

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

DATE: FRIDAY, JUNE 27, 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 9:02 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Reed Kishinami
Thomas Oi

Robert Pacheco
James Gomes
Wesley Furtado

STAFF

Julie China-Deputy AG
Kevin Moore-LAND
Maria Carnavale-PMNM

Sam Lemmo-OCCL
Alan Downer-SHPD
Dickey Lee-ENG

OTHER

Ross Smith/ DOT-AIR
Rocky Kaluhiwa/ K-3
Brenda Asuncion/ K-3
Peter Hamasaki/ D-18
Mark Roy/ D-11
Noboru Oishi/ D-4
Chancellor Don Straney/ D-19
Sterling Wong/ D-19
Kealoha Pisciotta/ D-19
Jim Hayes/ D-19
Pono Kealoha/ D-19
Kaanohi Kaleikini/ D-19
Maoni/ D-19
Tim Lui-Kwan/D-19
Kapuakeli'ikoa Kamai/D-19
Beverley Amaral/ D-2
HECO Rep/ D-15

Luka Mossman/ K-3
Jerry Kaluhiwa/ K-3
Dan Purcell/K-3,D-10,D-4,D-19,K-2
Paul Mancini/ D-10
Jeri Oishi/ D-4
David Kopper/ D-5
E. Kalani Flores/ D-19
Deborah J. Ward/ D-19
Dianne K. Hoapili/ D-19
Kimmer Bighorse/ D-19
Amelia Gora/ D-19
Shelly Muneoka/ D-19
Candice Fujikane/ D-19
Laulani Teale/ D-19
Stephanie Nagata/ D-19
Kelly Gleason/ F-1

Chair Aila acknowledged and commended Member Pacheco for his service as the Hawaii Island Board Member. Chair also acknowledged Wesley Furtado as the newest Land Board Member.

Item A-2 Approval of April 25, 2014 Minutes

Unanimously approved as submitted (Pacheco, Kishinami)

- Item M -1 Amendment No. 3 to Concession Agreement No. DOT-A-09-0002, to Extend Lease Term Under Provisions of Act 46, DFS Group, L.P., Retail Concession, Honolulu International Airport Tax Map Key (1) 1-1-003: Portion of 1.**
- Item M-2 Issuance of a Revocable Permit, Hawai'i Island Air, Inc. DBA Island Air, For the Purposes of Passenger Check-In Counters and Office Space for Airline Operations, Honolulu International Airport, Tax Map Key: (1) 1-1-003: Portion of 208.**
- Item M-3 Issuance of a Revocable Permit for Aircraft Parking, Cardinal Partners, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-076: Portion of 23.**
- Item M-4 Issuance of a Revocable Permit for Commercial Helicopter Operations, Alexair, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 19.**
- Item M-5 Issuance of a Revocable Permit for Commercial Helicopter Operations, Aris, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 19.**
- Item M-6 Issuance of a Revocable Permit for Office Space, DAL Global Services, LLC, Kahului Airport, Tax Map Key: (2) 3-8-001: Portion of 19.**
- Item M-7 Issuance of a Revocable Permit for Aircraft Parking, Guardian Flight, Inc., Moloka'i Airport, Tax Map Key: (2) 5-2-004: Portion of 8.**
- Item M-8 Issuance of a Revocable Permit for Storage Space, U.S. General Services Administration for Transportation Security Administration, Hilo International Airport, Tax Map Key: (3) 2-1-012: Portion of 90.**
- Item M-9 Issuance of a Revocable Permit for Office Space, US General Services Administration/TSA, Lihu'e Airport, Tax Map Key: (4) 3-5-001: Portion of 135.**

Ross Smith representing the Department of Transportation Airports Division (DOT-AIR) went through items M-1 through M-9 and had no changes.

Member Gomes asked what the form was to find out how much their lease would be from the state. Smith explained in this case DOT is negotiating it based upon the revenues that are anticipated to generate.

Unanimously approved as submitted (Pacheco, Gomes)

Item K-3 Conservation District Use Application (CDUA) ST-3703 for a Statewide Programmatic General Permit and Programmatic Agreement for the repair, restoration, maintenance, and operation of traditional fishpond systems in Hawai'i by the Department of Land and Natural Resources, Office of Conservation and Coastal Lands.

Written testimony was submitted by Grayson "Buddy" Keala, Kevin K.J. Chang, Leimana DaMate, and John N. Kittinger, Ph.D.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) presented item K-3. Its item supports a statewide programmatic general permit and programmatic agreement for the repair, restoration, maintenance and operation of traditional fishpond systems in Hawaii. OCCL is the applicant and will affect all traditional Hawaiian fishponds in the state of Hawaii that occur within the conservation district. The intent would be to provide cultural practitioners with a single application and permit processed by OCCL which encompasses about 5 different permits. This does not address the leasing issue, only the regulatory process. Lemmo gave detailed background on the structure and process.

Member Pacheco asked if these projects would be eligible for direct leases. Lemmo responded that if they are a 501-C3 then they qualify.

