

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

DATE: FRIDAY, FEBRUARY 14, 2014  
TIME: 10:30 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 10:40 a.m. The following were in attendance:

**MEMBERS**

William J. Aila, Jr.  
David Goode  
James Gomes

Dr. Sam Gon  
Reed Kishinami

**STAFF**

Maria Carnevale/DAR  
Russell Tsuji/LAND  
Barry Cheung/LAND  
Ed Underwood/DOBOR

Sam Lemmo/OCCL  
Dan Quinn/PARKS  
Kevin Moore/LAND  
Lisa Hadway/DOFAW

**OTHER**

Ross Smith/DOT-AIR: M-1-M-6  
Jacque Scheibel/ K-1  
Natalie Hiu/D-9  
Mr. Larson/D-9  
Valarie Monson/E-1  
Brian Yesland/D-7  
George Lindsey/J-2  
Elijah Yep/J-2  
Jerry Gibson/ D-12  
Don Pascual/D-12

Abel Lui/F-1,K-1,D-9,D-15/K-2  
Paul Mutsunie/ K-1  
Eric Masutomi/D-9  
Boogie Kahilihiwa/E-1  
Dr. Patty Isaacs/D-18  
Katriona Morgan/K-2  
Michael Shehan/J-2  
Ivan Lui-Kwan/D-12  
Rick Egged/D-12

**Item A-1 Approval of December 13, 2013 Minutes**

**Item A-2 Approval of January 10, 2014 Minutes**

Chair Aila differed Item A-1 and A-2.

- Item M-1 Issuance of a Revocable Permit; Jefts, Larry G.; Honolulu International Airport; Tax Map Key: (1) 1-1-76:21 (Portion).**
- Item M-2 Issuance of a Revocable Permit; Kahala Surf Corporation; Honolulu International Airport; Tax Map Key: (1) 1-1-72:11.**
- Item M-3 Issuance of a Revocable Permit; Kahala Surf Corporation; Honolulu International Airport; Tax Map Key: (1) 1-1-72:69 (Portion).**
- Item M-4 Issuance of a Revocable Permit; Hawaii Island Air, Inc. DBA Island Air; Commuter Terminal, Honolulu International Airport; TMK: (1) 1-1-003:001 (Portion).**
- Item M-5 Issuance of a Revocable Permit to; Oxford Electronics, Inc.; DBA Oxford Airport Technical Services; Honolulu International Airport; TMK: (1) 1-1-003:001 (Portion).**
- Item M-6 Issuance of a Revocable Permit; Trans Executive Airlines of Hawaii, Inc. DBA Trans Air; Honolulu International Airport; Tax Map Key: (1) 1-1-72:69 (Portion).**

Ross Smith representing DOT/Airports reviewed Items M-1 through M-6 and had no changes.

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

- Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Mr. Eric King, Schmidt Ocean Institute, for Access to State Waters to Conduct Shipboard Support Activities.**

Maria Carnevale representing the Division of Aquatic Resources (DAR) presented item F-1. This is a permit for a vessel platform, the activity on the ship will come before the Board in two weeks. The applicant and the applicant for the activities that will take place on the ship were both present to answer questions.

Abel Lui testified that the water belonged to the people that lived there. Chair Aila told Lui that there is no one living in Papahānaumokuākea right now. Lui testified in opposition of this scientific study.

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

**Item K-1 Conservation District Use Application (CDUA) MA-3689 for After the Fact Seawall and Stairs by Henry and Diane Schweitzer Located at Keonenui Beach, 'Alaeloa, Island of Maui, Makai of Tax Map Key: (2) 4-3-015:001.**

Written testimony was submitted by Jacqueline Scheibel.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) provided background. The seawall was built at least 30 years ago. In September 2012 the Schweitzer's were fined for a non-conforming structure and told they could either remove the structure or apply for an after-the-fact permit. They chose to file the after-the-fact permit. The staff assessment is that allowing the seawall to remain will not significantly increase erosion caused by existing seawalls and sea level rise. Lemmo recommended that this structure remains pending an easement from Land Division.

Member Gomes asked about the approval of the removal of the stairs. Lemmo explained that staff is not asking them to remove the stairs; the stairs would be approved with the seawall structure; subject to an easement. Member Gomes asked how this would be rectified moving forward. Lemmo explained that OCCL is facilitating a process. Member Gomes expressed how uncomfortable he was with this.

Chair Aila said that part of the issue was that the state is still trying to come up with a policy and a direction to proceed in terms of how to deal with this and other encroachments. Chair Aila explained that more of these will be coming up and this is the department's attempt at making things correct. Chair Aila announced that since the shoreline issues in Hawaii are complex, OCCL will be presenting an informational briefing to the Board very soon.

