

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

DATE: FRIDAY, JUNE, 13 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 9:09 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
David Goode
James Gomes

Dr. Sam Gon
Reed Kishinami

STAFF

Russell Tsuji-LAND
Maria Carnavale-PMNM
Galen Kawakami-DOFAW
Alyson Yim-ENG

Sam Lemmo-OCCL
Ed Underwood-DOBOR
Steve Soares-Parks

OTHER

Eric Leong/DOT HAR
David Bettencourt/M-11
Harry Yada/ D-6
Yvonne Izu/ D-11
Michael Lam/ D-4
Blanche Matsuyama/ D-18
Ed Stone/ D-8
James Hollstorm/ D-8
E. Kalani Flores/ D-8
Kealoha Pisciotta/ D-8
Tuti Baker/ D-8
Candace Fujikane/ D-8
Shelly Muneoka/ D-8
Laulani Teal/ D-8
Ponokealoha/ D-8
Olu Campbell/ D-8
Ben Manuel/ D-8
Liko Martian/ D-8

Ross Smith/DOT AIR
Dan Purcell/M-11,D-18,J-1,D-8, L-1
Lynn McCroy/ D-11
Ed Bushor/ D-4
ADC Rep/ D-20
Don Straney/ D-8
Michael Bolte/ D-8
Sterling Wong/ D-8
Marianne Takamine/ D-8
Paul Cowen/ D-8
Willford Tyler Gee/ D-8
Kai Hyashi/ D-8
Brooke Wilson/ D-8
Leonard Hoshijo/ D-8
Heather Kaulana/ D-8
Jackie Hoover/ D-8
Crystal Softer/ D-8
Barry Taniguchi/ D-8

Chair Aila announced that the Board will break from 12pm to 1:15pm for a lunch to honor Member Goode and Member Gon as today (6/13/2014) will be their last meeting. TMT will be taken at 1:15pm.

Item A-1 Approval of March 27, 2014 Minutes

Member Goode recused, he was not in attendance.

Unanimously approved as submitted (Gomes, Gon)

Item M-1 Issuance of a Revocable Permit to Atlantis Submarines Hawai'i, LLC, for Joint Development of Lot 6 (Fast Land of 44,054 Square Feet) and Lot 17 (Submerged Land of 26,868 Square Feet), Pier 28, Honolulu Harbor, Tax Map Key (1) 1-5-038: (Portion of) 1, 11, 17, 23, 57, 68, 72, 73, and 74.

Eric Leong property manager representing the Department of Transportation- Harbors Division (DOT-HAR) was present to answer any questions.

Unanimously approved as submitted (Gon, Goode)

Item M-2 Issuance of a Revocable Permit for Office Space for its Airline Support Mechanics, Mokulele Flight Service, Inc. DBA Mokulele Airlines, Honolulu International Airport, Tax Map Key: (1) 1-1-003:208 (Portion).

Item M-3 Issuance of a Revocable Permit for Aircraft Parking, McBride, Kirk W., Rewick, Kenneth E., and Scott Jr., Robert M., Honolulu International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.

Item M-4 Issuance of a Revocable Permit for Office Space Avairpros Services, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 019.

Item M-5 Issuance of a Revocable Permit for Terminal Spaces, Hawai'i Island Air, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 019.

Item M-6 Issuance of a Revocable Permit for Aircraft Storage, Mokulele Flight Service, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 019.

Item M-7 Issuance of a Revocable Permit for Parking Permit for Aircraft Tie-down Parking Purpose, Guardian Flight, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-012: Portion of 090.

Item M-8 Issuance of a Revocable Permit for Container Storage, Mokulele Flight Service, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-043: Portion of 40.

- Item M-9 Issuance of a Revocable Permit for a Shared Baggage System, Delta Airlines, Līhu‘e Airport, Tax Map Key: (4) 3-5-001: Portion of 008.**
- Item M-10 Issuance of a Revocable Permit for Office Space, Hawai‘i Island Air, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-001: Portion of 135.**
- Item M-11 Issuance of a Revocable Permit for Commercial Helicopter Operations, Sunshine Helicopters, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 019.**

Ross Smith representing the Department of Transportation-Airports Division (DOT-AIR) reviewed items M-1 through M-11.

Member Gomes asked how come M-3 and M-7 are both tie-downs, but have different square footage. Smith explained that tie-downs vary depending on where and when they are established. There is a rate for tie down spaces.

David Bettencourt testified opposing any approval of revocable permits or leases at Līhu‘e airport (M-11) until or unless the state can comply with HRS 171.59B and has a rational method at making competitive determinations. When the Līhu‘e heliport was built Safari was one of the existing operators, Sunshine and Blue Hawaii were not. South Sea helicopters filed litigation that lasted 10-15 years. The litigation was finally resolved by AG Mike Lau in 2005. However, unknown to the other vendors, the agreement was made after a meeting of Lau and the attorneys for Blue Hawaii. The settlement imposed a two pad limit that would encourage competition. The problem Bettencourt has with HRS 171.59 is that no one has the criteria to determine whether allowing certain operators the advantage of exceeding the two pad limit meets the competition standard. They were happy with the two pad limit because it would preserve competition and stop one operator from becoming the dominant operator. Several years ago, the Board approved an application to Blue Hawaiian to take over the spot that his company was designated to take over. Safari had refused to sign the lease on the grounds that the lease denied the operator any access to the courts; they had to stipulate in the lease that the director would make all final determinations. The lease rent was also set by a “rigged” appraisal of the Līhu‘e heliport. Those rates have since been reduced. Earlier this year, Safari was moved to another location under a revocable permit (RP) because they were evicted. Sunshine went to Kauai about 5 years ago as a new interim operator. None of the Kauai operators can expand to Maui because people like Sunshine have 4 pads over there. The Blue Hawaiian and Sunshine have been the dominant operators on Kauai. Bettencourt is opposing the grant of any leases in Līhu‘e until the two pad limit is reinstated.

