

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

DATE: FRIDAY, JANUARY 10, 2014
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:18 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Dr. Sam Gon
Reed Kishinami

Robert Pacheco
David Goode
James Gomes

STAFF

Michael Cain/OCCL
Scott Fretz/DOFAW
Curt Cottrell/PARKS

Lisa Hadway/DOFAW
Russell Tsuji/LAND
Dan Quinn/PARKS

OTHER

Cindy Young/Deputy AG
Bill Wynhoff/Supervising AG
Don Young/C-1
Tom Pierce/C-1
David Brown/C-1
Michael Gibson/C-1
Hawaii Native Hawaiian Legal Corp. Rep/C-1
Calvin Ho/D-18
Richard Emery/D-3

Ross Smith/DOT-AIR
Chester Koga/K-1
Edwin Mersino/C-1
Claire Apana/C-1
Hope Kallai/C-1
Evert Ota/C-1
Julia Morgan/C-1
Kevin Aoki/D-3
Dr. Carl Oguss/D-3

Item A-1 Approval of October 15, 2013 Minutes

Member Pacheco recused himself.

Unanimously approved as submitted (Goode, Gomes)

Item M-1 **Amendment No. 1 To State Lease No. DOTE-1-A-13-0009; Application For Additional Space; Hawaiian Sealife, Inc.; Honolulu International Airport; Tax Map Key: (1) 1-1-14:21 (Portion).**

Item M-2 **Issuance of A Direct Hangar & Facilities Lease; Guardian Flight, Inc. Kona International Airport At Keahole; TMK:(3) 7-3-43:Portion Of 003.**

Ross Smith, DOT-Airports reviewed Items M-1 and M-2. Smith had no changes.

Unanimously approved as submitted (Pacheco, Gon)

Item K-1 **Conservation District Use Application (CDUA) HA-3683 by the State Department of Transportation for the Saddle Road Baseyard at the Mauna Kea State Recreation Area, Kaohe Mauka, Hamakua, Hawaii, TMK (3) 4-4-016:003.**

Written testimony was submitted by Hanalei Fergerstrom.

Michael Cain, Office of Conservation and Coastal Lands (OCCL) presented Item K-1 with the applicant Chester Koga. Cain explained that the recreation area is state land in the forest reserve, and there are negotiations with the county to manage it. He gave background of the reserve and stated that the total land use is 2 acres. Exhibit 6 shows the number of mitigation measures that the county agrees to follow. OCCL received few comments; the most significant concern came from State Parks in regards to water. Water capacity is down to 200 gallons per day, which is not enough to meet State Parks' needs, much less additional uses. The restrooms have become a critical stop for people on the road, so water is defiantly a concern. OCCL originally recommended that if the permit is approved, then the applicant would work with State Parks to come up with a water plan. After talking to Dan Quinn, Administrator of State Parks, Cain recommended this to "the applicant will work with DLNR", as State Parks might not continue managing the land, but it will still remain DLNR land. Cain also addressed a fax that he received at 9:03am in opposition from Hanalei Fergerstrom. He mentioned 3 issues 1) the area is endangered habitat for the endangered palilla bird; 2) lack of fresh water and 3) removal of mamane trees. Fergerstrom also requested the right to a contested case. Cain noted that he didn't request a contested case; he just 'reserved the right'. Staff's response is that this does not appear to be in critical habitat which the Department of the Interior has confirmed. 2) There are no mamane trees that need to be removed. 3) The water is in issue and does need to be resolved.

Member Gomes asked Cain what kind of plan he has and if he has a summary mitigation. Cain stated that he would let the applicant answer the question, however; from what he learned prior to the meeting water would have to be trucked in. He also mentioned that there is a potential well that the army is exploring, but that's years away. Cain also said that there is a reservoir on site, but it will need some repair to be functional.

Chester Koga, representative from DOT said that water has always been an issue, he shared that the site is being shared with the Division of Forestry and Wildlife, who maintains the nursery facility there. Most of the water is Forestry's, it was used as a Nene facility and all the water was

developed by them, for them. They will make sure that all native trees such as Mamane are kept intact. All native plants and the plum grove will be left intact, with minimal clearing. The water will be discussed in terms of what can be done. Water is being hauled now, until something can be done.

Member Gomes asked if hauling water was a standard procedure, because the Nene birds don't drink that much water, compared to a base yard where you would be washing off equipment, etc. Koga confirmed that.

Member Pacheco asked what the estimated daily water use. Koga was unable to answer that. Pacheco expressed his concern about the water issue, that it is not only dire, but has been in decline over the last 10 years. He asked what would happen if DOT put this facility in and there's no water well, then there's no water source coming from Mauna Kea. Pacheco asked if DOT would be able to support hauling water. Koga answered by stating that he cannot answer that, but he assures that DOT will do what they need to do.

Member Goode asked Koga if the facility can be seen from the roadway and if there has been any talk about camouflaging the building. Koga confirmed that you can see parts of the building from the road. Goode asked that staff look into somehow camouflaging the building so you can't see it from the road.