Member Gon noted that Lemmo has been one of the most consistent voices in the approach to policies on shoreline. Member Gon asked Lemmo if as a result of this, there is now a clearer route to who has jurisdiction in situations like this. Lemmo agreed that this case clarified things between Maui County and DLNR; but it is a work in progress.

Abel Lui testified that this was a problem and that the Board needs to consider whose land this is. Chair Aila noted that this is not an access issue.

Jacque Scheibel submitted her testimony to the Board members. Sheibel was present on behalf of the Kahana Sunset Owner's Association who are neighbors of the Schweitzer parcel. Sheibel read her testimony highlighting that they do not agree with the staff submittal language on page 6:

It is our opinion that the primary threat to the beach at Keonenui Ba is the inappropriate siting of some of the Kahana Sunset Condominium facilities (next Door) and accelerated sea level rise.

The Kahana Sunset Owner's Association believes that flanking and damage to the Kahana Sunset seawall is likely to occur if the Schweitzer stairs and wall are removed. They do not oppose the Schweitzer application, they just ask that the Board delete or correct the statement in the staff submittal on page 6.

Member Goode clarified that Scheibel's main request is that Kahana Sunset disagrees with some aspects of the staff report, but they support the application. Scheibel confirmed.

Paul Mutsunie representing the Schweitzes (Mrs. Schweitzer was present) began his testimony by giving some history of the Schweitzer's and their property beginning with the purchase of the property in 1979/1980. The wall was first noticed in 2002/03 but the county had no record of a permit and believed it was built in the setback. The state argued that the wall was on state land. After a survey was complete, it proved that the state was correct. The county then said either remove it or get a permit. The Board also said to either get an environmental assessment, a permit or remove it. The Schweitzers are serious about removing the wall due to their age; however it would tremendously impact their neighbors; so they decided to go ahead and apply for the permit. If this is approved today, they still need to get an easement and an appraisal.

Member Gon asked if Mutsunie and the Schweitzers were okay with staff's recommendations.

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

**Item D-9 Amend Prior Board Action of August 26, 2011, Item D-8 by Revising the Performance Bond Condition and Approving the Easement Document Regarding the Grant of Perpetual, Non-Exclusive Easement to Honolulu Seawater Air Conditioning, LLC for Seawater Air Conditioning Waterlines Purposes on State Submerged Lands off Kaka'ako, Honolulu, O'ahu, Tax Map Key: (1) 2-1-060:Seaward of 008.**

Russell Tsuji, Administrator of Land Division told the Board that this item is coming back for an amendment to the standard form easement document. Changes were made primarily to the performance bond section. Due to the nature of this project Land Division wants to make sure there is a fund in case the state needs to remove the pipe should Sea Water Air default at any time. Tsuji explained that they have negotiated payment over time; the department feels like if this goes forward it's more likely that the department will need the funds towards the end of the project verses the early stages.

Member Gomes asked if the expense was per year. Tsuji confirmed noting that the easement is perpetual, by a certain year like the 25<sup>th</sup> year there would be a fund of money from that point on.

Member Kishinami asked what kinds of issues were occurring. Tsuji responded that the issue that was brought to staff's attention by a Natural Energy Laboratory of Hawaii Authority (NELHA) issue. NELHA took over their Kona facility from another agency which had installed piping before the 1980s. These old pipes have been moving around and causing damage to the coral. The Natural Energy lab under the current lease took on the responsibility of removing the pipe, but had to seek funding to resolve the problem. The Land Division, through this amendment is seeking to ensure that funding is available should a similar situation occur.

Member Kishinami questioned the bond because it is more than the department is receiving in lease rent. Tsuji explained that the department is giving them the option to fund it by cash and this easement is not a revenue generator.

Natalie Hiu an attorney representing Honolulu Seawater introduced herself, along with Eric Masutomi, President/CEO of Honolulu Seawater, and their engineer, Mr. Larson.

Masutomi explained that if for some reason or an act of God, something happens to the pipe and it becomes dysfunctional the state would like to have sufficient funds available to cure the problem, in the event of abandonment.

Hiu confirmed, adding that the easement document obligates Honolulu Seawater to maintain, repair and take care of the lines and all installations for the duration of the easement, which is perpetual. Staff was concerned that should something happen with Honolulu Seawater that they have a way to correct any problems in the future.

Member Gon asked if they agreed with staff recommendations. Masutomi commented that they weren't pleased with staff's recommendations, but they have no other choice; they need the easement.