Chair Aila asked Bettencourt if he was opposing any issuance of revocable permits or only those involving helicopter operations. Bettencourt said helicopter operations in Līhu‘e because that’s where one company can dominate the market. It’s their contention that that State has never complied with HRS 171.59 in Līhu‘e.

Member Goode asked why this hasn't come up before. Bettencourt said they were never informed that people were going through their property. He also explained that part of the issue is that the other operators want more than two pads. He said Safari has been the only ones that have been evicted. They haven't received the eviction notice yet, just an oral telephone call. Bettencourt asked to postpone this until they can file a contested case hearing on these issues.

Dan Purcell said he testified last meeting that these items are very important and require more scrutiny. Purcell said that 7 day notification of agenda items is not enough, especially for people who are off island.

Member Gon made a motion for the Board 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 Kishinami seconded.

9:37 AM EXECUTIVE SECESSION

10:00 AM RECONVENE

Chair asked the Board to entertain an action on items M-2 through M-10 since there was no discussion on those items.

Member Goode made a motion to approve items M-2 through M-10. Member Gon seconded.

Unanimously approved as submitted items M-2 through M-10 (Goode, Gon)

Chair announced that that would then go back to agenda item M-11. Member Goode noted that the Board members had a good discussion with their attorney about some of the issues Bettencourt brought up; however the Board doesn't feel that the issues that were brought up were grave enough to defer action on this item. Member Goode made a motion to approve per staff recommendation. Member Gomes seconded.

Unanimously approved as submitted item M-11 (Goode, Gomes)

Item D-6 Rescind Prior Board Action of May 12, 2006, Item D-4, Direct Lease to the University of Hawai'i for Education, Housing, and Related Purposes, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-001: portion of 024 and (3) 2-4-056: 017 and portion of 014.

RESUBMITTAL - Direct Lease to the University of Hawai'i for Education, Housing and Related Purposes, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-001: 024 and (3) 2-4-056:014.

Russell Tsuji Land Division Administrator had nothing to add. Harry Yada was present to answer questions.

Member Goode asked if changes needed to be made to the EA. Tsuji didn't believe so. Harry Yada said there was EA done back in 2005. He said they were just transferring land so it was exempted from an EA.

Unanimously approved as submitted (Gon, Gomes)

Item D-10 Grant of Term, Non-Exclusive Easement to Lāna'i Resorts, LLC; dba Pūlama Lāna'i for Tide Pool Stairs Encroachment Purposes, Pulawai, Lāna'i, Seaward of Tax Map Key: (2) 4-9-017:002.

Written testimony was submitted by Ron McOmber, Alberta de Jetley, Lynn McCrory, and Leimana DeMate.

Item D-11 Grant of Term, Non-Exclusive Easement to Lāna'i Resorts, LLC dba Pūlama Lāna'i for Pier Pilings Encroachment Purposes, Pulawai, Lāna'i, Seaward of Tax Map Key: (2) 4-9-017:002.

Written testimony was submitted by Ron McOmber, Alberta de Jetley

Tsuji explained that these two items need to be taken together because these relate to the island of Lāna'i and both items are asking for easements for encroachments along the shoreline. Tsuji added that this lease requires legislative approval before it can be documented in the form of an easement because it is on a shoreline. Tsuji spoke with Larry Ellison's staff Lynn McCrory and they are planning on doing a lot of improvements on the property and this came up in a shoreline certification. They would like to have the shoreline certification go forward so they can continue with the improvements to those hotels. McCrory told Tsuji that Ellison is willing to post a million dollar bond to make sure that the encroachments are resolved in case there is a problem on documentation or the legislature denies the approval. After looking at the encroachments Tsuji said it wasn't as big as he thought it was, so he's not asking for a million dollars, but half a million. McCrory had no problems.

Lynn McCrory stood on her testimony and also on Ron McOmber and Alberta DeJetley's who were unable to attend the meeting.

Yvonne Izu representing the Pūlama Lāna'i was present to answer any questions.

Member Gomes asked if the stairway would be removed and relocated. Izu said they would be using the same stairs and it would be able to easily repair them. She confirmed that these are open to the public.

Member Goode made a motion to approve items D-10 and D-11 and commented that he liked the solution that they came up with the bond, just in case it doesn't get approved, it can be removed. Member Gon seconded.

Unanimously approved as submitted (Goode, Gon)

Item D-4 Resubmittal:

(1) Report to the Board on Uncured Defaults for Performance Bond and Improvement Bond, and on Plans Submitted by Lessee for Review under General Lease No. S-5844, WHR LLC, Lessee; and (2) Authorization of Forfeiture of Lease in Event Defaults are not Cured, Waiākea, South Hilo, Hawai'i, Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, 046.

Written testimony was submitted by Ed Bushor and Douglas B. Lee.

Tsuji conveyed item D-4 and after reading the submission from Ed Bushor, had nothing to add. The primary issues are the bonds, especially the performance bond. Tsuji explained that this acquisition occurred at the end of 2013 and these bonds became due upon closing, the court decided that the bonds were the responsibility of the buyer. Bushor made presentations and a schedule of timeline, with the completion of the project at the end of 2014. Tsuji explained that he has constantly been reminding Bushor for the past six months that the bonds need to be paid. This bond is to cover any default under the lease. The memo that Bushor submitted is providing a bond that says they can cover everything under the lease except claims under one specific paragraph. This is an auction lease and the Supreme Court has been clear that terms of an auction lease cannot be amended even if both parties agree, because it's not fair to those who were bidding at the time of the auction. Tsuji added that the Board should be aware that there are other defaults that have not been cured. What is being presented is the recommendation to terminate the lease. Tsuji said that if the Board is inclined to proceed with this recommendation, then he asked that the recommendation section be amended to say that it is going to be terminated for any and all defaults that have not been cured. In his recommendation Tsuji made it clear that the recommendation is termination with 30 days' notice, and the Board does not have to follow staff recommendation.