Member Pacheco, who drives by the area every day, explained that the place looks like a warzone right now because a lot of the vegetation has dried out due to the drought. Pacheco said that he doesn't feel like this will be an adverse impact to the area and is set back pretty far from the road. His concern is the water, he said DOCARE built a facility out there a while ago and didn't use it; he is just worried that this will be another incident. Pacheco did say that they are looking for water, and that hauling water is going to be costly.

Unanimously approved as amended (Pacheco, Gomes)

Item C-1 Request Approval To Issue An Invitation For Bids And To Award, Execute, Amend, And Extend A Contract To Conduct An Archaeological Inventory Pursuant To Chapter 6e, Hawaii Revised Statutes, For Proposed Subject Land Exchange, And Of A Portion Of The Alleged Historic Trail Crossing Land Owned By Halekala Ranch Company, District Of Makawao, Ahupua'A Of Kalialinui, Maui, Tmk: (2) 2-3-005:004, And;

Request Approval To Issue An Invitation For Bids And To Award, Execute, Amend, And Extend A Contract To Conduct Environmental Review Of Proposed Subject Exchange, And For The Waiopai Kahikinui Forest Reserve Access Road, Crossing Land Owned By Halekala Ranch Company, District Of Kaupo, Ahupua'A Of Na Kula, Maui, Tmk: (2) 1-8-001:004, And;

Request Disapproval Of The Request By Public Access And Trails Hawaii (Path) To Issue A Land Lease To Path Of A Portion Of The Alleged Historic

Trail Crossing Land Owned By Halekala Ranch Company, District Of Makawao, Ahupua‘A Of Kalialinui, Maui, Tmk: (2) 2-3-005:004, And;

Request Approval For The Chairperson To Negotiate And Enter Into An Agreement With Halekala Ranch Company To Agree, In Principle, To Terms For A Proposed Exchange Of A Portion Of The Alleged Historic Trail Crossing Land Owned By Halekala Ranch Company, District Of Makawao, Ahupua‘A Of Kalialinui, Maui, Tmk: (2) 2-3-005:004, And For The Waiopai Kahikinui Forest Reserve Access Road, Crossing Land Owned By Halekala Ranch Company, District Of Kaupo, Ahupua‘A Of Na Kula, Maui, Tmk: (2) 1-8-001:004, Between The State And Haleakala Ranch Company, For Future Consideration By The Board Pursuant To §171-50, Hawaii Revised Statutes And All Other Applicable Laws.

Written testimony was submitted by the following: Richard Sylva, Dr. Carl F. Oguss, Cory Font, Charles Flanerty, David Brown, Deborah L. Chang, Carmel Davis, Maryann Glanantoni, Susan Maskey-Guille, Cory Harden, Robert D. Harris, Scott Innes (w/petition of over 2300 names), KAHEA 2014 Board Members, Hope Kallai, Tim Kallai, Wendi Lau, Don G. Menling, Basil Oshiro, Janive Palama-Glennie, Tom Pierce, Jonathan Ching (OHA), Russell Reinertson, Karuna Santoro, Ken Schmitt, Richard Spacer, Kat Tracy, Peter Waldau, Scott Weeks, Melinda Neuwirth, Kahu Lyons, Bryan McKay, Kapi'iohokalani Nhohe, Tamara McKay, Hanna Mounce, Sean O'connor, Frances Ort, William G. Phipotts, Eric Paapanen, Lorna Hazen, Melissa McKay, Paul Brian Narcisco, Jordan Jokiel, Michelle L. Baldwin, Randal Bartlett, Judy & Bill Bisgard, Meg Cameron, Donna J. Clayton, J.P. Damon, Jamie P. Davidson, Brad Fitkin, Teri Freitas Gorman, James JC Haynesill, Hargon Holland, John W. Hoxie Jr., J. Kevin Jenkins, William H. King, Brian Larsen, Anders Frank Lyons, Camille D. Lyons, Frances Lyons, Kristina Lyons, Mette Lyons, Roger Lyons, Samuel A.B. Lyons, Shepherd Murray, Doug MacCluer, Kenneth F. Miranda, Walter B. Quinsenberry Jr., Henry F. Rice, Mary C. Stanford, E. Gunner Schuli, Chris Speere, Hugh Starr, Donna Dean Sterling, Mark Vaught, Robert Vorford, and Don Young.

Before continuing Chair Aila introduced Lisa Hadway as the new administrator for the Division of Forestry and Wildlife.

