there is a based carrying capacity there with a facility on State land and this is income coming to you that's above and over the top by having this other sub-lessee. Just because you have this perceived notion of how much income you should be getting from that you need to increase that if that is taken out. I don't understand that. Ms. Hughes said that was a provision of the license because any time Hawaiian Telcom does encumber assets or rate paying assets it cannot cost the rate payer anything so we do have a standard provision in our licenses that Hawaiian Telcom cannot accrue additional expense as an effort to enter into a license.

Mr. Tsuji said one the things he always asks is there any added costs to the Hawaiian Telcom as a result of this sublease arrangement or at least factor in because they have fixed costs right now as it is. As far as we know fixed costs remain. The improvements are paid by the sub-lessee and as we see it, it's just gravy. I don't know if this is the intent of Hawaiian Telcom's comment about the PUC. I've raised this issue with the renewable energy companies. It's one thing to get off imported oil, but we've been getting complaints from consumers that they have not seen a drop in the electrical rates that has been going on. The public utility rules do not get into for example if you are going to have a renewable energy facility that there be a 20% discount over within 5 years for the rate payment. When I look at this transaction you have Hawaiian Telcom and you have HECO. Right now prior to the sub-lease arrangement there is no rent, no sub-lease rent. What they are proposing was that they continue to pay "X" and not increase even though they know their revenue base will suddenly increase to the point where it exceeds the ground rent for the facility that is paid to the State. I thought the only other reason for them to say they are going to go back and raise the rate on Hawaiian Electric or was once Kahuku Wind Power was they must have in addition to their own

fixed operating costs for the facility a burden of additional fixed operating costs because of the sub-lease applicant and that I don't have before me.

Member Pacheco said that answers my question because whatever license agreement between the two parties I don't understand and it seems like gravy that you guys are getting on top of this and the State is entitled a fair share of that. Just because you have a license agreement that says well, we said this, but they are going to take this and we're going to pass this on to you. Ms. Hughes said any revenues that this does generate for Hawaiian Telcom does go back into the rate base and they will confirm this with the PUC when they initially submit this for their approval.

Member Edlao asked whether a proposal was submitted with numbers. Mr. Hauret said not really. I'm not prepared to discuss rents right now.

Member Pacheco asked how about in principle. How do you feel a flat rate is fairer than a percentage? Mr. Hauret said because that is what we are paying at two other sites. The land owner wanted a flat rate in addition to what the tower owner gets a monthly figure and it wasn't 50% as I understand it and based on those other sites for the same project. Chair Aila asked if these sites were privately owned. Mr. Hauret said one is privately owned at Palehua and the other is Army land up on Mt. Cabella, but the tower owner is Crown Castle. They have a master lease from the Army which was originally under Campbell before the land was sold. Member Pacheco asked if there was a flat rate agreement that would come from HECO's side plus you would still be paying this sub-lease amount. Mr. Hauret acknowledged that is correct. Mr. Tsuji said that is funny because our lease is with Hawaiian Telcom and not you. We're basically saying should we participate with Hawaiian Tel. The base \$31,000 and some cents, but the sub-lease is getting \$33,000.

Member Goode asked whether we have clause about sandwich rents in our lease. Mr. Tsuji said it does go into the Board evaluating and sets whether to participate in the sub-lease rent and is where we evaluate the transactions. Every one is different and not every one is the same, but this one stood out because it was an older lease where the improvement, the \$100,000 for the antenna was going to be used by the sub-lessee was paid for by the sub-lessee and not by the lessee. Yes, it will take up so much square feet of the building and from what we can tell it wasn't a significant portion of the building and didn't appear to impact operations which is the kind of information we don't have. It looks like they had extra space, they agreed to park it there, antenna outside, the new guy pay for it, we want you to pay us rent for that, and it exceeds the State annual revenue. Ms. Hughes apologized and corrected that. The tower is the improvement and is what the new sub-lessee is connected to. The \$100,000 that Kahuku Wind Power had contributed to was actually the upgrade of the building to accommodate their equipment that they placed into that 80 square foot area. We had to construct dividing walls. The \$100,000 wasn't for the antenna, but for improvements to the building because the antenna is still owned by Kahuku Wind Power/HECO and that is their equipment. Chair Aila asked who paid for the tower. Ms. Hughes said Hawaiian Telcom did.