Michael Lam, council for the lessee, hasn't been involved in any action that could delay this action. In regards to the bond issue, there is a concern that the lessee is not doing what it was obligated to do under the lease. Lam said that the work that was done previously is not incorporated in the work that is to be done. The work that is to be done will be covered by the bond silo 41, paragraph 41 requirement of 5 million. Lam said that the state's interpretation is if there is a shortfall, then any monies that are available for those bonds should be used as a cross over for either or both bonds. Lam is trying to explain that there is a solution, there has been no notice of completion that has been filed, that Lam could tell. Generally if a debtor files bankruptcy any obligation that the debtor was obligated to pay would be satisfied and or

dismissed through bankruptcy. The proposal that Lam was working on was how to bridge the gap between the 1 million performance bond and the 5 million security bond required for improvement. Lam said that they are proposing to have a personal guarantee. The lessee is requesting termination not be approved, but have it deferred for 30 days.

Member Goode asked how many bonding companies they were talking to. Ed Bushor explained that it was bid out to multiple bonding companies; this company was the most willing. Bushor said that he was advised that there is an order in place that all claims of the bankruptcy have been dismissed. He said that he is willing to personally guarantee and add an addition to the order so that DLNR is comfortable.

Lam again said that they ask this be deferred at least one more time to work this out.

Bushor gave an update on the project. They have completed the construction plans for tower one and two; he submitted a packet of 91 pages of pictures of everything that is going into the hotel. He assured the Board that hundreds of thousands of dollars is going into this project. These are the specs of what was submitted to the County and DLNR, all of which were completed in 4 months. What they completed in 4 months was never submitted in 7 years by the previous owners. They have the community support and have been working actively with the community. Bushor said that they have worked hard and cured every violation requested. He explained that there are permits open from the previous owner, all he can do is cure it, but he has to submit a construction drawing that has all the things they are requesting. Bushor expressed how committed and ready he is to build this. He said he was willing to cover the overlap, whatever legal issues need to get done; he's willing to do it and sign a personal guarantee.

Member Gomes asked for clarification that what they are asking is to defer this item. Bushor said no, he doesn't want to wait another month. To him deferring meaning accepting his bond of 1 million dollars, issue it, and do the construction on the new construction and he will send a personal guarantee that overlaps the concern of Tsuji.

Lam stated that he thinks Bushor means he doesn't want the Board to take the automatic recommendation of the termination within 30 days. Lam from a legal stand point said he didn't want termination either, but he doesn't think the Board should take the recommendation and grant an automatic 30 day termination based on everything that was discussed today.

Member Gomes asked why not take the termination in 30 days when Bushor just said he would sign it. Bushor said he was fearful that the lawyers won't get it done, so what he requests is that the lawyers get it done, he will sign it, then come back in 30 days and tell the Board we got it done. He said if they can't get it done then he's good with an automatic 30 day termination.

Tsuji asked to comment on the points being made. He said that the guarantee is only as good as the person signing it. He said he told Bushor, that as an alternative to the bond the state will always take a cash deposit, or recordable letter of credit. The lease requires the bond; there is

also a provision that allows alternative security. Tsuji then shared an email related to the bond that Lam forwarded. The email read "From the surety, to Mr. Bushor". Tsuji explained that it basically said that the insurance company is saying they are a good financial company and they created the forms for the performance/construction bonds, so they should be picked. It's a bond that is not required by the terms of the lease, and that does not comply with the law. The construction bond cannot be used for lack of payment of rent; the performance bond however can be used for any defaults. It doesn't matter who did it, the lease was an auction lease.

Member Gomes asked Tsuji if he would agree on Bushor giving a million dollars cash. Tsuji said absolutely, or an irrevocable letter of credit would be fine, too. Bushor said that as a developer he understands that the performance bond does cover all defaults of lease and supports that, but the lease does not say you have to cross collateralize the bonds. One says construction bond, and one says performance bond, they are two different sections. He disagrees, but is willing to give the million to cover performance, because he wants Tsuji and DLNR to have the assurance.

Member Goode asked Tsuji if he provided Bushor an example of the previous bond that the previous owners had. Tsuji said that the department has never accepted a bond like that. The lease does show you can lower the amount for being good tenants, etc. As far as changing the scope of the bond, it cannot be done under the lease, because you cannot deviate from the terms of an auction lease.

Lam said they want to come up with a business solution, if Bushor signs a personal guarantee, that's something that's up to the Board to allow. They want to make sure Tsuji is satisfied; if the board wants more information on the bankruptcy, then they can get that info to the department Monday.

Bushor offered to provide the order or the representative. He was also willing to provide a financial statement.

Member Gomes 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.

11:05AM EXECUTIVE SECESSION
11:40AM RECONVENE

Member Goode explained that the Board had a good discussion with counsel about lease provisions, bonds and understanding construction plans and permitting. The Board is very supportive of getting this project done, but still thinks the lease provisions need to be met. Member Goode made a motion to defer this item and give Bushor 90 days to cure all provisions and get things moving. If they are cured, then there is no need to come back to the Board. Member Gomes seconded the motion of a 90 day deferral.

The Board deferred this item for 90 days to allow the lessee additional time to cure all outstanding defaults under the lease.

Unanimously defer (Goode, Gomes)

Item K-1 Conservation District Enforcement MA 13-23 Regarding an Unauthorized Driveway, Rock Walls & Gate in the Conservation District by the William Engel Trust Located at 6501 Hono-a-Pi'ilani Hwy., Honolua, Maui, Tax Map Key : (2) 4-2-004:062.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) presented item K-1. The prior owners made unauthorized changes, then Mr. Engle made additional changes. Under the current penalty guidelines the Board could impose up to 2 and 3 thousand dollar fines. Mr. Engel wasn't the original violator; staff is recommending a fine of \$2,000 and \$250 administrative fee, as well as requiring the submittal of an after-the-fact CDUP to get authorization for the structures.

