

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

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

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:03 a.m. The following were in attendance:

**MEMBERS**

William J. Aila, Jr.  
Thomas Oi  
Christopher Yuen

James Gomes  
Stanley Roehrig  
Ulalia Woodside

**STAFF**

Russell Tsjui-LAND  
Sam Lemmo-OCCL  
Erik Vuong-DOCARE  
Kevin Yim-DOBOR  
Adriana Phillips/DAR  
Fraizer McGilvery/ DAR  
Erin Zanre/ DAR

Luna Kekoa-DOCARE  
David Sakoda-DAR  
Kevin Moore-LAND  
Alton Miyasaka/ DAR  
Bill Tam/ CWRM  
Emma Anders/ DAR

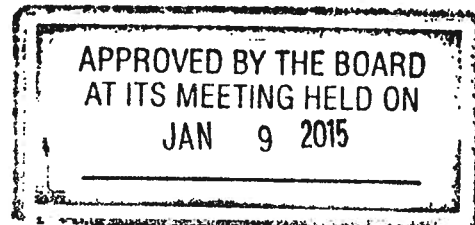
**OTHER**

Dan Morris/ Deputy AG  
James Stone/ M-5  
Ed Sniffen/ D-1, D-4  
Tim Lui-Kwan/ D-5  
Bishop Robert Fitzpatrick/ D-2  
Mark Fox/ B-1  
Louell Valdez/ F-2  
Dan Purcell/ D-3, F-4, M-1

Ross Smith/ DOT-AIR  
Lloyd Maki/ M-6  
David Kim/ D-4  
Ivan Lui-Kwan/ D-2  
Luka Mossman/ B-1  
Ann Bousloug/ K-2  
Brian Campbell/ K-1

**Item D-6**      **Withdrawal from Governor's Proclamation dated December 31, 1918 for the Mokuleia Forest Reserve and Reset Aside to the Department of Accounting and General Services for Public Safety Communication Purposes; Issuance of an Immediate Construction and Management Right of Entry, Waialua, O'ahu, Tax Map Key: (1) 6-8-001: por. 004.**

**Withdrawn**



- Item M-2 Issuance of a Revocable Permit for Aircraft Parking, North Shore Aviation LLC, Dillingham Airfield, Waiālua, Hawai‘i, Tax Map Key: (1) 6-08-014-001 (Portion).**
- Item M-3 Issuance of a Revocable Permit for Aircraft Parking, Terrapac Imagery LLC, Dillingham Airfield, Waiālua, Hawai‘i, Tax Map Key: (1) 6-08-014-001 (Portion).**
- Item M-4 Issuance of a Revocable Permit for Land to Store an Office Trailer, Rec Solar Commercial Corporation, Kahului Airport, Tax Map Key: (2) 3-08-001:019 (Portion).**

Ross Smith representing the Department of Transportation- Airports Division- DOT-AIR reviewed items M-2 through M-4 and had no changes.

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

- Item M-5 Re-submittal- Amendment to Action Taken Under Item M-1 of the Land Board Agenda of April 11, 2014, Regarding Concession Agreement No. DOT-A-07-0001, In-Bond (Duty Free) Concession to Revise the Concession Fee, Provide for Further Extension of Term in the Event that Improvements Constructed on Behalf of the DOT by Concessionaire Exceed Cost Estimates, and Allow for Conversion of Duty Free Merchandise to Duty Paid Merchandise Under Certain Circumstances, DFS Group, L.P., Honolulu International Airport, Tax Map Key: (1) 1-1-003:001 (Portion).**

*Written testimony was submitted by Ross Higashi.*

Smith explained that this item was a continuation from last meeting and noted that Deputy Director Ross Higashi submitted a written statement to Chair Aila.

Chair Aila apologized that he was in a Water Commission meeting all day, prior and was unable to share the statement with the Board members. Chair Aila asked Smith to please cover what was expressed in the statement. Smith indicated that Higashi stressed that the Duty Free in bond Concession is very important to the airports division and represents a high percentage of revenues. DOT believes this was the best deal they could make with DFS at this time.

9:08AM Member Roehrig arrived.

9:09AM Chair Aila stepped out to look for email sent to him by DOT-AG.

Member Yuen asked Smith about the difference in submittals; the submittal for this meeting contains a formula for extending the concession beyond the ten year extension, while the submittal for the last meeting did not. Smith confirmed the difference.

9:11AM Chair Aila returned.

The DFS representative discussed improvements. Member Yuen questioned why the cap of 5 years is not mentioned in the submittal and suggested amending the submittal to include the cap. The Representative explained that the DOT would impose the contract. Smith recommended seeking advice from the department's AG before making an amendment. Member Yuen made it known that he would feel more comfortable amending the item to include how far the time extensions could go. Member Yuen understood that the legislation didn't have a limit, but asked what the normal limit is for this type of lease. Smith said it depends on what is involved in the concession, they are frequently issued at 5 year intervals, and they could be issued longer; 15 being the longest. Member Roehrig concurred that there should be a limit.