Member Gomes asked what would happen if someone had to go through private property to get to the fishpond. Lemmo explained that if the fishpond is owned by the owner, then there would need to be an agreement with the private land owner. If the pond is public, then you would have to have an agreement. They are making this process as friendly as possible, while maintaining the responsibilities to protect the cultural and environmental resources of the state. Lemmo added that OCCL has been working on this application for almost a year.

Member Furtado asked how many fishponds the department was willing to restore under state jurisdiction. Lemmo said there are about 400 fishponds under the state, and feel like this program will create incentive for practitioners who haven't shown an interest in this, to maybe show an interest in this. OCCL hopes to see about 20 projects in the next year.

Luka Mossman, Fisheries Outreach Coordinator for Conservation International testified in support, as this will ease the burdens of the fishpond practitioners.

Rocky Kaluhiwa po'o for the Island of Oahu testified on behalf of the Aha Moku Advisory Committee (AMAC) in support. Kaluhiwa read testimony submitted by Leimana DaMate, Executive Director for AMAC.

Jerry Kaluhiwa, Rocky's husband and cultural practitioner advised the Board to pick practitioners that are qualified and selected by the kupuna.

Member Gomes asked about where the monies from the fishponds would go. R. Kaluhiwa explained that the money from the fish sold goes back into that fishpond.

Brenda Asuncion with Kua'aina Ulu Auamo affirmed that they are committed to supporting practitioners along with this effort. Asuncion stood by the written testimony that was submitted.

Dan Purcell asked who would consume this fish and if any would be sold. Chair Aila explained that there are existing commercial fishponds, what is done with the fish is up to the land owner/applicant, it needs to be spelled out in the application.

Member Gomes commended Lemmo and staff for their work in this application and supports this projects. Member Pacheco seconded, he also supports.

Unanimously approved as submitted (Gomes, Pacheco)

Item D-12 Status of the Lawsuit filed by Plaintiffs Malama Kahakai and Dana Naone Hall v. 3900 WA Associates, LLC, dba The Four Seasons Resort Maui at Wailea, The Board of Land and Natural Resources, State of Hawai'i, et al., Civil No. 13-1-0219(2) filed in the Circuit Court of the Second Circuit, State of Hawai'i (Maui County).

The Board may hold a discussion in 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.

Kevin Moore representing Land Division (LAND) reviewed the item explaining that this was just to report the status of the lawsuit. Deputy Attorney General Donna Kalama was present.

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 Pacheco seconded.

Non-action item/ Non decision making.

9:48AM EXECUTIVE SESSION
10:11AM RECONVENE

Item D-18 Request to Amend Prior Board action of April 11, 2014, Item D-11, Amending Prior Board Action of November 8, 2013, Item D-13, Amending Prior Board Action of March 8, 2013, Item D-8, Approval of the Modification and Assignment of the Development for the Former 'Ewa

Feedlot site at Campbell Industrial Park, Honouliuli, 'Ewa, O'ahu, Hawai'i, Tax Map Key: (1) 9-1-031:001. The purpose of the amendment is to extend the benchmark deadline for compliance with Hawai'i Revised Statutes Chapter 343, Environmental Assessments that is set forth in the Amended and Restated Development Agreement.

Moore presented item D-18 explaining that as of the meeting of April 11, 2014 the department worked with the AGs to get the development agreement drafted and signed, in the process of circulating that, the developer requested additional time to complete the environmental assessment and instead of the fixed date (August 1, 2014), to change that to after the effective date of the development agreement. Land Division has no objection to that especially since the developer made a payment.

Peter Hamasaki representing McCorriston et al. testified that he was in support.

Unanimously approved as submitted (Gomes, Kishinami)

Item D-10 Grant of 55-Year Term, Non-Exclusive Easement to Matthew H. and Shawneen M. Schweitzer for Seawall and Stairway Encroachment Purposes; After-the-Fact Authorization to Issue Immediate Right-of-Entry Permit for Emergency Seawall Work; Authorize Issuance of Right-of-Entry Permit to Repair Seawall, 'Alaeloa, Lāhainā, Maui, Tax Map Key: (2) 4-3-015: Seaward of 001.

Written testimony was submitted by Paul R. Webber, PE.

Moore briefed the Board on item D-10 and explained that staff's recommendation is to grant the easement and approve the after-the-fact emergency right of entry and issue a right of entry to allow construction to go forward.

Paul Mancini, representing the Schweitzer family, thanked the Board and staff for the emergency permit.

Member Gomes said he went to site and saw the emergency repairs, and was curious as to how they were going to cure those repairs.

Mancini handed out a report with the repair designs prepared by a Mr. Webber.

Member Gomes asked about the beam holding up the wall. He asked if a footing would be built. Mancini read the narrative, which noted that reinforcing bars would be installed, forms would be placed on the footings and held in place while the concrete is pumped up the yard into it. Member Gomes said he would like to know how this is going to be implemented without damaging anything. There are stairs, but there is no way he can get into the water through those stairs, if he doesn't get down deep enough, that water will erode them again. Mancini said he would make arrangements for Member Gomes to speak with Webber.