Member Gomes asked when the driveway was constructed, since this project was ongoing and needed to be repaired and if the \$250 covers the cost. Lemmo thought the driveway about 10 years old and explained that typically OCCL asks for \$500 in administrative fees. On a penalty schedule this would fall between 2 and 10 thousand dollars, because this is a moderate violation.

Engel was not present.

Member Goode made a motion to approve with the amendment of doubling the administrative fee to \$500. Member Gomes seconded.

Unanimously approved as amended (Goode, Gomes)

Item D-13 Cancellation of Revocable Permit No. 7212; Issuance of Revocable Permit to Tactical Airgun Games Hawai'i LLP, Honolulu, O'ahu, Tax Map Key: (1) 1-1-003:003, 204 to 207, 212.

Tsuji had no changes to item D-13, the applicant was present to answer any questions.

Unanimously approved submitted (Kishinami, Gomes)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Loren Scott Godwin, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Reef Assessment and Monitoring Study Activities. Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Project.

Maria Carnavale State Co-Manager for Papahānaumokuākea Marine National Monument (PMNM) had no changes to the submittal. The applicant was present to answer questions.

Unanimously approved submitted (Gon, Gomes)

Item D-20 Set Aside to Agribusiness Development Corporation for Agricultural Purposes, Honouliuli, ‘Ewa, O‘ahu, Tax Map Key: (1) 9-1-031:037.

Tsuji had a change to the location to have direct access to the road.

Chair noted that Agribusiness Development Corporation requested that the land be transferred because they are trying to work with the rendering plant to come up with new feed sources for agriculture farms.

The representative was present; Tsuji thanked them for pointing out the change. The representative was okay with the rest of the submittal.

The Board amended Recommendation B to read:

“B. Reservation of a non-exclusive access and utility easement of 30 feet wide between Lot 12020 and Lot 12021 and as shown on the amended Exhibit A1 attached to these minutes hereto.”

Unanimously approved as amended (Gon, Gomes)

Item D-18 Request for Mutual Termination, Grove Farm Fish & Poi, LLC, Lessee, General Lease No. 5654, off Ewa coast, Ewa, Oahu, TMK (1) 9-1-005:000 seaward.

Written testimony was submitted by Kamana`opono Crabbe, Ph.D. and Leimana DaMate.

Tsuji indicated that this has returned from bankruptcy, and Grove Farm Fish & Poi, LLC has come to ask the Board to relieve itself from one obligation. This one condition requires to removal of 4 concrete blocks and will require a CDUP. The blocks now appear to have coral around it. OCCL has no objection to leaving the blocks, the Division of Aquatic Resources (DAR) feels like a condition is a condition and needs to be met. Land division, in Tsuji’s view has no objection to letting the blocks remain. Tsuji said that DAR’s only comment was that they did not feel like the blocks were natural habitat.

Blanche Matsuyama representing Grove Farm Fish & Poi stated that she was present to answer any questions.

Member Gomes asked was about a compromise position. He commented on the precedence the Board would be setting if this item is approved. Chair Aila explained his concern is that since there have been reports of coral growing on the block, and we remove the blocks, then that will

result in further consultation processes which may stretch out this process and add to administrative costs. The blocks there now are a nice habitat for the fish and coral. In the future these will be taken on a case by case basis.

Member Goode asked if the blocks can be reused. Ryan, a rep from Grove Farm said yes, those blocks can be reused; they have attachment points on them, at the location of the existing use location.

Dan Purcell testified that this would raise concerns about future block placement. These are now a permanent part of the ocean.

Member Gon commented that he was reading the testimony submitted by the AHA Moku Advisory Committee (AMAC) and OHA. OHA was requesting an onsite assessment of the cost and benefits of the removal and AMAC is opposed to the idea of leaving the blocks in place. Member Gon pointed out that it wasn't only DAR that was in opposition. Member Gon then asked about the bankruptcy.

Matsuyama explained that bankruptcy was filed at the end of 2010; they weren't able to emerge from bankruptcy and therefore liquidated all assets. They paid off all the secured creditors that they could with the liquidation of the assets. This leaves them no capacity to remove the blocks.

Member Goode asked if to the bankruptcy court considered setting aside funds to remove the blocks. Matsuyama said no, it was a chapter 11 re-org, thinking they could emerge from it, but it was a failed attempt. Member Goode commented that next time the Board will have to adapt to changing conditions. He said he was okay with the staff submittal, it does provide habitat and could potentially be reused.

Chair Aila commented that no assessment has been done; we just have the evidence that was done by Sea Engineering.

Member Gon asked what the dimensions of the block were; the rep explained that they were 4ft wide by 7ft long and about 4-5ft deep.

Member Gon made a motion to approve staff's recommendations, considering the size, the fact that there is coral and limu growing on them. Since they have removed everything except these items, he's willing to accept this. Member Goode seconded.

Unanimously approved as submitted (Gon, Gomes)

- Item D-17**
- (1) Amendment of Grant of Non-Exclusive Easement S-6043 by Revising the Easement Area and Stipulating the Additional Consideration; and**
 - (2) Consent to Assign and Assumption of Grantee's Rights and Obligations under Grant of Non-Exclusive Easement S-6043, James Hugh Duncan and Barbara-Jeann Duncan as Assignors to John**

Thomas King and Yvonne Geraldine King as Assignees, And Release of James Hugh Duncan and Barbara-Jeann Duncan from the Obligations under Grant of Non-Exclusive Easement S-6043; Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-005: seaward of 056.

Tsuji explained that when the seller of a home assigns an easement, the original holder of the easement remains liable. No changes.

Unanimously approved as amended (Kishinami, Gon)

Item J-1 Request Clarification as to Whether the \$5,000 Reimbursement Granted by the Board of Land and Natural Resources at the April 25, 2014 Meeting, Item J-4, for Repairs Made to Slip #74/#76 Located at the Ma'alaea Small Boat Harbor, Maui, was the Total Reimbursement Authorized for the Repairs and that Reimbursement is to be Evenly Divided Between the Permittees.