Lisa Hadway-Administrator/Division of Forestry and Wildlife (DOFAW) reviewed Item C-1, explaining that they are not requesting that the Board approve the request for the land exchange at this time because the EA (Environmental Assessment) and the AIS (Archaeological Inventory Survey) need to be done before any changes in the disposition of land can be made or considered appropriate. They are asking to disapprove the request by PATH to lease the bridal trail to PATH for the same reason. The state did an analysis in 2000 and concluded that there is evidence that the state may own the trail under the highways act of 1982. However, the land owner disagrees and Public Access Trails Hawaii has filed suit, which is now pending in Circuit Court to establish who has ownership of the trail. Despite the disagreement regarding ownership, the state and the Haleakala ranch have a MOA that allows the public to sign up for guided hikes on the trail. That MOA has been operational for more than a year now, and there have been 9 hikes that have accommodated everyone who has shown up. Hadway told the Board that the request before them is for approval to explore a resolution to the question of the trail ownership through an

exchange of lands that would relinquish the title of the bridal trail to Haleakala ranch, with some important conditions which include; 1) Public access to the bridal trail would continue; 2) the trail and its cultural and historic features would be protected and preserved; 3) the public would gain a new access route to the Nakula natural area reserves and Kahiki Nui Forest reserves.

Board member Gomes recused from Item C-1, and explained that his employer, Ulupalakua Ranch is in partnership with Haleakala Ranch for a company called Maui Cattle Company.

Don Young-President/Haleakala Ranch Company testified on behalf of the Company in support of the exchange and to answer any questions. Young emphasized the company's desire to work with the state and DLNR to resolve this. He believes this proposed land exchange is the most reasonable resolution to mutually benefit the company and the state.

Board member Pacheco asked Young, if this is approved and for whatever reason the state doesn't claim title to the trail, how would that affect easement negotiation.

Young responded by explaining that the basis of this proposal is settling the litigation, recently the judge denied the motion for a partial summary judgment on the issue of ownership and supported the ranch's position that there is a legitimate basis for the ranch. If they can't settle, then they will just go based on whatever the outcome of the lawsuit. The company wants to continue to work with the department on issues where they disagree with and come up with a resolution. Young said that their motivation is that it would be better to settle this out of court then to litigate and this would be the best way to resolve ownership, provide public benefit, and to provide new public benefit on the south side of Maui.

Pacheco clarified that if this goes forward, then part of the agreement would be similar access so that the trail will still be open to the public in some form. Pacheco asked why not just let the determination of the ownership go forward if nothing is going to change for Young's company.

Young explained that this goes back to litigation, that the state and Haleakala Ranch are defendants in this case. It's not only ownership, but public access. The plaintiffs are asking for unfettered, 24/7 access to this section of the trail on their land. With the continued guided hike public access program, there is a benefit to the ranch in resolving the uncertainty of what will happen with the future of the trail. The trail goes over a pasture area that is important to the company in terms of operations and in times of drought.

Pacheco asked how many paddocks were on the trail in terms of the mountain pastures.

Young said the company is going through a transition as they have been struggling with the drought. Over the last 6 years, they have added sheep and goats to the livestock operation. The sheep and goats are there to deal with invasive plants. Wild gorse is a huge problem in the mountain and the operations there, which involve portable electrical fencing and guard dogs. Young commented that the Haleakala Ranch family has a commitment to continue the heritage of ranching and stewardship for future generations. He feels like the state and the ranch should be on the same side and mitigate legislation.

Member Goode questioned the MOA and the 9 guided hikes in the past 2 years.

Young stated that the last time they were before the Board was May 2012, when they got approval for the MOA. Discussions were started in 2006 and the Ranch was willing to start at that time. After they received approval they started the hikes in August of 2006, 4 hikes in 2012 and 5 hikes in 2013. These guided hikes so far have been good, and are good for the ranch in terms of public relations.

Goode's follow up questions is in regards to testimony that was received commenting that 2 hikes per year seemed in adequate. Goode asked if the MOA addressed the 2 plus hikes.

Young said that was a question raised by the Board in 2012. In response the MOA was amended by adding changing the language to a minimum of 2 hikes to meet reasonable public demand. Within reason they would schedule more hikes.

Edwin Mersino-Chair for the Sierra Club said that testimony was submitted by their director Robert Harris, who was unable to make it to the meeting. Mersino expressed his concern with this proposal is that even though this is taking place on Maui, this type of swap might set a precedent for other land swaps.

Pacheco asked Mersino if he would be satisfied if a deal was made and in the deal public access was a requirement; meaning the public access across that trail would be in the property deed so there would be a guarantee of access.

Mersino explained that on Oahu, there have been a number of subdivisions built with the idea that they would allow access to the trails above them, and in many cases it has become very difficult to get access through those sub divisions because of the restrictions they put on the access. He explained that now there is talk about these subdivisions building fences around their properties, cutting off access and because it's their land they can build a fence. Historically in the deed and the permitting process they were allowed to do the development with idea of allowing access. Mersino commented that he hopes the ranch is different from the way things run here on Oahu.

Chair Aila called attorney Tom Pierce to testify next, however Pierce offered to let others testify first, because he has a 20 minute presentation to share as part of testimony.

Chairman Aila agreed and asked if anyone else would like to testify first.