Mr. Tsuji said he had no objection to meet with them to work something out which I thought they were going to do. I don't know if there is some urgency to close this out on the Wind Power side not knowing if there was anything unofficially that they want to work it out and try to bring something to the Board that makes sense.

Member Pacheco said he had no problem with that, but there is a great amount of income coming into Hawaiian Telcom on our property under our lease with you that exceeds the base rent. Unless you can come back and tell us that this adds to the carrying cost to that whole thing I don't understand how the State should get a substantial part of that. Ms. Hughes said we can get those costs for you from our real estate operations department that could quantify that for you.

Member Agor said he personally feels comfortable with staff's methodology if staff wants to move forward with negotiations.

Mr. Tsuji said he didn't want to be the bad guy that he was always willing to listen, but was just waiting for the information to figure it out.

Chair Aila asked whether another 30 days allow them to provide the information so they can make an assessment. Ms. Hughes said that they will work with staff to come to some sort of agreement. Chair Aila asked whether we can get the additional information about the other towers that the comms. are. The lessee agreed. Mr. Tsuji noted that they need to give it to him next or in two weeks because it has to come back to the Board in 30 days.

Member Gon made a motion to defer for 30 days and Member Goode seconded it.

Mr. Conry said that staff is trying to move towards recognizing where there is use of State lands out there that the State is able to recognize a fair market share of that rent and that is one of the things going on here. We see it as a sub-lease and they turn it around and lease it out for the exact amount or maybe more than what they are paying on the lease. We are in agreement that the State should be receiving a share of that. An important thing to recognize is that these are telecommunication sites which are limited throughout the State and I agree with that fair market value.

Mr. Tsuji said that is how it got his attention to look at it more carefully. It was Mr. Conry's staff because they (DOFAW) have lands all around there that brought it to his attention and they should participate. Land Division is managing this, but they are surrounded by DOFAW and maybe recapture and get some revenue from this. Member Pacheco asked if the area is run by NARS and Mr. Tsuji confirmed that.

There was some discussion to bring this back to the next Board meeting.

The Board voted in favor.

Mr. Pacheco said he would like some clarity about this 50% and passing it to HECO with a domino affect.

**The Board:**

**Deferred for thirty (30) days. Lessee to provide proposal to Administrator Tsuji within two weeks.**

**Deferred (Morgan, Goode)**

**Item D-11 Amend Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. bearing Land Office Deed No. 18685 for Electrical Transmission Line Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-023:portion of 002.**

Mr. Tsuji related what item D-11 was and that he had nothing to add to the submittal.

Mr. Hauret representing HECO testified that this was a realignment of a small portion of an easement on the hospital site in Kaneohe which is U.H.'s project under grounding existing over head lines and most of the easement they will have to redo is on the U.H. property.

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

**Item M-1 Recision of Prior LB Action Under Item K-2, December 14, 2001, Authorize the Issuance of Electrical Power Distribution System Substation Facilities Lease and Related Power Line Easements to Hawaiian Electric Company, Inc. Honolulu International Airport**

Ann Shige representing DOT-Airports conveyed some background on item M-1 and explained the reason for the change that the land area was reconfigured from the original land. Due to the new emergency power system that will be developed on a portion of the adjacent power facility they had to relocate to a new access point and changes were made to the land area. There was a change in rent to full nominal rent and the commencement date was changed. The purpose of the lease remains unchanged.

John Yonegira representing HECO testified that they agree with the terms of the lease.

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

**Item D-17 Request for Plan Approval [in-Concept-of-Request] for Installation of Fence, General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, Auhaukeae, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.**

Member Pacheco recused from item D-17.

Mr. Tsuji related some background on item D-17 and had nothing to add. At one time the Andersons was the only shopping center to get this lease property, but from what he understands is they've lost ownership of that shopping center property to some mortgage foreclosure. This lease is not subject to a mortgage.

Tina Coleman introduced herself and Sheryl Nicholson as attorneys from Alston Hunt Floyd and Ing represent the Eleanor Portners who is the sole member of the current owner of the Coconut Grove Market Place in Kona. She reminded the Board that this came before them before and testified that the Coconut Grove Marketplace is set-up as a "u" shape where this property is in the middle. The property was lost by the Andersons in foreclosure owing \$21 million. During that time a receiver was appointed and Ms. Nicholson also represented the receiver when she was with a prior firm. When the shopping center was developed by Brian Anderson it included the parcel leased from the State and that parcel contains the drainage, an open space recreation area which was the purpose of the lease, the shopping center walkways go through the State leased parcel and is an integral element of the shopping center. And, the fence proposed by the Andersons is unclear to them and related the issues with that. The plans don't match with what they were told. The fence is a retaliatory or negotiating tactic because they've been trying to recover ownership of the shopping center on the cheap.