Member Gon then asked Masutomi if he was able characterize any kind of maintenance. Masutomi said that the pipeline would require periodic inspection and necessary repair. Chief engineer of Honolulu Seawater, Mr. Larson explained maintenance procedures.

Member Gon asked staff if negotiations can be made at the end of the first decade or at key points along the history of this project. Tsuji said that standards do give the ability to remove from the bond if in compliance. Hiu said that the easement agreement does allow the Board to waive or modify bond requirements.

Abel Lui testified asking how big the pipes were and noticed that the Board needs to consider who lives down there.

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

**Item E-1 Amend Prior Board Action of July 26, 2013, Item E-1 Issuance of Direct Lease to Ka 'Ohana O Kalaupapa. The Purpose of this Amendment is to Change the Board's Approval of the Lease to the Board's Approval in Principle of the Lease, Kalaupapa National Historic Park, Kalawao, Moloka'i, Tax Map Key: (2) 6-1-001: 002 (por.).**

Written testimony was submitted by Charmaine Woodward, Boogie Kahilihiwa, Gloria Lutu Marks, and Valarie Monson.

Dan Quinn Administrator of State Parks reviewed item E-1 and explained that after discussion with the Attorney General's Office State Parks determined that they needed to return to the

Board and ask that the Board change the “approval” to “approval in principal”. This is related to the fact that something new is being built on the site and State Parks needs to run an assessment prior to the actual issuance of the lease. There is no change to the substance of the approval the Board previously granted.

Member Gon clarified that in order for the Department/Board to be compliant with statute the Board needs to approve the lease after the required Environmental Assessment (EA). Quinn confirmed.

Member Goode questioned how this was missed. Chair Aila said they believed this project qualified for an exemption from an EA. However after further review the Attorney General’s Office advised that the EA be done, which is why this item is before the board for this amendment.

Member Goode then asked if the lease term would change. Quinn said there would be no change to the 65 year lease period.

Boogie Kahilihiwa President of Ka’Ohana O Kalaupapa thanked the Board for approving the 65 year lease last July. Ka’Ohana O Kalaupapa wants to be in compliance with the law and agrees that with the proposed amendment. They also hope that the Land Board will emphasize the importance of getting the Memorial built in a timely basis, while there is still a living community at Kalaupapa. Kahilihiwa noted that Ka ‘Ohana o Kalaupapa has developed agreements to better work with the National Park Service so the project can move forward in a timely manner.

Valarie Monson Coordinator of Ka ‘Ohana O Kalaupapa began her testimony by reminding everyone how grateful they were that last summer the Board gave 65 year approval to the Ohana for about 5.9 acres on the peninsula to construct the Kalaupapa memorial. Ka’Ohana O Kalaupapa agrees with the staff submittal, but would like an additional amendment. They want the submittal to read: “principle and approval of a direct lease for 65-years”. She noted that 65 years is not mentioned anywhere in this submittal, and the submittal last July still says 20 years. They want to make sure that any new people/staff will know that this approval is for 65 years. They are also hoping if while completing 343 if it would be possible to work with staff and the AGs office at the same time on the negotiations and the general terms and conditions of the lease so that when they come back they can provide that document to the Board at the same time.

Member Gon asked if the minutes from July 2013 reflected that it was a 65 year term lease that the Board concluded on. Staff confirmed that was correct.

Member Goode asked the Deputy AG for clarification. Deputy Attorney General Linda Chow said that she believed the amendment can be done and the language by the applicant is okay; “approval in principle of a 65 year lease”.

Monson agreed that the language was okay and asked if it was okay if the Ohana starts working on the general terms while they are working on 343. Chair Aila said that staff has indicated that is fine.

Member Gon thanked Ka ‘Ohana O Kalaupapa for coming in person to testify.

Abel Lui testified stating that the coast guard needed to be notified because they control the water and they need to aware of what is going on.

Member Goode made a motion to amend the language to “approval and principal of a 65 year lease” as amended. Member Gomes seconded.

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

**Item D-16 Cancellation of Governor’s Executive Order No. 172 and 784 and Reset Aside to Department of Human Services for Hawaii Youth Correctional Facility, Kailua, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-2-006:002 and (1) 4-2-009:006.**

Russell Tsuji, Land Division Administrator reviewed item D-16, a representative from Hawaii Youth Correctional Facility was present to answer questions.

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

**Item D-8 Grant of Perpetual, Non-Exclusive Easement for Cable Communication Purposes to Oceanic Time Warner Cable LLC: Issuance of Immediate Construction and Management Right of Entry Permit, Honolulu, O‘ahu, Tax Map Key (1) 1-7-042:portion of 002.**

Tsuji presented Item D-8. An Oceanic Time Warner representative was present to answer questions.