Dan Purcell testified by asking what kind of follow up would be done about the issues that Member Gomes brought up. Moore said that complaints about the shoreline are brought to the department by the public, but if the Board requests an onsite inspection, one can be done for this project. Member Gomes said he would like that.

Unanimously approved as amended (Gomes, Pacheco)

The Board amended the recommendation section to require the applicant submit plans for the repair of the seawall to the Office of Conservation and Coastal Lands, and have its engineer and contractor consult with OCCL on the repair prior to commencement of construction.

Item D-11 Amend Prior Board Action of August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to Association Of Unit Owners (AOUO) of Hale Kai Condominium for Seawall / Revetment Purposes; Amendment is for the Inclusion of an Additional 1,287 Square Foot Encroachment Area, Honokōwai, Lāhainā, Maui, Tax Map Key: (2) 4-4-001: Seaward of 042.

Moore noted that the requested action is to amend prior Board approval to increase the area of encroachment and charge the applicant accordingly based the appraisal that was done on the encroachment in 2011.

Mark Roy representing Hale Kai thanked staff. Hale Kai has been working with staff and the AGs office. Due to the age of the property, repairs needed to be done and there was a requirement to do an updated shoreline survey. When Hale Kai did that, it was determined that the shoreline shifted further mauka, which is the cause of the additional square footage. They are in agreement and would like to move forward. The owners recognize there will be maintenance requirements and are prepared to go through the right process when that time comes.

Unanimously approved as submitted (Gomes, Furtado)

Item D-4 Lessee's Request for Early Termination of General Lease No. S-3836, NoJer Enterprises, Inc., Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-048:001.

Moore reviewed item D-4 explaining that the lessee is asking for early termination, staff is asking that a phase I site assessment is done as part of that agreement.

Member Gomes questioned the sold date under the remarks column of the staff submittal. Moore apologized and stated that the date should read June 16, 1964 not June 126, 1964. Member Gomes then asked if the applicant approached the department and said they couldn't afford the lease. He also asked if there anyone else interested in leasing this property. Moore said that it's up to the interested parties to take the assignment of a lease.

Jeri Oishi, one half of NoJer Enterprises stated that her husband Noboru is the other half. They bought the property in 1998 and over the last 10 years, business has not been robust. They

believe the re-assessment that had just been done had been exaggerated. With a retiring workforce they found it unsustainable. Recently, the Oishi's approached another business man in the area and asked him to take over their customers and their last two remaining employees. The employees now work for him and he has not taken over any part of their business. Member Gomes asked Mrs. Oishi if she still wanted to be in business if the rent was reduced to an affordable amount. She responded that their plan was to continue for the last 5 years of the 55 year lease, but they feel it's time to close. They plan on selling their plants for whatever they can get. At this point, they don't want to continue with the lease because their employees are already gone.

Member Oi asked if the main reason for opting out of the lease is the increase in rent. Mrs. Oishi said yes.

Chair Aila asked Moore for the reasoning was behind the increased rent. Moore said that was a difficult question and explained that the appraisal issue is specialized and that property values factor in. Moore did point out that the lessee is entitled to an arbitration reopening, but has decided not to do so.

Member Pacheco commented that arbitration is expensive, and felt like the department should've tried to work with the tenant to keep them for the last five years. Member Gomes agreed with Pacheco.

Noboru Oishi, Ms. Oishi's husband asked that the Board consider allowing a condition permitting the Oishi's to sell their greenhouses. Member Pacheco stated that is part of the recommendation.

Dan Purcell testified that staff ought to be prepared to answer questions. He also commented on the configuration of the meeting.

Chair Aila responded that the appraisal process is handled by professional standards, so staff is unable to answer those questions, because that is something that is out of the purview. The law only allows the department to do the appraisal, not to explain why the appraisal needs to be done.

Unanimously approved as submitted (Pacheco, Gomes)

Item D-15 Grant of Perpetual, Non-Exclusive Easement for Utility Purposes to Hawaiian Electric Company, Inc.; Issuance of Immediate Construction and Management Right of Entry, Honolulu, O'ahu, Tax Map Key (1) 2-1-015: portions of 009 & 030.

Moore conveyed item D-15 and noted that the decision is gratis because this is a government agency.

A representative from Hawaiian Electric (HECO) testified supporting the project.

Unanimously approved as submitted (Pacheco, Gomes)

Item D-5 Denial of Requests for Contested Case by (1) Kalani Flores, (2) Paul Neves, and (3) Hanalei Fergerstrom re: (a) Board Action of November 8, 2013, Item D-5, No Action on Mutual Cancellation of General Lease No. S-4191 to the University of Hawai'i (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General; and (b) Board Action of December 13, 2013, Item D-15, Deferring Action on Resubmittal: Mutual Cancellation of General Lease No. S-4191 to the University of Hawai'i (UH) for the Mauna Kea Science Reserve and Issuance of New Direct Lease to UH for Mauna Kea Science Reserve Purposes; Mutual Cancellation of General Lease No. S-5529 to UH for the Hale Pohaku Mid-Level Facilities and Issuance of New Direct Lease to UH for Hale Pohaku Mid-Level Facilities Purposes; Extension, Amendment and Restatement of Grant of Term Easement S-4697 to UH to Extend the Easement Term by Approximately 45 Years and Update the Easement Instrument with Current Provisions Approved by the Department of the Attorney General, Ka'ohē, Hāmākua, Island of Hawai'i, Tax Map Keys: 3rd/4-4-015:01 por., 09 & 12.