Ms. Nicholson testified that they weren't clear looking at staff's submittal whether Exhibit D-1 is the most current rendering of the planned fence because Brian Anderson's letter says they were modifying their original request to retain the fence only on the mauka and south sides of the property which is not on Exhibit D-1. It also says there would be follow-up with Inaba Engineering and she asked staff. Mr. Tsuji said that it was his understanding. Ms. Nicholson said it does not match the letter. There was some discussion between them with the original drawing. What Ms. Nicholson understood was staff rejected the six foot fence covering the three sides of the parcel and referred to a contested case regarding the fence blocking pedestrian access to tenants. The main problem with the application is we have a tenant in violation of the lease. The lease requires that the tenant keep the premises in a sanitary, clean and orderly condition and this is not occurring per the property manager(s) on site. People still congregate where the volleyball court was, but there is a significant safety concern with no sand there. It's exacerbated by the fact that the Market Place was lighting the volleyball court area at night when there was volleyball. Even with people continuing to go there the Market Place was instructed by the Andersons to shut the lights off.

Member Edlao asked what is on the volleyball court surface now. Ms. Nicholson explained it is a synthetic, hard surface with a light coating of sand that if you were to slip and fall you will get hurt. We have a violation for not maintaining the premises, for not maintaining the improvements. There is a proposal for a fence that would violate the lease because it requires the lease be used solely for commercial purposes and staff's concern is there is no commercial purpose suggested that this fence would be used for. Also, in the lease 50% must be devoted and maintained as open park space which is not proposed here. The proposed fence is not going to serve the purpose that the Andersons say they are building it for which is to prevent or minimize liability to them that is fence

is 4 feet high and can walk around it. While she was representing the receiver there were numerous attempts by the Andersons to try to get the then lender and now owner of the Market Place to the table to negotiate. When the new owner succeeded the Anderson's built the fence and she described it causing a violation with the County and the January item which was the forfeiture of the lease. She related previous history in 2009 and that the Anderson's are not concerned with liability. The fence would damage the Market Place because you would have to drill into sidewalks and would damage some rock walls. It would block patrons, suppliers to the restaurants and access to some tenants. It is an improper use of the State parcel. They urged the Board to not accept this application and if they do they asked for a postponement so that the lessee can come into compliance with the lease before the Board takes up this matter again and can answer to the Board as to how it sees that the proposed fence complies with the terms of the lease. And, to provide the updated drawings that they were led to believe would be forthcoming and no one has seen.

Member Agor asked about the original lease with the Andersons, was there an element in there to allow public use. Mr. Tsuji said provisions on that was what was quoted and from what he understands is the extent of it. Typically, when staff leases it's private and not open to the public, but this one had a special provision in part because of what happened with the County to keep certain amount (lands) open, at least the coastal view plane. It's a coastal view park. I don't see anything in the lease that requires the lessee to say it has to be specifically open to the public. Our leases are exclusive leases. Compare that with certain easements that are non-exclusive. They have an area where they can issue more easements or it's not the sole exclusive use of the easement holder. Leases are typically exclusive use for the lessee. If there is a problem there he has to enforce it by calling the police. The provisions relevant are what our District Land Agent had quoted and that is the extent of Mr. Tsuji's knowledge.

It was asked by Member Edlao if there had been violations that this guy says when was the last time staff went out and did anything to correct it, appeared violations. Mr. Tsuji said he does know for a fact that the District Land Agent went out when they initially got the violation from the County back in January. He doesn't know whether he has gone out since then. Member Edlao said whether the fence goes up or not you guys are not going to be happy and what he (Anderson) is trying to do or not to do, that is not before us. But, I am concerned that there are violations and why aren't we trying to cure that. Having some pictures would have been good. He suggested instead of a chain link fence how about putting up a 4 foot hedge which would be more acceptable or pleasing to the eye. Your guys' problem is not my problem. We just have to deal with the lessee here and what he is doing and if he is not in compliance than that would be my concern. If he is forcing something that you guys don't want to do that is you guys.