Member Woodside commented that she would prefer that the Minimum Annual Guarantee (MAG) not be a holdover because the last 4 years of the mag is already being held over. She wasn't happy that the mag wasn't clear and asked that it be reiterated in the motion what exactly the mag formula would be for the extension years. Smith noted that the formula in the submittal is the standard formula used for all concessions; it's used in airport contracts, as well as airport contracts around the world.

Member Yuen made a motion to approve with the amendment that the additional extension beyond the initial 10 years based on any cost over runs be limited to 5 years. Member Gomes seconded.

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

**Item M-6 Request Approval of a Use Permit Between the State of Hawaii, Department of Defense, Hawaii Army National Guard (HIARNG) and the County of Kaua'i/ Kaua'i Police Department, for Access to, and Partial use of, the HIARNG's Hanapēpē Armory Building 1 Located at 1-3460 Kaumuali'i Highway, Hanapēpē, Kaua'i, Tax Map Key (4) 1-08-008:077 (Portion).**

Lloyd Maki with the Department of Defense indicated that the occupancy is only there so the officer has a place to fill their forms, etc. The area will be available 24/7, but no detainees will be brought in. Maki didn't consider this a substation, more of an office.

**Unanimously approved as submitted (Oi, Yuen)**

**Item D-1 Denial of Request for Contested Case Hearing by Pacific Alliance to Stop Slavery Regarding Petition for Contested Case Hearing Regarding Issuance of Direct Lease and Immediate Right-of-Entry to the City and County of**

**Honolulu for Temporary Mobile Access to Services and Housing (TMASH) for Housing First Transition Purposes, Sand Island, Honolulu, O‘ahu, Tax Map Key: (1) 1-5-041: Portions of 130 and 334, together with rights of access and utility easements.**

Russell Tsuji, Administrator for Land Division- LAND conveyed item D-1.

Ed Sniffen with the City and County of Honolulu thanked the Board for consideration.

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

**Item D-4 Amend Prior Board Action of December 9, 2010, Item D-6, Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, O‘ahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various. And**

**The Amendment is Regarding the Issuance of Revocable Permit to the City and County of Honolulu for Beach Management Purposes over Fort DeRussy Beach.**

Tsuji presented item D-4. This area is not unencumbered land, instead land that was ordered under DOT-Harbors lands. The Attorney General’s office has advised that there are no departmental rules prohibiting any kind of camping activity. LAND is asking that the Board amend the prior submittal that was done in 2010.

Member Roehrig wanted clarification that this action is to clear out the homeless from Fort DeRussy. Chair Aila answered that this change makes management of this land parcel consistent with the management other land parcels in Waikiki. This is not directed at the homeless, there are currently no administrative rules by any divisions under DLNR for this area. In addition to making Waikiki Beach consistent with the new County ordinance, this also helps with any other situations that occurs on a piece of property that has no administrative rules for management of the area. There was a brief discussion of other parcels not in DLNR-Land jurisdiction.

In answer to Mr. Roehrig’s question about how the Department is addressing the homeless, the chair explained that the department assists homeless advocates with their programs, and is assisting the County with their Housing First program. He noted that this item affects anyone who uses that portion of the beach, including homeless, beach vendors, or anyone else. The County will assist in the management of this section of the beach, as they already do for other parts of Waikiki.

Member Woodside asked for clarification on the intent. Tsuji said that the long term intent is for an Executive Order (EO) to the Division of Boating and Ocean Recreation (DOBOR), but right now the department would like to issue a Revocable Permit (RP) to the County for management of the area. . The prior EO is not being canceled, it's just being amended. Kevin Moore-Assistant Administrator for LAND said 1 year would be the length of time that the City and County would help the department.

Ed Sniffen representing the City and County of Honolulu explained that they were trying to help the State to manage the beach until the rules are set. Their plan with this project was the same as the Sand Island plan.

David Kim, a homeless advocate testified that these homeless people keep getting pushed around. They are in Waikiki to make a little extra money. Kim said that the bottom line was that the State and the City and County need to get serious about opening affordable housing for homeless people. He suggested setting aside lands that could be used for homeless people to build their own cabins. Kim said that homeless shelters were really just mental institutions.

Chair Aila told Kim that the department will be happy to entertain any reasonable proposals.

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

**Item D-5 Re-submittal - Issuance of Revocable Permit for Recreational and Maintenance Purposes to Resorttrust Hawaii, LLC; Issuance of Management Right-of-Entry, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:041.**

*Written testimony was submitted by Tim Lui-Kwan.*

Tsuji explained that this was a change in ownership of the Kahala Hotel; the lease is being bought out. Tsuji went into the History of this property and gave a description of the long term plan. LAND is asking that the Board issue the revocable permit for the public land area in the owner's name, Resorttrust Hawaii, LLC, and immediate management right of entry.