Claire Apana from Wailuku, Maui testified referring to an OHA report, where they identified many significant, cultural sites along this trail. They say that it's important because of the cultural practices that used to go on there. Apana Pointed out the practices continue today. On May 30th, she did a cultural practice there. She was barred back in September and October when she tried gathering for subsistence practices. She called for two months and was told that she can't go there because hunters are there. After a month, the only way she could go gather and do practices was by finding someone who worked there and who could take her on their day off. Apana supports the ranch in their farming and industry but, does not believe they should own

every piece of access to the ranch. She feels like she shouldn't have to wait until there are enough people to be able to go on the hike; she should be able to go freely as she wants. Apana said the law states that the EA needs to bring in the consultation of the public and the cultural practitioners. She's not sure why the question of ownership is in question as to why this should be open to the public, people shouldn't have to sneak around.

Chair Aila asked Apana what it was that she went to gather, she told him maile, that there aren't many places to find maile.

Tom Pierce began his presentation by asking everyone to take a virtual walk on the Haleakala Trail. He showed pictures from someone on a guided hike, explaining guided hikes only go in certain areas, and highlighted different points along the hike. Pierce also explained that there are various parts of the trail that are not included in the guided hike.

Pierce was present representing Public Access Trails Hawaii, a 501C3 nonprofit that was established to build community ties by connecting people and places through trails, urban paths, and bikeways. Pierce expressed how precious and significant this trail was, being one of two routes on the island of Maui. He showed different maps of the trail to support how significant Haleakala was dating back as far as 1885. In summary Pierce gave the background and history of the trail. He noted that Haleakala ranch had always been run by the Baldwin family Mr. Baldwin had asked the kingdom to provide public money for public land because he believed Haleakala was for the public benefit, not just for tourist. Pierce questioned how the Board can make this decision by not knowing if the state even owns the land. Pierce is asking not to do anything until an AIS is done, until the Board is presented with sufficient information to make a good informed decision. Public Access Trails Hawaii feels like the DLNR was pushed and put under pressure to make a decision when they need more time. He then addressed information from the staff report that was incorrect including where people live, and the fact that DLNR claims to have no money. Yet, in the staff report the department is claiming to make all these changes and improvements to Haleakala. Pierce told the Board if they vote yes on #4, the state and the public are going to be losers, the ranch will be the winners. He then compared making rushed decision in this case to the Superferry that failed and was unsuccessful due to a rushed decision. Pierce also addressed that fact that this trail has been around for hundreds and hundreds of years. They feel like something that historic should not be given up. Public Access Trails put together a petition, and as of this morning, 1-10-2014, they generated over 2,300 signatures. Pierce read various comments from different people who are in opposition.

David Brown, a member of the Sierra Club from Maui, congratulated Haleakala Ranch for 125 years of service and for its community involvement. Brown stated that in circuit court, they say the trail does not exist. He expressed that he felt like Haleakala ranch may have wrote the staff submittal due to the over use of the statement "alleged trail". Chairman Aila assured Brown that Haleakala ranch did not write the staff submittal. Brown submitted that Haleakala ranch has assets from 100-200 million dollars, most of which come from the mainland. He expressed how important access to the trail is, giving an example of how ridiculous he feels the process is to have to call and ask to be on a list to go for a hike, and to have to wait for days for a call back with a confirmation letting you know when your scheduled hike is set. Brown said that this access and procedure is too difficult, and is not pono, but evil.

Hope Kallai stated that she submitted written testimony and summarized it as her testimony. Kallai asked the Board not to approve this item. She said that the Waiopai access appears to be beneficial and should be considered independently. Kallai said the trail is unique, irreplaceable, and priceless. She said that a cultural and economic assessment needs to be made before any decision, referring to HRS 351. She said that the Board needs to consider the public interest. Kallai commented that the trail list is not accommodating and said that cultural practitioners and others who want to use the trail should not have to wait. She said that if she were going to use the trail to make ceremonies, her path would be up not down. These guided hikes are only downward, and an upward jeep trail. Kallai said that she doubts that the employees at Haleakala ranch have been given cultural sensitivity training. She said that the Board needs to consult other agencies and consider path rights. Kallai also addressed other trails, especially the Moloaa Bay Coastal Trail and the problems they have, and the state failing to recognize the public trust rights of lateral transit.

Kallai then read a letter that she and her husband wrote in opposition and ended by saying “who has the genealogy to undo the last act of our last queen”.

Michael Gibson, the attorney for Haleakala ranch said he was there to answer any legal matters. Gibson addressed various concerns that came up beginning with the description of the bridal trail. In the complaint the trail was built in 1905, not used by ancient Hawaiians to access the summit of Haleakala. The trail they are talking about ends at the national park boundary, not at the summit. Gibson also emphasized that Haleakala ranch is not trying to rush or avoid legislative, environmental, and cultural or any other type of review or assessment. Gibson stated that they are trying to avoid an unnecessary trial in March and would like to be able to go back to the judge and say that the state and the ranch are negotiating in good faith.