Ms. Nicholson agreed with Member Edlao about the hedge that all the Andersons are telling you is they want something temporary to figure out what they are going to do and talk to the Market Place owner. It's premature and they say it's for liability purposes and it's obviously not. Ms. Coleman said that the current owner offered to pay liability insurance for the parcel.

Member Edlao said his two concerns are the fence and the alleged violations. Ms. Nicholson said they would have been happy to provide pictures, but the property manager was on the mainland. Member Edlao said he was uncomfortable when you guys get into real details about what he is trying or trying not to do without him here referring back to January's Land Board meeting. Member Edlao reiterated his two concerns.

Ms. Nicholson said it would be good to get confirmation on what the real drawing is and the real cross sections of this parcel because of concern of damage to any under ground utilities. Member Goode agreed reading what Brian Anderson says compared to the map there were questions and Brian Anderson and his consultants were not here. He cannot support staff's recommendation and to defer to get that information and a better description of exactly what liability concerns they (Anderson) have because they do have insurance on the parcel. Does the police have any incidence? It is a commercial area and they might have incidences now and then, but has it risen to a new level?

Mr. Tsuji said that the applicant was informed of the meeting twice and it was his understanding the applicant was to be here to answer these questions. We all know who DG Anderson is and who Cord Anderson is. It would certainly help staff if this Board would direct staff to do certain specific items and come back. Member Edlao agreed and said to get some pictures, check on the violation and request that he be here. If he is not than three strikes and you're out then we can start the process for revocable. Mr. Tsuji said most applicants who are in this it's your decision to come and if you're requesting something you should come because...Member Edlao asked if you threaten them with the violation that has been going over and over again and not being cured don't we have a process to take it back. If we threaten them with that maybe they will show up. Mr. Tsuji said that Land Division does the best job they can and he can tell the Board this one isn't because they didn't go out there. Member Edlao said what you should do is go out there, take some pictures, come back and see about the violations and if not cured we will come up with some sort of fine - \$5,000 per day if he doesn't show up.

Chair Aila said Mr. Tsuji asked for some specific directions from the Board. First have staff go out and investigate these alleged violations. Mr. Tsuji explained it's an ordinary inspection and come back, evaluate whether they are in compliance or not. If not in compliance, automatically a notice of default goes out. A notice of default always has a time to cure.

Chair Aila said and second have the applicant provide the Board with a drawing that accurately reflects what they are planning for. Member Goode said he would like to find out what exactly are these liability issues were raised. Member Agor said and to be present. Mr. Tsuji said he (Brian Anderson) is claiming its liability issues. The Chair said that is driving the intent to put up a fence.

Member Edlao asked how long would staff need. 30 days, 60 days? Mr. Tsuji said to do the inspection and evaluate...if there is a default there is a trigger and normally its 30 to 60 days. He didn't know whether the Board wanted it back while the cure period is still



available. If you want to answer questions there is a bunch of questions regardless if you chose a default. Member Agor said they don't know if they are going to contest the violation or not at this time. Mr. Tsuji said definitely in 30 days you will have pictures. Member Edlao said to have him (Brian Anderson) come in and answer to the default because the last time he cured it right away before the meeting. Mr. Tsuji acknowledged that was for a trigger due to a County violation.

Chair Aila asked whether there is a time limit to build a commercial within the lease. Mr. Tsuji said he didn't know at this point because typically....Ms. Nicholson said she had the old lease in front of her and there was no original requirement for the construction of the improvements. Member Gon asked there was no original requirement. Ms. Nicholson said there was. One of the things I was curious about is lease details with regard to public use. A clarification on what that park meant. Mr. Tsuji said he will double check on that, but as stated he didn't think there was anything specifically about open use of the public except for the coastal view plane.

Member Gon asked about lease details with regard to public use. A clarification of what that park meant. Mr. Tsuji said staff will check on that and like he stated he didn't think there was anything specific for the public except for the coastal view plane. Member Gon asked and the precedence of a sand volleyball court which seems like encouragement of public recreational use. Mr. Tsuji said in this lease at the time it was issued the Anderson's had the shopping center and as presented to the County it was one plan.

Member Goode asked than building the fence would require an SMA assessment. Has that been done? Mr. Tsuji acknowledged that it has not been done.