Ed Underwood Administrator for the Division of Boating and Ocean Recreation (DOBOR) presented item J-1 asking the Board to clarify if the reimbursement granted on April 25, 2014 was to be split between the two permittees or if a \$5,000 reimbursement should be issued to each permittee.

Member Gomes indicated that from his recollection the \$5,000 was the total and it's up to Mr. Kim to determine if he wanted to split it with other parties.

Member Goode said his recollection was different and recalled making the motion to reimburse half of the \$20,000 and since Kim Sterling contributed to half of the pier, he got half of that \$10,000 which was \$5,000.

Jeff Straun who shares the pier with Kim Sterling said that he was there to advocate for his share.

Member Gon told Straun that the last time this item came up there was very detailed discussion about the pier. Member Gon explained that the issue now was the reimbursement and asked if there would be any other parties coming back to ask for reimbursement. Straun said no, there are only two parties. Both parties contributed to the bill.

Dan Purcell asked for clarification, asking why reimbursement is being allowed in this case verses others. Chair Aila explained that the attorneys approved reimbursement in the last case, so legally it's okay.

Member Goode made a recommendation to pay \$5,000 reimbursement, the same as they paid Sterling. Member Kishinami seconded.

All in favor, Member Gomes opposed.

Approved as submitted (Goode, Kishinami)

12:20PM RECESS
1:28PM RECONVENE

Item C-1 Request for Authorization for the Chairperson to Sign, Execute, and Amend a Memorandum of Understanding Between the Department of Land and Natural Resources and the Department of Transportation Regarding the Funding and Implementation of an Invasive Species Monitoring Program at Department of Transportation Facilities.

Galen Kawakami and Josh Atwood with the Invasive Species Council had no changes to the submittal.

Member Gon expressed how important this was, and how excited he is to be part of this experience.

Unanimously approved as submitted (Gomes, Gon)

Item D-8 Consent to Sublease under General Lease No. S-4191 to the University of Hawai'i, Lessee, to TMT International Observatory LLC, Sublessee, Ka'ohē, Hāmākua, Island of Hawai'i, Tax Map Key: (3) 4-4-015: 009 por.

Written testimony was submitted by Shelley Mahi, Grace Alvaro Caligtan, Paul, Tuan Tran, Zach Mermel, Kim Compoc, Hāwane Rios, Peter Ganaban, Angienora Puanani Rogers, Clare Loprinzi, Daniel Cooper, Christine T. Lipat, D.C., Lehua Kaulukukui, Matthias Scheffler, Miwa Tamanaha, Noelani Goodyear-Ka'ōpua, Terri Keko'olani, Andre Perez, Shelley Muneoka, Shannon Rudolph, Starr Kalahiki, P. Ka'anohi Kaleikini-Ohana Keaweamahi, Isaac "Paka" Harp, Joan Lander, Nancy Hutto, Lynn P. McCrory, Jacqui L. Hoover, Dwight Takamine, Barry K. Taniguchi, Daniel Cooper, Puanani Rogers, Jo-Anna K. Herkes, Austen Drake, Hugh Y. Ono, Kevin Cavanagh, Michael Bolte, Gregory R. Mooers, E. Kalani Flores, Marianne Takamiya, James E. Hallstrom, Jr., Toni Auld Yardley, Cari Rose Aquino, John P. Coney, Vaughn G.T. Cook, Kathy Cooksey, Ph.D., Chuck Erskine, Nathan Grocholski, Clyde T. Hayashi, Celeste Ha'o, Janice Harvey, David A. Honma, Mr. and Mrs. Benjamin K.S. Hu, Art Kimura, Ka'iu Kimura, Vivian Landrum, Leonard Bisel, Keawe Liu, Jon Lomberg, Keith Marrack, Michael, B. Medina, Representative Mark M. Nakashima, Dale Olive, Chris Peterson, Carol Salis, Tyler Dos Santos-Tam, Dr. Douglas A. Simons, Arthur K. Taniguchi, David Tarnas, Nancy C. Tashima, Robert Whitfield, Brooke Wilson, Lea K.M. Wilson, Naomi Pualani Abraham, Jim Albertini, Thomas Ah Yee, Association of Hawaiian Civic Clubs, Bithiah, Kris Bordessa, Cheryl Burghardt, Kini K. Burke, Vikki Catellacci, Kukauakahi Clarence Ching, Shama Dawn, Ann Evans, Hanalei Fergerstrom, Debera Elkahana First, Candace Fujikane, Cory Harden, Edward Hilliard, Nancy Hutto, Gwen Ilaban, Roger M. Kaneali'i, Jr., Edith Kawai, Jamie M. Kawauchi, Leigh Sidney Keonekaulana Case, Laura Lahilani DeSoto-McCollough, Shawn James Leavey, Michael Lemmen, Donna Brillheart, hauMANA (student Movement for Aloha no ka `Āina), Bonnie Morgan, Nelson Ho, Catherine E. Holland, Amara Wahaba Karuna, KAHEA 2014 Board of

Directors and Staff, Liam Kernell, Pamela Lucas, Yuki Ka`ea Lyons, Bryna R. Storch, Delphina Nova, Mahina Pai, Alexa Shelley-Rose, Fred D. Stone, Hawaiian Ethnobotanist, Morris & Sharon Torbert, Lākea Trask, Keomailani Von Gogh, Deborah J. Ward, Jennifer Wheeler, Momi Wheeler, Leslie Wingate and Gary C. Zamber.