A representative from the Native Hawaiian Legal Corporation testified addressing different issues, the first one being that this Board cannot make any decisions in regards to the 4th item; regarding the fate of the trail or any agreement until an EA or AIS is completed. He said the Board needs the information these studies contain so that a decision can be made. He referred to different cases from the past. He told the Board/ DLNR that if they want to open another trail then they should go the Legacy Lands Program, and not give up public rights to public land. NHLC explained that by going through with this, they will be giving up their rights to historic lands.

Everett Ota the lead compliance specialist with the Office of Hawaiian Affairs (OHA) provided testimony supporting the State Historic Preservation Division (SHPD) and Division of Forestry and Wildlife (DOFAW) recommendations for environmental review. They have included evidence in their testimony that supports the contention that Haleakala trail is a historic property and traditionally used by native Hawaiians. OHA believes that an environmental review and AIS would provide a better picture of the broad management responsibilities that would follow from this land management exchange. They favor retaining public ownership of the Haleakala trail, keeping the trail in the public domain would allow the public better access the trail. Ota said that OHA has concerns with the use of the exchange statue under the proposed land exchange in the DLNR submittal.

Julia Morgan executive director for Kahea, an environmental alliance stated that they support the oral testimony provided so far, she also submitted written testimony, and summarized certain points. Kahea is concerned with land swaps and the potential for the loss of cultural and environmental resources, including gathering. They are concerned with the proposal that the Chairman enter into negotiations with Halealaka ranch, and request the results of the reviews be included in those negotiations.

Member Pacheco asked staff to clarify that in regards to talk about a land swap, this wouldn't be a land swap; this would be renegotiation of a trail, if the department has ownership of the trail, or an easement.

Lisa Hadway confirmed that was correct as it was written, she introduced Scott Fretz, the DOFAW Maui branch manager. Hadway said they could also consider other alternatives aside from a perpetual easement.

Scott Fretz stated that under statute 17150, an appraisal and equal value is required, although an easement is what is being considered.

Pacheco said that he wonders how someone would value cultural aspects in terms of money. He mentioned that thorough out the submittal, the public access demand has been met though the current MOU. Pacheco asked if the intention of the department is to revise the MOA as a condition of the land exchange to provide a level public access that is consistent with public demand.

Fretz said that is the implication, and if there is such a land exchange, the department would make sure people had access. Fretz said the MOA is done, the Board approved it, but if there was a land exchange then they would have an opportunity to revisit and potentially change it and change the way people are able to access the trail.

Bill Wynhoff, supervising attorney general commented that the MOA right now says a minimum of two hikes a year. The practice has been whenever people sign up. The intent is to document the fact that it's not just a minimum of two hikes but will be consonant with demand.

Member David Goode asked Fretz if he had been on both trails, Fretz had. Goode said that on the Waiopai there was discussion and testimony on using the state parcels to gain access. Goode asked if this site was a good potential access way.

Fretz said, yes that it's one of the best because the road goes all the way up to the reserve. They have been considering other options for years and if any of those opportunities open up, then they will pursue them. The potential issues are what the lease allows, and Fretz isn't sure if it allows public access. It's not clear that there is a feasible road that goes all the way up to the reserves. Fretz hasn't been on the road, but staff has.

Member Pacheco was confused and thought Fretz just said there were roads there.

Fretz clarified that there is already a road on the Haleakala ranch map, but he's not sure about the state leased land.

Member Pacheco made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded. The motion was passed unanimously.

EXECUTIVE SECESSION 11:20AM
RECONVENE 11:59AM

Chair Aila announced that Member Gon recused himself at the end of the last secession, before Executive Secession because he remembered that he recused himself for previous discussions with the MOU.

Supervising attorney general Bill Wynhoff added that when they went into the Executive Secession Member Sam Gon immediately said, he thought he needed to recuse himself, so he did and did not participate in Executive Secession.

Member Kishinami had questions for staff and Mr. Gibson. Kishinami asked if there were any suggestions for amendment in regards to item #4.

Gibson said that they are not asking the board to make a decision on a settlement; they are asking to authorize staffs to go through with the studies, the appraisals and things that need to be done. They are also asking someone to be the point person in the discussions that will follow, which would be the Chairman or delegated to staff. Gibson said that he would prefer to leave item #4 in, that the main thing he wants to be able to do is to go to a hearing on the 15th and tell the judge that they are in the process of serious negotiations to settle this case with the state and the ranch. He would also like to ask the judge to postpone that trial to see if there are good reasons to have a settlement. They would like to reach a settlement and believe they can.

Chair Aila asked if the approval of items #1 and #2 would be sufficient enough to indicate that the department is considering the opportunities that are presented in settlement discussion.

Gibson is not sure, but said that it's either the state or the ranch that owns it. If they go there and show the judge that the state and the ranch are motivated to do this, then he believes the judge would try to continue, meaning to postpone to a later date. Gibson said this process is going to take a long time.