Ms. Nicholson said on page 19 of the lease, paragraph 34 titled "Improvement Requirements" – the lessee shall on its own cost and expense within two years after the commencement date of this lease, April 18, 1990 expend not less than \$50 thousand for on-site improvements. Including, but not limited to excavation, landscaping and new construction of buildings in accordance with such plans and specifications submitted by the lessee and approved by the Chairperson of the Board. The Chair asked that was when the lessee had the shopping center, correct. Ms. Nicholson acknowledged that. Member Goode asked that condition is only under the State parcel. Maybe the walkways were done or any drainage improvements that they (Andersons) may have spent that \$50 thousand. Ms. Nicholson said sure. It was during that late 80s early 90s time frame. Since that time the parcel has been used as an integral part of the Market Place. So much so that even though there may not be this requirement in the State lease when Brian Anderson negotiated the Outback Restaurant it is mauka of that State parcel. Anakona LLC, Brian's entity promised the tenant that parcel would remain open. If there were a change it could be done without the tenant's consent and if it was done without the tenant's consent there could be significant consequences. The view plane was counted on by the landlord of the Market Place. Mr. Tsuji said even though our lease may not require it per se it is up to the lessee if he wants to open it and go on the property. He

will be responsible for it. When they (Andersons) had the shopping center it was all one thing.

Ms. Coleman said she doesn't know how you can have any commercial use if you have no trespassing signs all over it. Chair Aila said the commercial use was in reference to a previous time and we need to have a determination if that is still so. Ms. Nicholson said it is current up to today because the commercial use is allowing access in conjunction with the retail Market Place and also providing the open space.

Mr. Tsuji said I know we need to know when we are going to bring this back to the Board whether its 30 days, but definitely within the 30 day period staff could of gone out there and have photos. Member Edlao said as soon as you can. Mr. Tsuji said Land Division will go out and inspect and if they believe there is a default under the lease to proceed with an appropriate notice of default which provides for the cure timing. Ask the Andersons to provide a more current updated drawing to reflect his (Brian's) letter dated August 12<sup>th</sup>. (Andersons) Show up at the next scheduled Board meeting. How is this commercial use in connection with a lease evaluating whether or not there is a default and the liability issues. Mr. Tsuji asked whether it was okay to bring it back to the Board that the cure period for whatever default that may be issued has not been done yet to answer these questions and whether they intend to cure the default. Member Edlao said they should resolve this all one time. Ms. Coleman said if the cure period hasn't expired yet you are not going to know. Mr. Tsuji said they will bring it back to the Board. If there is a default staff will bring it back as soon as they get the information. Ms. Colman requested it not be scheduled until the beginning of October. Mr. Tsuji said it's unlikely they will do it in September. Staff is already planning for October. Member Edlao made a motion to defer and staff to follow-up as discussed earlier. Member Gon seconded it. All voted in favor.

Member Edlao commented that the next time if he (Brian) does show up you guys (Ms. Colman and Ms. Nicolson) stay away from what he is trying or trying not to do or forcing you guys to do. Keep that out of the discussion because I don't want a fight over here because you can go back and forth and that is totally different from what we need to resolve. I know it's hard, but we have to deal with what is before us. Ms. Nicholson said she appreciated that and she heard him.

**The Board:**

**Deferred with the following conditions or requests:**

- 1. The Department is asked to complete an inspection of the subject premises, which shall include the taking of photographs and the preparation of an inspection report to be submitted to the Land Board when this matter is later placed back on the Agenda for the Land Board's consideration. The Department is asked to review all of the terms and conditions of the Lease and to proceed to issue, if appropriate, notices of default under the Lease.**

2. **The Lessee, in connection with its proposed plan to erect a fence, shall timely provide to the Department (which the Department shall present to the Land Board) detailed plans, specifications and conceptual drawings that are consistent with the Lessee's letter to Mr. Kevin Moore dated August 12, 2011; of particular interest is the 4-foot height fence and the statement that the proposed fence would be limited to the mauka portion of the premises, and leaving open over 50% of the subject property.**
3. **The Lessee is asked to attend the meeting of the Land Board when this matter is next presented for consideration, and be prepared to answer questions or clarify its positions/statements. Of particular interest to the Land Board is for the Lessee to further explain what specific liability issues are of concern, and how this proposed fence reduces or eliminates that concern; and how this proposed fence and Lessee's use of the premises meets or furthers compliance with the commercial use requirement under the Lease.**
4. **The Department may issue a letter to the Lessee informing it of the Board's questions or concerns noted above and to ask the Lessee to provide its responses to the Department in timely fashion to allow the Department to incorporate the Lessee's responses into its written submittal when this matter is next presented to the Board for its consideration. Notwithstanding any written responses provided by the Lessee, the Board is still requesting the Lessee attend the meeting when this matter is next presented for consideration by the Land Board, to answer questions and respond to concerns of the Land Board or others.**