Tsuji presented item D-8 and explained that there is a situation where the proposed sub tenants, who were present, would be paying the University of Hawaii (UH) a substantial amount of rent. The question before staff was whether a portion should go to funding state programs. Upon further research it was noted that there was a previous conservation use permit issue in a decision that was filed by the Board that said although the 30 meter telescope project generated substantial rents for UH, the money must be used and go back into the mountain (Mauna Kea). Therefore the recommendation does not include sharing of the sublease rents. UH does give annual updates on revenue from the Mauna Kea telescopes. In the future however, if the Board does go forward with the request, then staff would like to ask UH to give a little more detailed financial report on the revenues received from the mountain to show the Board how those monies go into preservation and protection. Tsuji had no changes.

Don Straney, Chancellor of UH Hilo testified on behalf of the Board of Regents requesting consent. Straney gave some history about the lease and how it got to this point. In determining the rent UH Hilo took the cost of managing the Mauna Kea Management Plan and distributed it on an acreage basis to all observatories on Mauna Kea; the theory being that they were charging the rent to cover the cost to fulfill the University's obligation under the CDUP. On that basis the rent on TMT telescope comes to 1 million 80 thousand dollars when the telescope becomes fully functional. The Board of Regents approved this sublease in February 2014, UH Hilo has developed a decommissioning funding plan. \$17 million is the estimated cost of the decommissioning plan. This telescope will allow us to look further and deeper into space and help us understand where we live and will allow us to teach the world that better, deeper view.

Ed Stone, the Executive Director of TMT began by disclosing that this all began in 2003 when they developed a preliminary design for the telescope. The TMT collaborators have spent more than 230 million dollars to be ready to build the telescope and have agreements, budgets and plans for the construction phase of another 1.2 billion dollars. Construction will begin as soon as the approval of the sublease is granted and completion of TMT is expected in 2020, with the initial operation beginning 3 years later. The TMT observatory in Hawaii will not only provide scientists and students access to the world's most powerful telescope, but will also recognize Hawaii as an outstanding platform for international collaboration involving the largest nations. In addition TMT will provide education, training and jobs.

Member Gomes asked if the term of the lease was 19.5 years. Stone said the term was through 2033 and completion is expected 2020, so they are hoping for at least 10 years of service.

Straney added that they are in the process of requesting an extension of the master lease which would extend beyond 2033.

Michael Bolte a professor and University of California testified by defining why astronomy is used and how the TMT fits in. Astronomy is used to define the origin of the universe, its contents and the processes that govern the universe. Astronomy gave us navigation and time. It's the field that most attracts students to the science field. TMT is the next step in telescopes, and is 10 times sharper than a regular telescope. Bolte believes this will be one of the greatest scientific creations of this century.

Member Gomes asked how Hawaii was picked out of all the other countries in the world. Bolte said that they spent 3-5 years evaluating sites all over the world, and it turned out that there were two hot spots for carrying out astronomy in the world; Mauna Kea and another spot in Northern Chile. Mauna Kea, because of where it sits in the middle of the ocean and the viscosity of the lava the slopes are very low, so when the air moves up the mountain top, they don't become turbulently unstable. Above Mauna Kea is the best window on earth into the universe. There are plans to build another telescope in northern Chile.

James Hollstorm submitted copies of his testimony. Hollstorm is president of Hollstrom Group Inc. He summarized his testimony by explaining that his assignment was to determine whether the proposed rents were appropriate, rational and supported by market standards. The conclusion is that the recommended contract subleases are appropriate, rational and supported and provide a return on the acreage. The lease site is 8.66 acres, of that 5.99 of that is useable. Hollstrom said that site is vacant, unimproved, and unserviced. He stated that it was important to understand that this raw piece of earth has no infrastructure. The magnitude of the proposed rent comes out to about 55 dollars per square foot. That rent is higher than any other rent that currently exists.

Sterling Wong the Public Policy Officer at OHA outlined his written testimony offering comments regarding the proposed sublease and non-exclusive easement agreement with TMT International urging the BLNR to carefully consider these concerns as they may relate to the encumbrance of culturally, environmentally, and financially valuable lands on Mauna Kea.

Member Gon commented that the written testimony pointed out that the Board of Trustees of OHA in July of 2009 unanimously adopted a resolution in support of Hawaii and TMT. He asked if the Board has changed its position since that time. Wong responded that the Board has taken a couple of positions consistent with OHA's long history of advocating for management of state lands. Generally they want to make sure they testify for compliance with state laws and making sure the state upholds the responsibilities of managing the public land trust that native Hawaiians have a share in.

Member Gon then asked what OHA considered management of the mountain. Wong said the comprehensive management plan lays out the basics for managing the mountain. OHA's main concern is that there is enough revenue coming from the subleases.

E. Kalani Flores submitted written testimony and testified representing himself and the Flores-Case Ohana. They are concerned Kanaka Maoli of Hawaii, and demand the BLNR not approve the proposed sublease for the following reasons: term lease is in violation of Hawaii Revised Statutes, the proposed sublease removes the oversight of the lessor, UH has not disclosed the valuation methodology, the sublease should not be issued for a project that extends beyond the life of the existing master lease, the sublease should not be approved until a final ruling regarding the CDUP has been rendered, and the sublease should not be approved until section 106 and consultation with Native Hawaiians regarding the TMT project has been completed.

Marianne Takamine a UH Hilo professor testified in support of the TMT because of scientific and educational purposes.

Kealoha Pisciotta noted that they filed an appeal of the TMT to the Supreme Court. Pisciotta was present to testify in opposition on behalf of herself, Mauna Kea Anaina Hou, as well as Paul Neves. She first commented that she took offense to the fact that Mauna Kea has been assessed as just "a mountain" or "just rocks". Pisciotta stood for protecting Mauna Kea, its significance. She said that Hawaiians need to be taken into account because Hawaiians use it.

Paul Cowen a native Hawaiian astrophysicist testified in support urging the Board to use this to bring the Hawaiian culture into the 21 century but do it by being culturally sensitive.

Tuti Baker read statements from a petitioner in objection to this item being an agenda item that took place here on Oahu, instead should have taken place on Hawaii Island. Baker suggested having a meeting on Mauna Kea to let the Mauna speak for itself.