The representative said they have no plans of serving anyone other than Lanikila Elementary school, but will notify the department if they change their plans.

Tsuji asked the Board if they would like to make a special provision on the item. Chair said yes, if Tsuji chooses to do so. Tsuji confirmed the provision.

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

**The Board amended the “Consideration” section of the submittal to clarify that the easement will be issued at gratis as long as the communication cable is devoted to the exclusive use of the Department of Education. If, in the future, the cable is put to public use, then staff may return to the Board for reconsideration of the gratis conveyance.**

**Item D-19 Consent to Assignment of Membership Interests Regarding Grant of Easements No. S-4606 and S-5595 between Tesoro Corporation and Hawaii Pacific Energy, LLC, Honouliuli and ‘Aiea, ‘Ewa, O‘ahu, Tax Map Key:(1) 9-1-026:Seaward of 026; 9-9-003:035; 9-9-004:003 and 024; 9-9-012:005, 046 and 047.**

Tsuji had nothing to add, other than this item is coming back for consent; this is just an entity change.

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

**Item D-15 Grant of Term, Non-Exclusive Easement to Thomas C. Young and Sandra G. Young for Concrete Pad, Ladder, Steps, and Rock Walls Purposes; Assess Administrative Cost of \$500 and Fine of \$500, Niu, Honolulu, O'ahu, Tax Map Key: (1) 3-7-002:Seaward of 045.**

Tsuji reviewed item D-15.

Member Gomes questioned why the encroachment was only \$500. Tsuji said that it was probably because the applicants were cooperative with working with staff. Member Gomes asked Tsuji if the fines and employee hours were more than the fines for this item. Tsuji said that they were only assessing from the point that it got to Land Division for an easement, not from the crew going out. Barry Cheung, Land Agent added that the division's bond policy is anything less than 100 sq. ft. encroachment no fine is recommended, anything above 100 sq. ft. there would be a \$500 fine.

Member Gomes asked that the policy be cited in the submittal for reference.

Abel Lui testified for the people that live on the islands and the future.

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

**Item D-18 Issuance of Direct Lease to Ka'ala Farm, Inc. and Ho'omau Ke Ola for Educational, Cultural, Agricultural, and Workforce Development Program and Activities Purposes, Waia'nae, O'ahu, Tax Map Key: (1) 8-5-006:004.**

Kevin Moore representing Land Division presented item D-18 with staff's recommendation to grant the lease. The applicant was present with nothing to add; they approve staff's recommendations.

Member Gomes asked if there was a game management plan for hunting or is hunting not allowed in that area. Chair Aila being familiar with the area said that this area was dry and there was nothing that would entice the department to create a game management area makai of the forestry line.

Member Gomes then asked about cattle proof fencing. Chair Aila explained that this land was under the Department of Agriculture and they leased it to someone who wasn't doing a good job of keeping their cattle fenced and out of the forest, so DLNR went to the Department of Agriculture and asked that that land be removed because they weren't managing it well. Chair Aila said that of the 1,000 acres, 900 acres are rich in cultural sites, rich in agriculture on the island of Oahu. There are no cattle there now. Chair Aila added that Department of Hawaiian Home Lands has about 90 acres of that land. In regards to farming, the plan is to be as organic as possible, with the plan to add an edible fire break.



Dr. Patty Isaacs Executive Director of Ho'omaueola, a partner of Ka'ala Farms explained their program. They plan to bring native Hawaiian men and women back to malama 'āina instead of staying in a prison. Chair Aila added that there is a spring that runs on the side of the mountain that is intended to be used to establish fruit trees to provide shade so the grass doesn't grow. This is to serve as buffer between dry land and the forest, which would be the fire break.

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

12:20 PM RECESS

12:34 PM RECONVENE

**Item D-7 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, Lāhaina, Maui, at TMK: (2) 4-8-003:001.**

Kevin Moore presented item D-7, explaining that this was a first time offence.

Brian Yesland representing Island Adventure Tours LLC, said they didn't conduct any commercial activity there, that all the activities are conducted on Ukumehame Beach. Yesland's employee met clients at Olowalu, but brought them back to Ukumehame Beach, where activities were conducted.

Chair Aila questioned the pictures of the kayaks on the beach at Olowalu, Yesland again said that no activity was conducted there.

Member Gomes asked if he was testifying opposing the fine. Yesland confirmed.