**Deferred (Edlao, Gon)**

**Item C-3      Acceptance of Hearing Officer's Report on a Public Hearing for Three Proposed Withdrawal and Five Proposed Additions to the Forest Reserve System on the Island of Oahu.**

**Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 80.35 acres from Waimanalo Forest Reserve, Kailua, Koolaupoko District, Oahu, Tax Map Key (1) 4-2-010:004**

**Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 64.8 acres from Pupukea Forest Reserve, Pupukea and Paumalu, Koolauloa District, Oahu, Tax Map Keys (1) 5-9-005:002 and (1) 5-9-005:077.**

**Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 0.59 acres from Round Top Forest Reserve, Makiki, Honolulu, Oahu, Tax Map Key (1) 2-5-019:006.**

**Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 1,413.93 acres to Honolulu Watershed Forest Reserve, Nuuanu, Pauoa, Manoa, Palolo, and Wailupe, Honolulu, Oahu, Tax Map Key parcels (1) 2-2-047:001, (1) 2-5-011:007, (1) 2-9-051:001, (1) 2-9-055:014, (1) 3-4-010:portions of 009, (1) 3-4-022:portions of 001, (1) 3-6-004:004, and (1) 3-6-004:026.**

**Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 2.5 acres to Waimanalo Forest Reserve, Waimanalo, Koolaupoko District, Oahu, Tax Map Key parcel (1) 4-1-010:094.**

**Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 25 acres to Mokuleia Forest Reserve, Mokuleia 2, Aukuu and Kikahi, Waianae, Oahu, Tax Map Key parcel (1) 6-8-003:041.**

Mr. Conry reported that we're adding more lands to the forest reserve, but pointed out there was a potential problem with the agenda title that in the submittal there are 9 paragraphs in the title, but only 7 were picked-up in the agenda. The title correctly identifies the scope of what the submittal is which he read and questioned whether that was a minor issue and appropriate for the Board to continue with the approval.

Deputy Attorney General Cindy Young asked whether the agenda doesn't list with respect to tax map key items that are listed. Mr. Conry acknowledged that. The last two paragraphs. Ms. Young said per Sunshine Law what is on the agenda is what to be discussed.

Mr. Conry inquired whether under the 1<sup>st</sup> paragraph, it correctly identifies there is going to be three withdrawals and five additions and those two are part of that and the determination was whether that was adequate notice for Sunshine purposes. Ms. Young said looking at the agenda we still need the specific reference to give the public adequate information about where those additions would be. Mr. Conry said rather than break it apart, to defer this; he would re-title the agenda at a later date and asked to withdraw this item.

**Withdrawn**

- Item L-1**      **Approval to Execute Supplemental Contract No. 1 to Contract No. 57136 for Professional Services, and Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Port Allen Small Boat Harbor Pier Improvements Hanapepe, Kauai, Hawaii**
- Item L-2**      **Certification of Election and Appointment of Kona Soil and Water Conservation District Directors**
- Item L-3**      **Appointment of West Maui Soil and Water Conservation District Director**
- Item L-4**      **Application for a DLNR DAM Safety Construction/Alteration Permit, Permit No. 52-Opaoula No. 2 Reservoir (OA-0019) Dam Alteration/Removal, Haleiwa, Hawaii**

Dickie Lee representing Engineering Division said they don't have any changes to items L-1, L-2, L-3 and L-4.

**Unanimously approved as submitted (Agor, Edlao)**

Member Pacheco returned to the meeting.

- Item D-1**      **Request for Issuance of Revocable Permit to Garden Isle Racing Association Inc. (GIRA) of the Mana Drag Strip for Motorize Sports purposes. Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 36 & 40.**

Member Agor asked whether the County responded to Garden Isle Raceway. Mr. Tsuji said supposedly the County said if we do the paving they will take over the waste thing because they are suppose to get an EO, but had concerns about liability. The Chair said they are definitely interested once the improvements are done. Mr. Tsuji said he had no changes for the remaining items.