Written testimony was submitted by Koa Luke and David Kauila Kopper.

Moore presented item D-5 explaining that the first two requesters are represented by the Native Hawaiian Legal Corporation (NHLC). After receiving the petitions requesting a contested case, the department referred these requests to the AG office for assistance. The department was then informed by the AGs that these persons are not entitled to a contested case on these items by statute, rule or due process. The department accepts the AGs determination, and staff recommendation is to deny the petitions for these individuals.

David Kopper, attorney with NHCL representing petitioner Flores and petitioner Neves. Kopper cautioned the Board that native Hawaiian cultural Practitioners have constitutional rights for contested case hearing for government approvals regarding lands that could affect traditional and cultural practices. The staff submittal does not contest the petitioner's right as cultural practitioners. The two issues are the ripeness, and whether or not under Sharma, these practitioners are entitled to a contested case hearing as a matter of law. To address the ripeness issue, Kopper referred to Kilikila O Haleakala, explaining that the Supreme Court said that a Contested Case must be made before decision making.

Member Pacheco 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.

10:53AM EXECUTIVE SECESSION
11:10AM RECONVENE

Chair Aila called for more public testimony. No one came forward, so Chair Aila closed public testimony.

Member Pacheco explained that he did have concerns with the staff recommendation, he then made a motion to approve the recommendation but amending A, B and C to include deny petition without prejudice so that the applicants can bring the petition back when the item is brought back to the Board if they so choose. Member Gomes seconded.

The Board amended the staff recommendation to provide that the Petitioners' requests for contested case are denied "without prejudice."

Unanimously approved as amended (Pacheco, Gomes)

Item D-19 Resubmittal: 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.; and Decision-Making on Requests for Contested Case Hearing by Kalani Flores and Dan Purcell on Board Action of June 13, 2014, Item D-8 in Opposition to the Request for 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 Hawaii, Tax Map Key: (3) 4-4-015: 009 por.

Written testimony was submitted by Ruby K. Maunakea, Bob & Margot Ernst, William Gioia, Leona Roberts, Jenna Claire Nanea Lo, David Nash, Garid Faria, Abel Peter Aquino, Gene D. Barber, Newton & Roberta Chu, Lydia K. Clements, Chuck Erskine, Janice Harvey, Barbara A. Hastings, Kevin Hedlund, Jacqui Hoover, Stewart Hunter, Mike Kaleikini, Art Kimura, Ka'iu Kimura, Rene Kimura, Vivian Landrum, Jon Y. Miyata, James E. Moulds, Lynn Kalama Nakkim, Darren H. Nishioka, Tyler Dos Santos-Tam, Alice Sledge, Nimr Tamimi, Arthur K. Taniguchi, Nancy C. Tashima, Carol A. VanCamp, Robert Williams, Miles Yoshioka, Cristina Bacchilega, Brad Bordessa, Kris Bordessa, Candace Fujikane, Lahela Jarrett Holmwood, Ku Kahakalau, Ph.D., Koa Luke, Malia Nakamura, Emiko Okawa, Susan Lani Orr, Taimiroa Pajimola, Leimomi Wheeler, Toni Auld Yardley, Alva Kaneaiakala, Cristina Bacchilega, Brad Bordessa, Kris Bordessa, Lahela Jarrett-Holmwood, Shelley Muneoka, Donald O. Straney, J. Douglas Ing,

Dianne K. Hoapili, E. Kalani Flores, Sterling Wong, Deborah J. Ward, Chris Peterson and the Hawaii Astronomical Society Board Members & Membership and Charlene Dwin Vaughn, AIC.

Moore reviewed item D-19 reminding everyone that at the meeting of June 13, 2014 the Board raised 3 questions and issues dealing with the sublease rent, questions about the advisory council and Historic Preservation, review of sublease issues, and whether HRS 171-36 prohibits UH from entering into this sublease. On the afternoon of June 25, 2014 UH delivered its response letter to the department. The department has provided a copy of the letter upon request to members of the public. The letter states that the sublease rent is substantially in compliance with the CDUP requirement, that The Advisory Council on Historic Preservation has determined that the project has no federal funds and therefore does not constitute a Federal undertaking, thus Section 106 is not triggered, and it takes the position that HRS 171 does not prohibit the sublease.

Another item covered by this submittal is the requests for contested case hearings that were made at the June 13, 2014 made by Kalani Flores and Dan Purcell; however no written petitions were received 10 days after the Board meeting as required by administrative rules. Moore indicated that those cases can be denied due to lack of follow up.

Deputy Attorney General (AG) Julie China recommended that the contested case requests be denied for “failure to follow up with a written request,” as required by the rules.

UH Hilo Chancellor Straney commended Moore for summarizing the content of the letter UH provided and was available to answer any questions.