Chair Aila reviewed the report, and the report doesn't say anything other than being parked on unencumbered state lands. Yesland said that being parked there is not a violation. Moore said if you park in the area or have a kayak sitting there, that is a violation. Yesland said that the Attorney General's office said that the beach can be used as long as it is not used for commercial activities.

Chair Aila asked that someone make a motion to defer this item until more research can be done. Member Gomes made a motion, Member Gon Seconded.

**Deferred. Staff was directed to review its assessment of whether parking a vehicle and kayak trailer in the subject location, with unloaded kayaks on the ground, constitutes a prohibited commercial use. The citing land agent should attend the next meeting on this item. Staff should also review Daniel Ornellas' letter of November 4, 2013 to Island Adventure Tours, LLC, and be prepared to respond to questions about the letter.**

**Item K-2 Contested Case Request HA 14-01 by Abel Simiona Lui Regarding Conservation District Use Permit (CDUP) HA-3674 for the Old Plantation**

**Spring Pipeline Located at Kaiholena, Ka`u, Island of Hawai`i, Tax Map Keys: (3) 9-7-001:001, 004, and 016.**

Member Gon recused, he recused last time this item came up.

Sam Lemmo Administrator, Office of Conservation and Coastal Lands reviewed item K-2. Lemmo explained that the recommendation is denial of the petition of a contested case due to the fact that Abel Simiona Lui has not shown enough interest to be admitted as a party in this contested case.

Lui presented books on his genealogy indicating volume 12 is all about him and how he has lived on the land for 25 years.

Chair Aila explained that having genealogy to a land commission award is not the same as having a deed in hand that shows that he has property, which would then give him a property right if the action was going to impact his property. Chair Aila asked Lui if he has a deed that shows that he has property rights to the land near the action. Lui said he needed more time, he thought he brought everything he needed. Chair said that claiming title to land is not made legal unless the land court issues a document or a deed.

Lui said he would appeal the decision.

Katrina Morgan question Chair Aila about constitutional rights. Chair Aila said that's not under the decision that was rendered by the Board, the decision was to issue a permit to run a pipe. Chair Aila again asked for a deed or proof of direct impact to growing of taro; a direct impact caused by the diversion of water to the pipe, to the other pieces of property. Lui said he had dead animals. Chair said dead animals are separate.

There was more discussion about Lui's rights.

Morgan said she had a problem with this being Exempt from an environmental assessment. She said she requested an Exemption memo and was sent a letter dated May 24<sup>th</sup> from Chair Aila. Lemmo explained that the Board issued an exemption, the staff report that was taken up in a public meeting identified the section of the administrative rule of which this was exempt and the Board approved that staff report.

Chair Aila explained the next step would be for Lui to file action in Circuit Court.

There was more discussion about Lui's rights and deed.

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

**Item J-2 Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-253, Registration and Permit Fees, and Amendments to Hawaii**

**Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements; Authorize the Division of Boating and Ocean Recreation to Conduct a Second Round of Public Hearings Regarding Amendments that were made to Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits and Chapter 13-251, Waikiki and Kaanapali Ocean Waters, Based on Public Testimony that was Received During the Rule Making Process. Attached to this Agenda and Incorporated Herein are the Proposed Amendments to Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4).**

Written testimony was submitted by Wm Mark Robinson, George Lindsey, Kyle Fields, Richard Kersten, George Parsons, James E. Coon, and Cynthia A Farias.

Ed Underwood Administrator of the Division of Boating and Ocean Recreation presented item J-2 addressing the main concerns, explaining that all permits will now have a 30 day grace period to renew. The recommendation is to approve 13-253 and 13-256 and go back to public hearing for 13-231 and 13-251. Representatives of various organizations were present to provide testimony.

George Lindsey representing Islands Activities Inc., Woodridge Inc, and Alela Catamaran Inc. explained the two testimonies that he submitted. In summary they have agreement on the language in exhibit O, where all catamarans agreed to pay 3% of the operational gross to the state as their fee. They want to make sure that people understand when you see these boats and sails they are going this way so everyone is safe. They ask that the sale of the company not be included in the fee, as they believe this clause is not fair. Lindsey feels like most of what needs to be resolved has been done. One important outstanding thing is that 13-256-3 refers to commercial use permits the same as registration certificates, they are not the same.

Member Gon asked Lindsey if his testimony concluded with any needed amendments to the statements of staff as listed. Lindsey said the main one was exhibit O, and that's the language they agree with. They feel that the Waikiki catamaran operators have earned the registration certificate. They would like to have the language clarified during the public hearings process or in direct negotiation. The registration certificate should read "shall" and not "may"; this is what the statute requires.