Member Goode asked Lisa Hadway about item #3 if staff had a chance to look at the capability of PATH.

Hadway said she would like to hold off on that option, and would like to look at other alternatives. She believes that partnership with the land owner and nonprofits are feasible in the future and if there is resolution or they can come to an agreement, the state is always looking for

opportunities to partner. Hadway said that with the budget situation there is limited ability to be able to provide opportunity to staff but if they need to then they will have to look for additional funds elsewhere, such as grants.

There was discussion about litigating a third party.

Chair Aila asked Hadway if the Board should follow through with staff recommendations and not approve the portion of item #3.

Hadway confirmed that it doesn't preclude considering later on.

Member Pacheco said that there's no way to entertain that right now over a property that the state may or may not own.

Tom Pierce added that PATH is happy to table that issue and they are asking that it be part of the alternative.

Member Pacheco called Pierce or Brown pertaining to item #4. He noted that the state can potentially get true public access across the property through this agreement, in addition to getting an easement. Pacheco doesn't want to close the door on opportunity at this point but the way the language is written, he cannot support it. He is doesn't understand why the department should go through with all this if it's not even proven who owns the land. Pacheco agrees with the arguments Pierce and Brown submitted. Pacheco asked what it would take language wise to move these two things forward and to have discussions.

Brown said that nothing needs to be done to have discussions, the thing they can't do is make a decision before they have the information. Brown said the way #4 is written, it's worded as if a decision has already been made, which the courts have condemned. He said discussions shouldn't be held until the information has been gathered.

Pacheco asked why the department should go through with getting these documents done if we don't know who owns the land.

Pierce said that this is before the Board today because the ranch has asked for a continuance of the trial. He said that Haleakala ranch never reached out to PATH to be a participant in anything. Pierce said today the Board can say they're interested in passing #3 and #4 and want to go through the assessment process. He is going to ask the judge to go forward no matter what decision is made. They would rather not be challenging the state on EA issues.

Member Goode made a motion to accept staff's recommendations on items #1, #2 and #3. Member Kishinami seconded.

Goode added that more info with the EA and AIS is needed.

Member Pacheco said that the issue for him is the ownership and that needs to be answered one way or another. At some point the court is going to have to decide to who owns the land. He said

if we lose this case then the access is going to be an issue, and all the money spent to do the EA and AIS will be a waste. If we win the case then it's back to square one. For Pacheco he would rather let the court play out.

Goode said that timing is going to take a long time.

Pacheco said that come July it may be a new Board and he would hate to spend all this money just to find out that the department doesn't own it. He thinks the quickest way is to let the courts decide.

Chair pointed out that this it's evident that based on this discussion these decisions are not pre decisional.

Pacheco said he would support.

Unanimously approved as submitted items #1, #2, and #3 (Goode, Kishinami)

Chair Aila announced that Items D-4, D-17, I-1, and J-1 are withdrawn.

Item D-16 Consent to Lease of Land under Governor's Executive Order No. 996 to Hawaiian Humane Society, Kamoiliili, Honolulu, Oahu, TMK: (1) 2-8-024:037.

Russell Tsuji-Land Division explained Item D-16 that this lease is asking for consent to enter into a new 65 year term. Tsuji understands that the longer terms asks for fundraisers and improvements on the site. Representatives from the Hawaiian Humane Society were present.

Unanimously approved as submitted (Gon, Gomes)

It was noted that all DOBOR rules were withdrawn, including J-2.

Item D-11 Withdraw from Governor's Executive Order No. 2704; Approval-In-Principle for Direct Issuance of Lease to University of Hawaii for Educational Purposes; Issuance of Immediate Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:portions of 006 and 334.

Tsuji gave background on Item D-11 explaining the process and that it's to basically clean up the lease formally.

Unanimously approved as submitted (Kishinami, Gon)

Item D-18 Approval in Principle for Issuance of Direct Lease to Hakipu'u Learning Center for Charter School Purposes; Issuance of Right-of-Entry for Site Investigation Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-023:001.

Tsuji presented Item D-18 with nothing to add.

Calvin Ho the applicant thanked the Board and staff.

Member Gon commented that he is very happy to see the department working with a well-established learning center.

Unanimously approved as submitted (Gon, Kishinami)

Item D-3 Forfeiture of General Lease No. 3269, Country Club-Hawaii, Inc., Trustee under that Certain Trust Agreement dated September 19, 1987, Lessee, and Issuance of a Month-to-month Revocable Permit to the Association of Apartment Owners of Country Club Hawaii, Inc., Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-05:20.

Tsuji explained that since the time that the submittal was submitted the applicant went in and made a \$34,000 payment. As of right now they have time to cure the last \$10,000. Tsuji said that there was a dispute among the owners and they stopped paying rent. The payment is coming from the lessee even though the association is supposed to pay it, the association has committed to paying the balance.

Kevin Aoki was present on behalf of the Association of Apartment Owners of Country Club Hawaii, Inc. Aoki said that they are trying to work with the association and if the association cannot, then they are willing to satisfy the terms of the lease.