Chair Aila pointed out that in the response an analysis was provided of similar situations for other telescopes around the world.

E. Kalani Flores made a request for a contested case hearing for this item D-19 because it is a resubmittal, and because it was previously deferred. He also submitted his petition for a contested case hearing. In regards to the contested case hearing, the testimony provided on item D-5 is relevant for this sublease, and shows why a contested case hearing should be approved.

Flores then submitted his written testimony pertaining to the D-19 sublease. He explained that this testimony was basically a follow up from the testimony from June 13, 2014 BLNR meeting. Flores summarized his testimony highlighting key points 1) the BLNR and DLNR have not fulfilled their statutory responsibilities to protect the interests, lands, resources and rights of the public, beneficiaries and Native Hawaiians associated with Mauna Kea by relying primarily upon the submittals and testimony of UH regarding this item; 2) Various terms and conditions of the proposed sublease are in violation of Hawaii Revised Statutes as well as constitute a breach of the State’s high fiduciary duties to the public lands trust; 3) The BLNR has failed to determine the fair market value of the proposed lease rent; 4) Sections 9 (a) (b)(c) of the proposed sublease are in violation of HRS 171-36 (a)(1); 5) Various terms and conditions of the proposed sublease remove the oversight of the lessor pertaining to significant provisions and relinquishes it to the sublessor; 6) This sublease should not be approved until an independent Ka Pa’akai analysis has been completed; 7) This proposed sublease should not be approved until a final ruling regarding

the CDUP has been rendered; 8) This proposed sublease should not be approved until section 106 and consultation with Native Hawaiians regarding the TMT has been completed; 9) A sublease should not be issued for a project that extends beyond the life of the existing master lease that terminates in 2033; 10) This sublease should be in compliance with Act 132; 11) This proposes sublease should not be approved based upon other written comments and testimony previously submitted and presented by Flores at the 6/13/2014 BLNR meeting; 12) Further construction should not be allowed until the terms and conditions of the sublease are in compliance with federal and state laws; 13) The submittal by Straney includes several inaccuracies and misleading statements.

Sterling Wong public policy manager with the Office of Hawaiian Affairs (OHA) testified along with their outside counsel, Ms. Broder. Wong distributed his written testimony, then highlighted key points. The fiduciary responsibility of the state is their main concern. He noted that all testimony OHA has previously submitted has been attached to the testimony submitted today. Wong wanted to be clear that OHA's Board did pass a resolution in July 2009 in support of TMT on Mauna Kea. OHA also has a 30 year responsibility advocating that the state meet its fiduciary responsibility to the public lands trust. Wong explained that OHA asks that the BLNR delay decision making on this sublease until it receives adequate information and there has been adequate time to review that information. OHA would like more time to review the response letter from UH. Their concern is still the rental structure calculation for the sublease.

OHA's outside counsel added that a persuasive case has not been made by UH to justify the amount of rent being charged to meet the standard of substantial rent.

Member Pacheco commented that the department has never done appraisals on subleases. He said that since UH is not making money off of the operating cost, how does OHA suggest the department to take that into consideration.

Counsel said its difficult to determine what is substantial rent because of the uniqueness of the property, so more information is needed to make a determination. Another important missing piece is the cost of the management plan. What impact will billion dollar contract will have?

Deborah J. Ward is one of six petitioners who have challenged the BLNR approval of the TMT CDUP because UH has failed to demonstrate compliance with the eight criteria set out in the Administrative Rules and failed to comply with due process. Ward submitted her written testimony in opposition and read it before the Board.

Kealoha Pisciotta, a litigant, practitioner and President of Mauna Kea Anaina Hou testified on behalf of herself, Paul Neves and Clarence Ching in opposition to this project. Pisciotta does not believe Sharma falls into place in this case. She expressed her concern that this meeting wasn't held on Hawaii Island. Pisciotta referenced all of their previous testimony and contested case findings and facts. She asked to re-request another contested case hearing if this one was to be denied. Pisciotta said that at the last meeting it was their understanding that this was deferred, so there should have been no clock on petitions if the item was deferred. She indicated that she requested a contested case at the last meeting but was not listed in the title as of the requestors. Piciotta reiterated that if this is the final decision, she wanted to contest it. She then expressed

her concern with the rent, and asked to amend the statement made that UH does not make money, because its money that's generated on ceded lands. Pisciotta clarified certain points in a letter submitted by the Advisory Council of Historic preservation.

Dianne K. Hoapili read her written testimony in opposition addressing the fact that the decision is discriminatory and has no respect for the culture.

Jim Hayes, an environmental planner, former Chairperson for the Sierra Club on Oahu who previously worked for the TMT prior to the environmental statement. He spoke about his perspective of the project and some things that he has heard from the community. Hayes supports this project.

12:26PM

RECESS

12:45PM

RECONVENE

Kimmer Bighorse, a veteran, who said her Navajo ancestors are the founding fathers of this Country presented her testimony in opposition, for the aina based on spirituality, indigenous spirituality, loss of religion, and spirituality that is fading. After her oral testimony, Bighorse chanted and asked that the song guides the Board with their decision.