Michael Sheehan testified that his major concern is that the state has never come up with a formula to determine a capacity for a resource before someone comes to the land board and asks for a permit, hiking, etc. Sheehan expressed how important he felt it was that the Board members ask staff where they came up with these numbers and what the formulas were to get these

numbers. He also noted that he is and wants to work with Underwood and DOBOR to use this boat yard to help make the Hanalei River cleaner.

Member Gon asked Shehan if recommended any changes. Shehan said that he would wait for the second round of public hearings to answer.

Elijah Yep an attorney representing Hawaii Fishing and Boating Association testified The Association opposes this item because they believe the DLNR has not followed basic notice requirements. Yep added that if this item is approved, then the item would be challenged. He gave background about the Association, which is based on the Island of Hawaii. They do not oppose the efforts to amend DOBOR's rules; they believe that that DOBOR is adding on to an already confusing set of rules and going about it without public participation. Yep shared two issues: 1) the rules packet wasn't available on the internet up until 48 hours before the scheduled public hearing in Kailua Kona on October 2013; 2) DOBOR suspended its usual practice of holding public meetings in advance of a hearing, as a result organizations like the Association were not consulted about the proposed rules changes. Yep explained that major procedural violations were 1) notice of public hearing- notice must include statement of the topic of the proposed amendments. The notice issued on September 5, 2013 did not describe the topic of the proposed amendments, only listed the chapter number and title of the rules to be amended. 2) The meeting agenda of this item only lists titles of the rules; the agenda items must be described in enough detail, approval of this will be a violation of section 92-7 of the Sunshine Law. 3) Proposed amendments were presented in the notice of public hearing as a single rules package. The proposal was to amend all the rules in that package at one time. Item J-2 proposes to make half of the amendments now, and hold the other half for public hearings later and that is a completely different proposal. No public hearing has been held for that particular proposal. Yep suggested holding a new public hearing for the entire proposal. Finally, Yep noted that at the October 16, 2013 public hearing held in Kailua-Kona the Hawaii district manager said that the attorney general made changes in the rule package, if that's true then those changes should've disclosed and perhaps another public hearing held. The Association urges the Board to reject item J-2, they agree that the rules are in need of revision, but believe they should be done so with adequate public input.

Member Goode asked if written testimony was provided. Yep said no. Member Goode commented that the title and the verbiage to him was clear not being a boater. Yep said that the title does not address the type of change or summarize the change so that the public knows if it's worth their time to look into the item and give testimony. Member Goode also addressed Yep's #3 concern, not understanding the purpose of doing everything in a "package". Yep said that there needs to be uniformity and consistency.

Attorney General Linda Chow suggested this is something that should be discussed in Executive Session.

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

1:55 PM Executive Session

2:27 PM RECONVENE

Member Kishinami announced that after consulting with the Attorney General the Board would like to amend the recommendation to include section 13-256-3 and 13-256-4 and reincorporate that with the recommended chapters that are going to go back out to the second public hearing.

Member Goode clarified that basically they will all go back out for a public hearing again. Member Goode seconded.

**Unanimously approved as amended (Kishinami, Goode)**

**Item J-1 Request the Board Delegate the Maui District Manger as the Authorized Representative for the Purpose of Issuing Commercial Use Permits for Ka'anapali Beach and Ocean Waters, Maui.**

Ed Underwood, Administrator for the Division of Boating and Ocean Recreation (DOBOR) reviewed item J-1.

Member Goode asked if something wasn't working well, then Underwood or the administrator could step in and take care of it. Chair confirmed. There was discussion about why this was a Board action due to the duty being assigned to a position lower than an administrator. Chair Aila said that since this was initially a Board item when it was assigned, it was brought back as a Board item.

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

**Item D-12 Staff Recommendation to Deny Hilton Hawaiian Village's Request to Modify Fee for Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Displays at Duke Kahanamoku Beach situate at Waikiki, Honolulu, O'ahu, Tax Map Key No.: (1) 2-3-037:021 (Portion).**

Written testimony was submitted by Rick Egged, Ivan M. Lui-Kwan, Jerry Gibson, Pua Aiu, Carty Chang, Roger Imoto, Lila Loos, Daniel Quinn, Russell Tsuji, and Sam Lemmo.

Kevin Moore representing Land Division explained that the department has re-assessed the way that fees for fireworks permits are charged. In the past fees were only charged for the platform from which the explosives were launched Moore explained the safety zone and that the daily charge would come out to over \$19,000. The Department reached a compromise of \$500 for the safety zone and \$50 for the fire rack. Hilton has asked for reconsideration and wants to go back to the old permitting fees. Staff recommendation is to maintain the higher fee due to departmental obligations.