- Item D-2**      **Consent to Assign General Lease No. S-4023, Tetsuro Maeda and Yoshio Hiranaka dba: T & Y Partners, Assignor, to T & Y, LLC, Assignee, Nawiliwili Harbor Lots, Lihue, Kauai, Tax Map Key:(4) 3-2-004:011.**
- Item D-3**      **Issuance of Month-to-month Revocable Permit to Giampaolo Boschetti for Storage Area and Parking Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-1-06:84.**
- Item D-4**      **Sale of Remnant to Thomas Christian Monson and Carolyn Joann Monson, Lepoloa-Kauniho Homesteads, North Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/3-1-02, portion.**

- Item D-5** Sale of Lease at Public Auction for Pasture Purposes, Kaauhuhu, North Kohala, Hawaii, Tax Map Key:3<sup>rd</sup>/5-5-01:45.
- Item D-6** Issuance of Revocable Permit to MC&A, Inc. for a Team Building – Sand Sculpture Event for Brinker International at Wailea Beach, Honuaula, Wailea, Maui, Tax Map Key: (2) 2-1-008: seaward of 109.
- Item D-7** Rescind Prior Board Action of November 19, 2009, Item D-10, Issuance of Revocable Permit to Moses Kahiamoe for Pasture Purposes, and Issuance of a New Revocable Permit to Moses Kahiamoe Jr. for Pasture Purposes, Puolua-Hanehoi, Hamakualoa, Makawao, Maui, Hawaii, TMK:(2) 2-9-008:024 and Portion of 018.
- Item D-9** Consent to Assign and Amend Grant of Non-Exclusive Easement Filed Under Land Office Deed No. 28379; William L. Oliver and Marguerite Oliver, Assignor, to Jeffrey L. Hoff and Laora A. Vidal, Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-10:008 portion.
- Item D-10** Authorize a Six-Month Holdover for General Lease No. 4008, Walter Fook Loy Chong Self Trusteed Trust and Evelyn Meu Lang Chong Trusteed Trust, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:014.
- Item D-16** Cancellation of Governor’s Executive Order No.4096 and Reset Aside to Department of Agriculture for Animal Quarantine, Animal Welfare, and General Commercial Use Purposes, Halawa, Ewa, Oahu, Tax Map Key:(1) 9-9-10:34 & 54.
- Unanimously approved as submitted (Agor, Gon)**
- Item H-1** Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)

Member Gon said he had missed the important conservation district rules decision and that one included some adjustments that were being forwarded and the wording was if those were the opinion of the Attorney General anything substantial they would be incorporated. He asked how long would we know before that happens. Chair Aila asked whether he would like a report from OCCL and Member Gon acknowledged he would. The Chair will have OCCL report on whether there were any substantial changes.

Member Edlao asked whether the Board members got a letter from a guy being appointed to the public lands thing and how is that going to work. They are working with the private sector to develop State lands and asked are they going to have the power to approve? Chair Aila asked whether he would like a presentation on that because staff

hasn't figured that out yet. Member Edlao said that would be good. The Chair said once they figure out what the law permits them to do then they will something.

Member Pacheco asked is OIP under DLNR. Chair Aila said anything it approves the Land Board will have to approve. We still have oversight. Mr. Tsuji said it is a vehicle to move development past because they had some special powers. Chair Aila said the purpose for moving the development forward in a more timely manner is to create revenue for the Department and that is the intent of the Legislature. Member Pacheco asked whether the Department supported that through the legislative process. The Chair said the Governor signed the bill.

Member Pacheco asked Glenn Shiroma's OIP stuff and threatening a law suit. He wondered whether any of the Board members were interested in OIP coming in and giving us some kind of briefing on what our...I don't know whether that would be beneficial for us because supposedly there is liability we have by voting on an agenda item that may not cover Sunshine Laws adequately and that gives us some liability over that. I would be interested in hearing how it is and what our role is as a Board member looking at it questioning whether this adequately describes the agenda item.

Member Goode said coming today about the appraisal process seeing these quotes like \$500 for appraisals depending on what the lease rent is it seems to be a lot for these guys to pay that he is hearing more about that. When you put your Legislative package for next year got any ideas for lower value deals or a different process? Mr. Tsuji said other than avoiding the appraisal process where he compared the mortgage for a house could be \$500-\$700 dollars and the easement for a seawall is \$2500 or even higher and definitely our commercial can be even higher than that it's the analysis. He explained about putting in more analysis whether private or public. Could directly negotiate, but could lead to abuse. The problem is people want to fight it and in the end they spend so much money in the arbitration process and they will never recoup that.