Chair Aila announced that the Board would be taking up an oral arguments case at 2pm and asked everyone to please limit their testimony and stay on the agenda item topic.

Pono Kealoha a Hawaiian National and kanaka maoli testified that Mauna Kea is sacred to him, his culture and his future generations. He challenged the Board on making any type of decision until a treaty of annexation can be provided and asked that the Board have nothing else to do with this item until then.

Amelia Gora, an heir to King Kamehameha told the Board to cease and desist and listen to the sacred piko, because there can be war crimes charged against many the Board members.

Kaanohi Kaleikini testified as a state recognized descendant to Kaohe. She encouraged the Board not to release Mauna Kea lands because it will damage numerous cultural sites. Kaleikini stated that the contested case hearings need to be heard.

Shelly Muneoka began her testimony opposing TMT by reading an excerpt from an oli that puts Mauna Kea in a sacred generation. Muneoka read the testimony she submitted that directly addressed the responses put forth by UH Hilo to the questions posed at the June 13, 2014 BLNR meeting.

Moani a state recognized descendant to Kaohe testified that she does not approve of this sublease because this is a sacred mountain and lots iwi kupuna will be affected.

Candice Fujikane an English professor at UH Manoa and KAHEA Board member testified urging the Board not to consent to the sublease. The TMT will be an industrial complex that cannot in anyway be consistent with the conservation district use compliance. Fujikane presented

photos so that we could visually see what the consequences would be if this is approved. She questioned how the TMT is able to begin construction and drilling even before TMT has a sublease.

Member Gomes asked if there really was construction. Fjujukane said yes, under the permit, but not without an actual lease.

Tim Lui-Kwan, representing UH Hilo explained that many of the issues raised today were issues in the CDUP which was issued last year. He asked the Board to ask any questions to any issues that were raised TMT has a grant of construction entry that was approved by OCCL. However, there is no construction occurring on TMT. In August 2013, geotechnical boring was done.

Dan Purcell said he was disappointed by comments from other members of the public. He asked to take Flores' statements as his own comments in regards to the contested case, Purcell said Flores' spoke them perfectly. Purcell asked for consistency in filing contested cases.

Chair Aila explained that the reason Purcell didn't get a contested case was because he didn't follow through with a written request within 10 days of the oral request. Purcell said he didn't follow through with one today and it's on the agenda for denial.

AG China clarified that it's because it's on the agenda again and if you had timely submitted a written petition, it was going to be addressed today. Purcell understood, but said it was still confusing. He reserved is right to a contested case hearing on this item. Chair Aila reminded him to follow up in writing in 10 days.

Laulani Teale testified as Public Heath Practitioner focused on Native Hawaiian Health. She addressed the health impacts the TMT has on the people protecting sacred places or cultural rights. She believes there will be serious health impacts because the destruction of sacred places can kill people. Teal asked the Board to consider this aspect in what they determine.

Kapuakeli'ikoa Kamai testified in disbelief of the failure of the state, staff and Boards. Kamai stated that this is environmental injustice; we need to preserve the aina for the future generations. She also said that the decisions that involve other islands need to be heard on those islands so the people affected can attend the meeting.

Chair Aila closed public testimony.

Member Pacheco said he had questions so he 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.

1:47PM
2:28PM

EXECUTIVE SECESSION
RECONVENE

Member Pacheco made it clear that a lot of issues brought up in testimony are an issue that dealt with the substance of the CDUP and that is already a legal document. The CDUP is not on the agenda is not what the Board is discussing. There were issues brought up about the 106 process, that's the federal process, not something that the Board needs to instigate. The Board is here to discuss the nature of the sublease. If that needs to go forward, then it will go forward. Member Pacheco does have questions about the substantial rent, and what that exactly means. He asked the appraiser to come up. Member Pacheco indicated that there is no requirement for the Board to have any kind of appraisal for a sublease.

Member Pacheco asked the appraiser about the appraisal process. James Hollstrom the appraiser for UH Hilo explained that this unique asset doesn't have an economic benefit, and he cannot speak to the value of the aina (land). Trying to come up with an estimate of a market value would be hard, because there is no market. It's preservation zoned land, there is no economic use. They made the observation that the amount of rent per unit or in total is greater than almost anything that currently exists for any state or private lease.

Member Pacheco asked Stephanie Nagata with the office of Mauna Kea Management what her opinion is on whether this sublease will contribute to the management of the mountain. Nagata explained that TMT's contribution will be very significant. Right now they are looking at 2.2 million dollars to manage the mountain, TMT will cover 50% of that.

Member Pacheco did have a concern from the Native Hawaiian Legal Corp about the quickness of this turnover response from UH.

Chair Aila told Member Pacheco that at the close of the June 13, 2014 BLNR meeting the question was asked about the quickest this could come back to the Board, Chair made everyone aware that the soonest this item could be back on the agenda would be the next Land Board meeting. UH Hilo had to do research to answer the questions that were brought up. They delivered their response on June 25, 2014 and we posted that and made it available as soon as technologically possible. Yes it was short, but the response was made available as quick as possible.