Ivan Lui-Kwan an attorney representing Hilton Hawaiian Village testified beside Jerry Gibson, Area Vice President for Hilton Hawaiian Village.

Chair Aila made a point of clarification, noting that the request before the Board was one separated out from non-regular showings. Chair Aila said that their presentation before the Board is only asking to reconsider staff's recommendation with regards to the Friday night presentation, anything other than the Friday night presentation they were okay with. Lui-Kwan confirmed. Lui-Kwan explained his submitted testimony summarizing that they don't feel like that's good policy to be basing a fee on footage. They feel that the 1,000% increase in permit fees discourages business from providing programs like Hilton's fireworks program.

Jerry Gibson read the testimony he submitted highlighting four main points. 1) The fireworks display benefits the entire community, not just the patrons and guest at the Hilton Hawaiian Village 2) Hilton Hawaiian Village is happy to share its fireworks display with the whole community and limits access to the beach only to ensure spectator safety during the fireworks display 3) Hilton Hawaiian Village takes pride in doing its part in maintain the natural beauty, safety, and cleanliness of Kahanamoku Beach at its own expense 4) Hilton Hawaiian Village is proud to be an effective guardian and custodian of Duke Kahanamoku Beach. Not including the permit fee, Hilton spends \$446, 887 annually for the fireworks production. Instead of adding this amount to the profit line, Hilton incurs this expense by sharing it with the community. Gibson asked that \$550 permit fee only be charged when the fireworks show is not a community event.

Member Goode asked if any funds from the City were received. Gibson said no, Hilton pays for everything.

Chair Aila asked how this started. Gibson gave the history explaining that it started 25 years ago by Barry Hilton who wanted fireworks every Friday night.

Member Gomes asked how many other fireworks shows Hilton had besides this one on Fridays. Gibson said 1-2 community events during the year, but 8-10 other groups per year that want a fireworks show presented. Gibson made it clear that he was not asking for any leeway for anything the Hilton Hawaiian Village gets revenue for, only the Friday night fireworks, 4 Fridays a month.

Member Goode asked if anyone has ever done an economic analysis on this to see how much revenue this is bringing in. Gibson said they have not, but believes it would be substantial due to the surrounding hotels and tour boats.

Rick Egged, President of the Waikiki Improvement Association submitted his written testimony asking the Board to reconsider the increased permit fee. Egged explained that the fireworks show does not just benefit visitors, but residents as well.

Member Kishinami asked Egged if they would consider helping with the funding of the firework show. Egged explained that they do help with funding for other events for the public purpose, however this is a public service event that the Hilton Hawaiian Village is willing to fund themselves.

Don Pascual with Hawaii Explosives testified that he had been doing this show since day one. This is one of the oldest shows in Waikiki and its free.

Russell Tsuji explained that the way the fee was determined was because of the safety zone and the amount of square footage that had been taken up at that point so was not available to the public for an extended period of time. The department didn't use the .10 a square foot formula and the charge is for the firearm area.

Egged testified that this is public use of the space, the show benefits the public. On a normal night when fireworks are being presented, there are a few people on the beach but not very many.

Member Goode asked staff if there were ever complaints about people wanting to use that space. Barry Cheung from the Land Division said that he did receive one complaint from someone about the security. That was the only complaint.

Member Gon commented that he does appreciate that in a non-public event Hilton accepts the \$550 fee. Member Gomes added that the Hilton is giving back enough to the public/community and supports that the charge for Friday nights remain at \$50.

Member Gon made a motion to affirm the \$550 fee and exempt the Friday night displays. Member Goode seconded.

**Approved as amended. The Board amended the "Recommendation" section of the submittal to read:**

**Staff recommends that the Board:**

- 1. Affirm the \$500 fee charged for the safety zone around the fireworks firing site, but exempt Friday night fireworks shows at Duke Kahanamoku Beach in Waikiki from the \$500 safety zone fee.**

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

**Item C-1 Issuance of Special Use Permit No. FW-2014-H-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:por. 007**

**And**

**Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirement for the Project.**

**Item C-2 Set Aside of a 7.97 Acre Portion of TMK 3-8-01 por. 19, Makai of Amala Place, at the Western Boundary of the TMK, for Inclusion in the Kanahā Pond Wildlife Sanctuary, Maui.**

Lisa Hadway, Administrator for the Division of Forestry and Wildlife had no changes to items C-1 and C-2.