Member Pacheco asked what the process is for appraisers. They are identified ahead of time right? Mr. Tsuji acknowledged that and said in our process we call it a hybrid and got it approved by Aaron Fujioka, State Procurement Officer. We use a combination of professional services and small purchase. Annually, maybe around April we start publishing annual solicitation in the paper, anyone interested in providing appraisal services to DLNR please submit your resume. Staff goes through the resumes and pre-qualifies so we have a set list and as we get jobs that last for 6 months to 2 years in advance we have a lot or re-openings of leases. When we get the job we send out for solicitation to everyone on the list inviting them to submit a proposal. This is the job; send me a proposal and how much it's going to cost. Typically, only a handful submits for whatever reason. From there staff evaluates it. Price is a factor, but not the determining factor. They are rated by experience and prior jobs and then come up with a winner where he referred to Weidenbach's. The appraisal cost "X", please deposit the money so we can proceed with the appraisal process. We get the appraisal back, tell them what the value is, and if they don't like it they have the right to hire their own. If the two can't make a deal then we go through a third appraisal.

Member Edlao asked whether they have appraisers on all islands. Mr. Tsuji said it is statewide and many times they fly as well.

Member Pacheco asked instead of doing it that way to do it backwards by putting it on the applicant and they can go get their own appraiser and pay for it. Then if the Department doesn't like the appraisal we can hire one from the list, but they still have to pay for it and not process anything. It might save the applicant money by being able to go out and would that be something that could work? Mr. Tsuji said more than likely it would go the opposite way because what happens in appraisals is the appraiser will only do what he is instructed to do. You can make an appraisal come out low based on instructions and assumptions if you tell them to make it. His job then is to put that in the report and say based on these assumptions and instructions I did this. I was instructed to do this and this is the value and you can have a deflated value. That is why the State appraiser gives us the fair market value for a sea wall. If you got filled land giving the example that it's our land that is filled and they are making like it's their own private property exclusively you will end up paying close to what the land value is because that is what it is. It maybe submerged, but you filled it up and now using it as land in a very exclusive area. What the appraisers will do is appraise the guy's house and it's so many dollars per square foot and pretty much that filled land will be close to that. You have regular land and submerged land or land that water covers and the appraisers immediately give a 50% discount. They look at the value of the abutting property and say 50% because water goes over it and it's not usable. If you fill it up, now the water doesn't go there and it's usable now and you can do activities on it.

Member Agor said it's a hard process to avoid for fairness. Mr. Tsuji said that is why he tells his lessees. In private the landlord can say lets make a deal or we are not going to make a deal it's up to them. The staff cannot. Here is our appraisal. You want to agree or no agree. If you don't agree by a couple hundred dollars off, in private practice you could split the difference or maybe it's not worth fighting for and just give in. For us we got to say that's the number – agree or no agree. If you don't agree then you have to go through this process. The whole thing is designed #1 as State property with very limited lands and for transparency, for fairness otherwise you could have a lot of deals. Member Gon said and we don't even want a perception. Mr. Tsuji said from a staff level we would rather do it this way. Member Goode thanked him.

Chair Aila said the other reason is the new law that was passed with the appraisers. Mr. Tsuji acknowledged that, but it's in arbitration. What was happening was they have a three panel appraisal which is not really an appraisal according to use. What happens is you have three appraisers get together and talk, evaluate a property and come up with a dollar amount. It's a letter and it's not an appraisal. With a panel you'll have three different appraisals that maybe close or maybe far and their job is to come up with two out of the three a value and it's not based on what they would ordinarily sign off on in accordance with State and national standards as a true appraisal of their own honest opinion, but this is an opinion of the majority. They are required to do an independent value appraisal, but when they come together it takes two out of the three to make a decision. Chair Aila said they may not always have the same criteria. Member Goode



said and that is why no one is going to sign off on it because it's a letter. Mr. Tsuji said then it jeopardizes the appraisers ethically, not coming into compliance, and could affect their license.

**Adjourned (Edlao, Goode)**


There being no further business, Chairperson Aila adjourned the meeting at 11:43 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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