Tsuji asked that D-3 be withdrawn.

Aoki added that the management has changed and the association is separated with people claiming to be the Board and the original Board which is creating confusion. He explained that there are two lawsuits.

Member Gomes commented moving forward with the new group, there shouldn't be any more problems.

Richard Emery president of Hawaii First, the nominee for the receiver explained that his priority is to get things sorted out with the judge as to who should be getting paid. Carl thinks that a plan to move forward should be in play within the next 30 days.

Dr. Carl Oguss testified that he was the president of the Board of directors at the Country Club. He said that he was the president that has been the president since June. Dr. Oguss spoke about the Board and their budget.

Chair Aila asked Dr. Oguss to tie what he's saying into what is presented before us, and reminded him that the item is being withdrawn.

Dr. Oguss said that he wanted the DLNR Board to know that his Board submitted an application back in August to gain this lease. He said that he is suggesting that Chair and the Board hear from his Board and the membership.

Chair Aila said that that's not the question, that the question is who is going to pay. Dr. Oguss confirmed he understood and said that he and his Board were the owners of that corporation.

Chair Aila said the action is whether or not to pull the lease. Dr. Oguss then expressed his concern that he had not heard back from staff after submitting his application. He wants to know how to get his application in motion.

Chair Aila said anyone can submit an application and asked staff to send a letter to Dr. Oguss acknowledging that this application was received. Chair also told Dr. Oguss that this is not the appropriate time to discuss this and the appropriate time would be when the department goes through the process at Banyan Drive.

Pacheco explained the processes to Dr. Oguss and said that a revocable permit is probably going to be granted while everyone works through what the plan will be and while that's going on, and then the public or people that have interest can put in their interest. Pacheco said that you can't just buy into a new lease.

Chair explained that the Board gets to decide the disposition.

Tsuji said that auction is the preferred route and said that there was already a contract for a term. Dr. Oguss said he had nothing against withdrawing the item and said that they just wanted their application reviewed. He also asked if there would ever be an opportunity to give input on the Banyan Drive task force.

Chair Aila acknowledged there would be opportunities for input and said that the Board is not going to acknowledge a dispute.

Unanimously approved to withdraw (Pacheco, Gomes)

Item D-15 Consent to Sublease General Lease No. S-5805, Waikiki Community Center, Lessee, to Uhane Pohaku Na Moku O Hawaii, Inc., Sublessee, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-025:008.

Tsuji reviewed Item D-15.

Member Gomes asked Tsuji to look at the term of the lease dated 6/1/2013 to 12/31/2013 and asked if this was a typo.

Tsuji said that it should read not to exceed the term of the sublease not to exceed 4/1/2017.

The Board added to Recommendation 2, a subparagraph D to read:

“D. The term of the sublease shall not exceed April 1, 2017.”

Approved as amended (Pacheco, Kishinami)

- Item D-1** Issuance of Right-of-Entry to the United States Department of Agriculture Forest Service, Institute of Pacific Islands Forestry, for the Purpose of Conducting Research on Hawaiian Forest Recovery After Cataclysmic, Man-Made Disturbance and to Exterminate All Invasive Albizia Trees Within the Research Area, Kapaahu, Puna, Hawaii, Tax Map Key: (3) 1-2-008:001 portion.
- Item D-2** Authorization to Contract Qualified Professionals to Provide Technical and Advisory Services Relating to Design and Construction of Renovations of and Improvements to the Naniloa Hilo Hotel (fka Naniloa Volcanoes Resort) under General Lease No. S-5844, Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-1:12, 2-1-5:13, 16, 17, 27, 32 & 46.
- Item D-5** After-the-Fact Approval of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on New Year's Eve, 2013, Ouli, South Kohala, Hawaii, Tax Map Key: (3) 6-2-02: seaward.
- Item D-6** Issuance of Right-of-Entry Permit to Mauna Kea Resort LLC, doing business as Hapuna Beach Prince Hotel, for Emergency Transportation and Beach Cleaning Purposes on Government Lands Seaward of the Hapuna Beach Prince Hotel Property, Ouli, South Kohala, Hawaii, Tax Map Key: (3) 6-6-002:seaward of parcel 037.
- Item D-7** Issuance of a Right-of-Entry Permit to the County of Hawaii, Department of Public Works for Staging Area and Roadway Improvement Purposes on Portions of Unencumbered State Lands located at Kalaoa, North Kona, Hawaii, Tax Map Key: (3)7-3-010:006, 042 & 045.
- Item D-8** Issuance of Right-of-Entry Permit to the Napili Bay and Beach Foundation, Inc. for Stream Clean Up and Restoration at Napili, Lahaina, Maui, Tax Map Key: (2) 4-3-002:023.
- Item D-9** Issuance of Right-of-Entry Permit to MC&A Inc. to Conduct a Beach Activity Event on January 28, 2014, at Lahaina, Maui, Hawaii: Tax Map Key:(2) 4-6-002: seaward of 007.
- Item D-10** Rescind the Following Prior Board Actions of:
- June 28, 2013, Item D-9, Approved as Amended, "Impose a \$1,000.00 Fine and \$420.00 in Administrative Costs Against Island Adventure Tours, LLC, dba Kelii's Kayak Tours, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.";