Member Pacheco then commented on the concept of the language of the sublease. He said that language is about that sublease being able to be carried forward if a new master lease is brought forward. Not that it requires things of the master lease. The sublease is subservient to the new master lease. Chair Aila added that will be part of a separate sublease action after an EIS is completed.

Member Pacheco added that this Board does have the authority authorize to issue subleases.

Member Pacheco made a motion to approve the recommendation, consenting to the sublease but that the consent is stayed until the administrative process is done. Member Kishinami seconded.

OHA made a request for a contested case.

Unanimously approved as amended (Pacheco, Kishinami)

The Board approved the consent to sublease, but stayed the effectiveness of the consent until administrative proceedings on any contested case requests are concluded. No action was taken on the two contested case requests made by Kalani Flores and Dan Purcell.

2:44PM

RECESS

3:38PM

RECONVENE

Item I-1 Request Approval to Authorize the Chairperson to Execute and Sign the Curatorship Agreement Between the Board of Land and Natural Resources and Ho'opakele Heiau Regarding the State Inventory of Historic Places Heiau Site #50-10-35-18695, Waiākea Ahupua'a, District of South Hilo, Island of Hawai'i.

Alan Downer Administrator for the State Historic Preservation Division (SHPD) asked for the approval of item I-1.

Member Gomes asked what happened between 1932 and 1983, if anyone claimed the heiau. Downer said no, the name now, is the name of the people who do work on the heiau. It has no name and no one has claimed it. Downer said that this group has been doing work on this heiau for the last 4 years.

Unanimously approved as submitted (Pacheco, Gomes)

Item D-2 Rescind Prior Board Action of March 27, 2009, Item D-4, Consent to Assignment of General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Jake Kaawaloa, Assignee, Kikala-Keokea, Puna, Hawai'i, Tax Map Key: (3) 1-2-043:035. And

Consent to Assign General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Beverly Keonaona Amaral, Assignee, Lot 35, Kalapana Section, Kikala-Keokea, Puna, Hawai'i, Tax Map Key: (3) 1-2-043:035.

Moore reviewed item D-2. Beverley Amaral was present and asked the Board to approve the lease.

Unanimously approved as submitted (Pacheco, Gomes)

Item D-7 Issuance of a Right-of-Entry Permit to the United States Department of Agriculture (USDA) Forest Service in conjunction with the Research Corporation of the University of Hawai'i (RCUH), for the Forest Inventory and Analysis Program at Honomā'ele and Ka'elekū, Hāna, Maui, Tax Map Key: (2) 1-3-003: Por. of 017.

Member Gomes asked how long the quarry has been used for the County of Maui. Moore said that Maui staff had just indicated this quarrying activity had been going on for some time. The

County is still on the property and is not exempt for an EA. Moore said he will check with Maui staff about the amount of time the County of Maui has been on this property and would follow up with Member Gomes.

Unanimously approved as submitted (Gomes, Kishinami)

- Item D-1** Reinstatement General Lease No. S-5563, Stephen Sico, Lessee, Portion of Lot 173, Kapa‘a Homesteads, 3rd Series, Kapa‘a, Kawaihau, Kaua‘i, Tax Map Key: (4) 4-6-008:001.
- Item D-3** Authorize a One-Year Holdover of General Lease No. 3165, Roderick Q. Hickman and Gloria L. Colden-Hickman, Lessee, 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 Lessee, Ocean View Lease Lots, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-1-007:031.
- Item D-6** Cancellation of Revocable Permit S-7711 Richard E. Souza and Donna Lee Souza with Issuance of New Month-to-Month Revocable Permit to Richard E. and Donna Lee Souza, for Pasture Purposes, Waiohinu, Ka‘ū, Hawai‘i, Tax Map Key: (3) 9-5-005: portion 003.
- Item D-8** Issuance of Right-of-Entry Permit to Beach Games Spectacular, Inc., for a Team Building Event at Wailea Beach, Honua‘ula, Wailea, Maui, Tax Map Key: (2) 2-1-008: Seaward of 109.
- Item D-9** Consent to Lease of Lands under Governor’s Executive Order No. 2358 to Lae ‘Ula O Kai, a Hawai‘i Nonprofit Corporation, Kanahā Beach Park, Kahului, Wailuku, Maui, Hawai‘i, Tax Map Key:(2) 3-8-001: Por. of 119.
- Item D-13** Grant of Term, Non-Exclusive Easement to Makai Ranch, LLC for Encroachment Structure Purposes; Assess Administrative Cost of \$500, Kahuku, Ko‘olauloa, O‘ahu, Tax Map Key: (1) 5-6-003: Seaward of 010.
- Item D-14** Amend Prior Board Action of April 12, 2013, Item D-12 by Authorizing the issuance of Immediate Right-of-Entry Permit for Access Purposes; Grant of Two (2) Perpetual, Non-Exclusive Easements to Clara Matthews, Sonny P. Lucas, and Debbie May Silva-Lucas for Access Purposes, Kunawai, Honolulu, O‘ahu, Tax Map Key: (1) 1-7-036:adjacent to 014 and 015.
- Item D-16** Consent to Assign General Lease No. S-4891, Alfred K. Fountain, Assignor, to Heine Fountain, Assignee, Maunaloa, Honolulu, O‘ahu, TMK: (1) 2-5-024:030.