Willford Tyler Gee a student at UH Hilo testified in support because it gives students who want to peruse education in astronomy the opportunity to stay on the islands to study instead of going away to the mainland.

Kalani Flores requested a contested case hearing on behalf of the Flores-Case ohana.

Written testimony was submitted on behalf of Dwight Takamine.

Candace Fujikane a professor of UH and Kahea Board member first read testimony on behalf of Kahea in opposition advocating for stewardship as well as cultural and environmental justice. Fujikane commented as an individual that it was disturbing to hear to hear Mauna Kea referred to

as a “piece of earth”. She gave the definition of settler colonialism as a system which settles replace indigenous people, and that what she feels is going to happen with Mauna Kea.

Kai Hyashi with Hawaii Lessor partners with Hawaii Labors Union. The orange and pink shirts were present with him in support. He submitted written testimony in support and stood on his testimony.

Shelly Muneoka read testimony in opposition from Haumana. They feel there should be no further construction that disrupt their sacred site for cultural purposes and expect the state to malama the Mauna Kea. Muneoka then read the testimony she submitted in opposition. She expressed her concern about the excavation of earth and with the interrupted view planes as it is becoming more difficult to find places on the Mauna that are not visually dominated by astronomy facilities.

Brooke Wilson, with the Pacific Resource Partnership, stood on their submitted testimony in support. They feel this will bring lots of needed jobs to Hawaii.

Laulani Teal, a cultural practitioner, testified in opposition addressing human rights. She said that this lease is not legal and is not right. This is placing a burden on cultural practitioners to fight for the protection of the Mauna that is their place of practice. This makes this a human rights violation, not just to them, but to future generations. She is not against astronomy, she is against destruction.

Leonard Hoshijo with the Hawaii Carpenters Union stood on their submitted written testimony in support.

Ponokealoha testified in opposition ashamed of a fake state program.

Roberta Chew former Chair of the Hawaii Island Development Board recommended approval because TMT will be paying rent in addition to providing viewing time and rent will go toward funding which will be used to take care of the mountain. This integrates culture, science and sustainability.

Pisciotta added that they use Mauna Kea to try to keep their knowledge. Modern astronomy cannot be compared to what ancients do.

Heather Kaluna from Paho, UH undergraduate studying astronomy and education supports the lease. She felt the TMT will provide opportunities for Hawaiian students in providing culturally significant programs.

Olu Campbell a student at the William S. Richardson School of Law studying environmental law testified that he was torn but wanted to emphasize one point. He sees this as a great opportunity for Hawaii and students of Hawaii, however on the other hand, Hawaiians are here, nowhere else. These opportunities and discoveries have other places to go.

Jackie Hoover a resident of Hawaii read her testimony in support. She submitted her testimony as well as testimony in support written by the Hawaii Leeward Planning Company and the Hawaii Island Development Board.

Ben Manuel opposed this, he doesn't think indigenous people should ever have to relinquish their right to defend their land and their culture.

Crystal Softer a student at UH Hilo studying astronomy supported TMT. She came to Hawaii 3 years ago to study astronomy. To her Mauna Kea is not just a mountain, it is very much alive to her.

Liko Martin submitted his testimony in opposition by singing a song that he wrote.

Barry Taniguchi from Hawaii Island testified he served on the Mauna Kea Management Board from 2000-2012, but remains passionate about the management of Mauna Kea. He made reference to the decommissioning fund and stated that the rent amount was fair. Taniguchi commented this cannot be compared to the Naniloa lease, because the Naniloa lease was an auction lease, this was not. Taniguchi supports the lease.

Dan Purcell testified that he was neither for nor against but wanted to provide general comments, suggested an alternative and addressed issues he had with process and procedures. He also expressed his frustration about the lack of communication and lack of ability to receive documents from the Mauna Kea Management Board. Purcell reserved his right to a contested case hearing so that he is entitled to participate.

No one else stepped up to testify, public testimony closed.

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

4:33PM EXECUTIVE SECESSION
5:03PM RECONVENE

Chair Aila announced that after conferring with the attorneys the Board is going to make a motion to defer this item and ask the University to come back with answers to a couple of questions; mainly the analysis of Chapter 171-17, the appraisal and the impacts of section 106.

Member Goode was curious about what other astronomy sites charge. For a complete record, that should be looked at.

An attorney representing UH Hilo said they don't have a problem deferring the item to the next meeting, especially when there has been a request for contested case already. They asked that the Board to defer the sublease until the Board acts on the requests of the contested cases. Chair Aila said the Board wasn't planning on making a motion until they get the information being requested from UH.

Straney suggested the University submit the requested information in writing. The UH attorney agreed that a written set of questions would be helpful. Dan Morris, the deputy attorney general said that was fine.

Morris made it clear to Tsuji that applicability of 171-17 as well as the appraisal methodology, as well as a reference in the testimony from Flores relating to the application of 171-36; restrictions on the options of the renewal.

Member Goode made a motion to defer the item pending a response from the University to the deputy AG's letter which will ask for clarification on 106 processes, section 171-17, section 171-36 and discussion of other ways to somehow value the sublease. Member Gon seconded.

Laulani Teal made a request for this item to be heard on Hawaii Island.

Deferred to allow the University of Hawaii to address certain questions and issues raised during the public testimony portion of the Land Board meeting. UH is asked to respond to the following questions and issues:

- 1. Explain how the sublease rent schedule proposed for the TIO sublease meets the "substantial sublease rent" requirement of CDUP HA-5668. In order to comply with the "substantial sublease rents" requirement: (a) should an appraisal be performed by UH in accordance with HRS 171-17; and (b) whether compensation paid for telescope viewing times at other observatories located elsewhere ought be considered?**
- 2. Respond to the June 4, 2014 letter from the National Council on Historic Preservation questioning whether UH complied with the section 106 consultation requirements of the National Historic Preservation Act.**
- 3. Whether the prohibition on options to renew leases contained in HRS 171-36 prohibits UH from entering into this proposed sublease with TIO?**

Unanimously moved to defer (Goode, Gon)

Item E-1 Approval of Warranty Deed and Easements for Acquisition of Private Lands for Park Purposes, Waikapū, Wailuku, Maui, Tax Map Key: (2) 3-8-007:104.