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

**Item D-1 Request for Issuance of Right-of-Entry Permit to Ronald Beckenfeld on State Unencumbered Beach Lands for Emergency Temporary Shore Protection, Kīkīaola, Waimea, Kaua‘i, Tax Map Key: (4) 1-2-013:035.**

**Item D-2 Rescind Prior Board Action of December 13, 2013, Item D-7, Mutual Cancellation of General Lease No. S-5405, Yvonne K. Okamoto, Lessee, Kīkala-Kēūkea, South Kona, Hawaii, Tax Map Key: (3) 1-2-043:005; and**

**Consent to Assign General Lease No. S-5405, Yvonne K. Okamoto, Lessee, to Deanna Piliāloha Kaho‘okaulana, Assignee, Kīkala-Kēōkea, Puna, Hawaii, Tax Map Key: (3) 1-2-043:005.**

**Item D-3 Consent to Sublease of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio, Lessee, to David Hepp, dba: East Hawaii Metals, Sublessee, Waiākea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:026.**

**Item D-4 Report to Board on Opinion from the Office of the Attorney General Regarding Previously Deferred Agenda Item D-6 of July 12, 2013 Land Board Meeting titled: “Rescind Prior Board Action of November 9, 2012, Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Pauka‘a, South Hilo, Hawai‘i, Tax Map Key:3<sup>rd</sup>/2-7-20:14”.**

**Board may 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 or to engage in attorney-client privileged communication.**

**Item D-5 Issuance of Right-of-Entry Permit to Kerry Ward of Corporate Explorer Training to Conduct a Beach Activity Event on March 24, 2014, at Wailea, Maui, Hawaii: Tax Map Key:(2) 2-1-023: seaward of 007.**

**Item D-6 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display Purposes at Honolulu, Lāhainā, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.**

**Item D-13 After-the-Fact Issuance of Right-of-Entry Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display Purposes on February 11, 2014, Waikīkī, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037:Portion of 021.**



- Item D-10** Issuance of Right-of-Entry Permit to Kanaka Ikaika Racing Association for a Paddle Race Event, on March 29, 2014, at Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: portions of 021.
- Item D-11** Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on February 17, 2014, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 (Portion).
- Item D-14** Consent to Issuance of Right-of-Entry Permit by the Department of Defense to Faith First, Inc. dba Extreme Fitness Club for the Use of Department of Defense Facilities for the Youth Sports Volleyball Program Purposes over Portions of Lands under Governor's Executive Order No. 1997, Honolulu, O'ahu, Tax Map Key (1) 3-1-042:portion of 010.
- Item D-17** Amend Prior Action of September 27, 2013, Item D-11 by Removing Posting of Performance Bond from the Recommendation Section; Request for Mutual Termination, Leki, Incorporated, Lessee, General Lease No. 3983, Waiale'e, Ko'olauloa, O'ahu; Tax Map Key: (1) 5-8-001:051.

Kevin Moore representing Land Division had no changes to items D-1, D-2, D-3, D-4, D-5, D-6, D-10, D-11, D-13, D-14, or D-17.

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

- Item E-2** Consent to Assign General Lease No. SP-0161, Daniel Hempey and Patricia Hempey, Assignors, to Karen Marie Bellavita, Assignee, Lot 51, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-003:017.
- Item E-3** Consent to Assign General Lease No. SP-0122, Kelly Carswell-Haneburg and David Carswell, Assignors, to Marau Beck and Hobey Beck, Assignees, Lot 75, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-004:069.
- Item E-4** Consent to Assign General Lease No. SP-0152, Gary Miller, Assignor, to Jon Ohman, Assignee, Lot 84, Pu'u Ka Pele, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-002:086.

Dan Quinn, Administrator for State Parks had no changes to items E-2, E-3 or E-4.

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

- Item E-5** Approval to Solicit Sealed Bids, Authorize the Chairperson to Award and Execute the Contract with Approval as to Form by the Department of the Attorney General Under a Competitive Bidding Process for a Contract for Goods and Services to Collect Entrance Fees and Conduct Parking

**Management Services at Diamond Head State Monument, Kapahulu,  
Waikīkī, O‘ahu, TMK: (1) 3-1-042:006 (Por.).**

Quinn is requesting to change the end of the second paragraph in the submittal to read “a period of up to 5 years” instead of “a period of 5 years”

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

Member Gon asked if the Board would see anything in regards to the damage done to ‘Iolani Palace. Quinn said quite likely, yes. Chair Aila said once the department gets the reports back is when State Parks/ Historic Preservation Division will create a submittal.

There was discussion about D-4, Chair Aila confirmed that the Board approved staff’s recommendation and will not grant an easement.

There being no further business, Chairman William Aila adjourned the meeting at 3:09 pm. 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