Item D-17 Consent to Warranty Deed Regarding the Transfer of Non-Exclusive Easement S-5202; Marlene E. Ress, the Assignor; to Lisa Gouw Iwata, Trustee of the Lisa Gouw Revocable Living Trust Agreement dated May 8, 1997, as amended and completely restated on May 23, 2006, and John Allen Wong, Trustee of the John Allen Wong Revocable Trust dated November 24, 1990 as amended and completely restated on March 14, 1998; the Assignees; Ka'alaea, Ko'olaupoko O'ahu, Tax Map Key: (1) 4-7-016:seaward of 061.

No changes to items D-1, D-3, D-6, D-8, D-9, D-13, D-14 D-16 or D-17.

Unanimously approved as submitted (Pacheco, Gomes)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Dr. Kelly Gleason, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Maritime Heritage 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 items F-1 through F-3.

Member Gomes asked for more detail on the "black coral species". Kelly Gleason explained that she was not the technical expert on that, but according to Daniel Wagner this is a new species, and he is not aware of this species on the main Hawaiian Islands. Carnavale said she would follow up with Member Gomes after she contacts Wagner.

Member Pacheco asked Gleason what the status was on the two brothers. Gleason said the latest is that they finished their documentary film last fall, and PBS picked it up. She is also currently working on a nomination to the National Register of Historic Places for that site. The film is about 25 minutes; she also offered to give a presentation to the Board members in the future.

Member Pacheco asked Gleason to briefly tell the Board members the significance of the two brothers. Gleason explained that the Two Brothers is a Nantucket Whaling ship. The Captain of the Two Brothers was a man named George Pollard, who was captain of the whaling ship Essex prior to the Two Brothers. The Essex was stove by a whale, which inspired Herman Melville to write Moby Dick. Captain Pollard survived that experience with a few of his crewman, made his way back to Nantucket and decided to head out on the Two Brothers 30 days later. His quote was "lighting doesn't strike twice," but he was just an unlucky man.

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Megan Donahue, Hawai'i Institute of Marine Biology, University of Hawai'i, for Access to

State Waters to Conduct Bioerosion Study Activities. Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Project.

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Megan Donahue, Hawai‘i Institute of Marine Biology, University of Hawai‘i, for Access to State Waters to Conduct *Pocillopora meandrina* (POME) Community Characterization Activities. Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Project.

No Changes to items F-1, F-2 or F-3.

Unanimously approved as submitted (Pacheco, Kishinami)

Item K-2 Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case (KA 14-02) Regarding Unauthorized Construction and Transient Vacation Rentals in the Conservation District, Located at Hanalei, Kaua‘i, Tax Map Key (4) 5-4-002: 032.

Written testimony was submitted by Harold Bronstein.

Lemmo explained that this is asking the BLNR to select a hearing officer to run a contested case hearing in the Laney alleged violation and to delegate to the chair for selecting a hearing officer. This is a procedural request. The defendant has indicated in writing that they have no objections to the procedure.

Dan Purcell asked why there needs to be a hearing officer and would the hearing be open to the public.

Chair Aila indicated the hearing officer makes recommendations to the BLNR, the BLNR decides to take the recommendations or ask for further advice.

Member Pacheco further explained that a contested case hearing gets a hearings officer appointed to them, usually an attorney and they act as the judge and hear the arguments.

AG Julie China added that the public can sit in on these hearings, they just cannot testify. It's like going to court.

Purcell asked how he would find out about the hearing. Chair Aila told him to send in a request and once the hearing officer is appointed, then the department will have the hearings officer contact him.

Item K-1 Conservation District Use Application (CDUA) HA-3700 Regarding the State Department of Transportation (DOT) Māmalahoa Highway Repair Project, Located in the Ka'ū District, Island of Hawai'i, on Tax Map Keys: (3) 9-5-016:006, 022, 025 and 026.

No changes to items K-1 or K-2.

Unanimously approved as submitted items K-1 and K-2 (Pacheco, Gomes)

Item L-1 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai'i Administrative Rules for Job No. J00CB01B, Rainbow Falls ADA Barrier Removal Project, Hilo, Hawai'i.

Item L-2 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai'i Administrative Rules for Job No. J00CB01B, Wailoa Small Boat Harbor ADA Barrier Removal Project, Hilo, Hawai'i.

Item L-3 Appointment of John McHugh and Certification of Elections of Alan Gottlieb and Peter Gibson to Serve as Directors of the West O'ahu Soil and Water Conservation District.

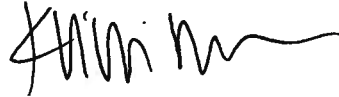
Item L-4 Appointment of Jill Suga to Serve as a Director of the East Kauai Soil and Water Conservation District.

Dickey Lee representing the Engineering Division (ENG) had no changes to items L-1 through L-4.

Unanimously approved as submitted items (Pacheco, Gomes)


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