Steve Soares property manager for State Parks asked to change a document number. The correct number should read 45617053. No other changes.

Unanimously approved as amended (Gomes, Kishinami)

Item L-1 Authorization to: (1) Contract Qualified Professionals to Provide Technical and Advisory Services Related to Geothermal Resources; and (2) Contract Qualified Professionals to Survey Geothermal Wells in the Puna Region, Island of Hawai‘i.

Dan Purcell commented this item was not properly displayed.

Item L-2 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai‘i Administrative Rules for Job No. J45CK41C Hā‘ena State Park Rockfall Mitigation, Hā‘ena, Kaua‘i, Hawai‘i.

Item L-3 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai‘i Administrative Rules for Job No. F11C763D, ‘Iolani Palace Fence and Gate Improvements, Honolulu, O‘ahu, Hawai‘i.

Item L-4 Appointment of David Fischer to Serve as a Director of the Kona Soil and Water Conservation District.

Alyson Yim representing from Engineering had no changes to items L-1 through L-4.

Member Gon noted that these were all very important items and he was happy to see them on the agenda.

Member Gomes made a motion to approve items L-1 through L-4.

Unanimously approved as submitted (Gomes, Gon)

Item D-1 Rescind Prior Board Action of January 24, 2014, item D-1, Request for Issuance of Revocable Permit to Kaiola Canoe Club for Canoe & Equipment Storage Purposes, Kekaha Beach Homes, Kekaha, Waimea (Kona), Kaua‘i, Tax Map Key: (4) 1-3-008:005.

Item D-2 After-the-Fact Approval of Right-of-Entry Permit to Hawai‘i Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display at Shipwreck Beach on June 5, 2014, Po‘ipū, Kaua‘i, Hawai‘i, Tax Map Key: (4) 2-9-001: seaward of 002.

Item D-3 Request for Issuance of Right-of-Entry Permit to Hawai'i Sand Festival c/o Julian Miller, for a Sand Castle / Sand Art Contest at Hanalei Bay Beach, Hanalei (Makai), Hanalei, Kaua'i, Tax Map Key: (4) 5-5-001: seaward of 11, 12, & 13.

Member Gomes asked how come there was no charge for this sand festival. Chair explained that his was not for profit and would be open to the public.

Item D-5 Authorize a One-Year Holdover of General Lease No. 3168, Christian Gallery and Lucy Snyder, Lessees, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit and Issuance of a Bill of Sale Transferring All Improvements on the Property to the Lessees, Ocean View Lease Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-007:034.

Item D-7 Sale of Flume Right-of-Way Reservation to Charles K. Novogradac and Deborah A. Milks, Pāpa'aloa Homesteads, North Hilo, Hawai'i, Tax Map Key: (3) 3-5-001:053.

Item D-9 Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on July 4, 2014, 'Ōuli, South Kohala, Hawai'i, Tax Map Key: (3) 6-2-002: seaward of 004.

Item D-12 Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display Purposes at Honolulu, Lāhainā, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.

Member Gomes asked for clarification. Chair explained that this was only a 20 minute show, but more time is needed for set up.

Item D-14 Issuance of a Right-of-Entry Permit to O'ahu Hawaiian Canoe Racing Association and the Lanikai Canoe Club for the Duke Kahanamoku Long Distance Canoe Race Event to be held on August 17, 2014, at Waikikī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: portions of 021.

Item D-15 Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Fire Hydrant Purposes; Maunalaha Honolulu, O'ahu, Tax Map Key (1) 2-5-024:016, 018 & 034.

Item D-16 Amend Prior Board Action of April 25, 2014, Item D-12, Consent to Plan and Agreement of Merger between Waimānalo Teen Project and Hui Mālama O Ke Kai Foundation regarding General Lease No. S-5468, Waimānalo Teen Project, Lessee, Waimānalo, Ko'olaupoko, O'ahu, Tax Map Key (1) 4-1-009:265.

The Amendment Seeks to Obtain the Board's Consent to the Facility Use Agreement for Three Days and Three Nights of the Resurrection, Sub-lessee.

Item D-19 Amend Prior Board Action of January 12, 2007, Item D-10, as Amended, Set Aside to the State Department of Transportation, Highways Division for Highway Right-of-Way and Highway Boundary Purposes, Cancellation of Revocable Permit Nos. S-7152, S-7329 and S-7402 and Re-issuance of New Revocable Permits Covering the Remaining Areas and Issuance of a Right-of-Entry for Construction and Construction Staging Area Purposes, Honouliuli, 'Ewa, East Kapolei, O'ahu, Tax Map Keys: (1) 9-1-018: Portions of 3 and 5, and (1) 9-1-017: Portions of 86 and 88. The purpose of the amendment is to obtain Board approval for a Land Court petition regarding the subdivision of the land, and a memorandum of understanding between the Board and Department of Transportation, Highways Division, regarding access.

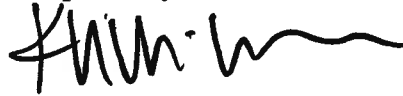
Item D-21 Authorization to Contract Qualified Professionals to Provide Technical and Advisory Services Relating to Renovation of Existing Structures and/or New Construction Options on State Lands at Waiākea, South Hilo, Hawai'i, Tax Map Keys(3) 2-1-5:020, 022, 033, 034, 035 & 045.

Items D-1 through D-3, D-5, D-7, D-9, D-12, D-14 through D-16, D-19 and D-12

Unanimously approved as submitted (Gon Goode)

There being no further business, Chairman William Aila adjourned the meeting at 5:21 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,



Ku'ulei Moses
Land Board Secretary

Approved for submittal:



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