August 9, 2013, Item D-11, Approved as Amended, “Request that the Board Grant Petition for Contested Case Hearing by Island Adventure Tours, LLC, dba Kelii’s Kayak Tours for a Contested Case Hearing as to Enforcement Action Against Island Adventure Tours, LLC, dba Kelii’s Kayak Tours Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer”; and

Withdrawal of Item D-7, approved on August 23, 2013, Request that the Board Grant Petition for Contested Case Hearing by KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures, for a Contested Case Hearing as to Enforcement Action Against KRS Investments LLC, dba South Pacific Kayaks & Outfitters, and Tiki Team Adventures Involving Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, Tax Map Key: (2) 4-8-003:001 and for Authorization to Select and Appoint a Hearing Officer.

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board’s powers, duties, privileges, immunities and liabilities.

Item D-12 Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. for Beach Activities Purposes on January 15, 2014, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:Portion of 021.

Item D-13 Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC for Beach Activities Purposes on January 23, 2014, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:Portion of 021.

Item D-14 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on January 23, 2014, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).

Item D-19 Amend Prior Board Action of August 9, 2013, Item D-16 to Seek Board’s Authorization to Execute the Estoppel Certificate Relating to the Consent to Modification of Mortgage and Extension of Lease Term, General Lease No. S-4644, Vallejo Venture 99 LLC, Lessee, Kalauao, Ewa, Oahu, Tax Map Key: (1) 9-8-013:014 (ODLO) Barry

Item D-20 Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.

Unanimously approved as submitted (Pacheco, Gomes)

Item D-21 Report on the Status of General Lease No. S-5844 (site of the former Naniloa Volcanoes Resort), Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-1:12, 2-1-5:13, 16, 17, 27, 32 & 46.

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

NO STAFF SUBMITTAL

Tsuji explained that he was going to report on the discussion from the meeting, but he hasn't met with the applicant yet.

Item B-1 Request Approval to Seek The Governor's Approval To Indemnify The Kauai Police Department And The County Of Kauai For The Use Of The Kauai Police Department Range.

Item B-2 Request Approval To Seek The Governor's Approval To Indemnify The City And County Of Honolulu Department Of Parks And Recreation For The Use Of The Koko Head Shooting Complex For Firearms Training.

Curt Smite with DOCARE administration had no changes.

Unanimously approved as submitted (Gon, Gomes)

Item E-1 Request The Issuance Of Administrative And Civil Penalties Of \$2,500 Pursuant To Chapter 184, Hawaii Revised Statutes To Alex Aquino For Violation Of Chapter 13-146 Hawaii Administrative Rules At Kealakekua Bay State Historical Park, South Kona, Hawaii.

Written testimony was submitted by Anne Irene Wilcox Young, Mark Ross and Sandi Ross.

Curt Cottrell representing State Parks said that this is the first time State Parks came to the Board in regards to civil and administrative penalties. He noted that this has been a problematic location. Cottrell explained that they did an Executive Order of the bay and vessel access to the water would become permit driven. For years there has been illegal use of kayaks and State Parks came up with a permit process where every special use permit holder has the ability to transit the water, but cannot use the wharf and transit unless they are the 3 approved revocable permittees. Under the new policy State Parks knows who has the 3 revocable permits. Staff is doing this to set precedent and to make a point. Staff is recommending a \$2,500 fine for first offence, also the 33 hours DOCARE spent on a sting operation. The cost of time including the administrative costs staff is asking for is \$735.46. Once this is approved, Alex Aquino's permit can then be pulled.

Member Gon asked if this was one of several that will come before the Board. Cottrell confirmed and said that they are working with the county.

Member Kishinami asked how Cottrell calculated the administrative fees and Cottrell explained that its 33 hours times the hourly rate of the DOCARE officers. State Parks Administrator Dan Quinn added that the administrative costs could include gas tor trucks, etc.

Member Goode said he finds it odd that Parks is asking for administrative costs for a sting operation and asked if we can legally ask for the max because we want to make statement. Goode asked what the reasons were why we are doing this. Member Pacheco explained that this is an ongoing problem that needs to be stopped.

Deputy Attorney General Cindy Young pointed out that the submittal says \$2,500 and doesn't say what the administrative fees are. Member Gon said that the Board has the right to amend that.

Member Pacheco made a motion to approve staff recommendation which includes the administrative fee of \$735.46.

Unanimously approved as submitted (Pacheco, Gomes)
The Board approved the additional administrative cost of \$735.46.

There being no further business, Chairman William Aila adjourned the meeting at 1:28pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Kuulei Moses
Land Board Secretary

Approved for submittal:



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