A letter was received the day prior from Tim Lui-Kwan, counsel representing the new owner asking that there be amendments on the conditions of the revocable permit. LAND had no problem with the requests.

Tim Lui-Kwan on behalf of Resorttrust Hawaii, LLC, reiterated the information presented by Tsuji. T. Lui-Kwan explained that there have been no recent complaints. He also went into detail about "presetting" of beach chairs and said there was no presetting of beach chairs. T. Lui-Kwan asked that a modification be set that would clarify this. He noted that there was no prohibition on holding weddings on the existing permit. The rule now is for unencumbered lands, this lease is encumbered.

Member Woodside asked how the public currently accesses the beach. T. Lui-Kwan described how the public was able to park at the resort and walk through and use the beach. Tsuji said there

was also a public right of way. T. Lui-Kwan added that he wasn't aware of any wedding ceremonies conflicting with public use of the beach.

Member Roehrig asked if surfing instruction was still going on. T. Lui-Kwan wasn't sure if that activity was still going on, although he thought that boards were available for guest to go on and paddle out. T. Lui-Kwan was okay with not having any type of surfing activity at all.

Member Woodside questioned the language of the right of entry. Tsuji said that if the Board would allow the approval of this item, he was going to substitute "b" for both sections 2 & 3 so there's consistency.

Member Yuen asked Tsuji if he was okay amending out the no wedding condition. Tsuji said no because T. Lui-Kwan has assured LAND that they will proceed with the formal legitimizing of the wedding ceremonies. T. Lui-Kwan indicated that his clients are very sensitive about the fact that the revocable permits are revocable at any time, and they are looking forward to a term lease in its place. He clarified that this parcel is not in the conservation district. Chair Aila added that this item will come back to the Board once all of these issues are resolved.

Tsuji asked that the Board not only amending sections 2b, 3a and 3b; but also asked to amend 3a because it was incorrectly written.

Member Woodside asked if they should add a section about prohibiting surfing instruction. T. Lui-Kwan said it didn't matter to them, because this wasn't an area that was being covered by the revocable permit.

**Approved as amended. The Board amended the Recommendation sections 2b and 3a and 3b as follows:**

**2b to read:**

- "b. Permittee shall not, without the prior written approval of the Department:**
- (i) Place improvements within the subject area; and,**
  - (ii) Preset beach equipment or conduct surfing lessons within the public beach fronting the subject area."**

**3a by replacing the phrase "most current revocable permit form" with the "most current right of entry form."**

**3b to read:**

- "b. Permittee shall not, without the prior written approval of the Department:**
- (i) Place improvements within the subject area; and,**
  - (ii) Preset beach equipment or conduct surf lessons within the public beach fronting the subject area."**

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

**Item D-2 Cancellation of Governor’s Executive Order No. 4053; Issuance of Direct Lease to The Episcopal Church in Hawaii for Church and School Purposes, Honolulu, O’ahu, Tax Map Key: (1) 2-1-018:004.**

*Written testimony was submitted by Ivan M. Kui-Kwan.*

Tsuji communicated that the City and County concurred with this item. The road within these lands is being sold to the school by the County; the County has jurisdiction over these lands. Tsuji understands that during the day the area will be open, but at night it will be closed. The road is being bought so it can be controlled by the school as the road is an interior road fronting Saint Andrew’s priory and St. Peter’s Episcopal Church.

Ivan Lui-Kwan introduced Bishop Fitzpatrick. Bishop Robert Fitzpatrick explained that the land around the church is all owned by the Episcopal Church of Hawaii and the school is part of the Church. Bishop Fitzpatrick gave some history about the site and detailed that their intent is this park parcel will stay public. However, because it is the entrance way to the school and, the back of the cathedral and the entrance to St. Peter’s Church Episcopal Church. They want to make this more attractive, maintain it better and put in sidewalks. He assured that it would still be a parkway that the whole City can use.

Ivan Lui-Kwan introduced more staff from the Episcopal Church. I. Lui-Kwan explained that the packet they submitted to the Board was to show their concerns for the safety of the, primarily the students of the school. There was a chart provided of 88 incidents that have happened throughout the past month. Most of them are trespassing issues. On September 10<sup>th</sup> the City and County approved the sale of the roadway and on July 3<sup>rd</sup> the Neighborhood Board approved the concept of allowing the Episcopal Church to secure and beautify the area. I. Lui-Kwan said his expectation is that assurance of continued public use would be incorporated into the lease.

Member Roehrig asked what would happen if a homeless person went to put up a tent. I. Lui-Kwan envisioned that they would be the lessee, and if they determined that person was using it in a way that wasn’t in the best interest, then they would ask that person to take down their tent. Bishop Fitzpatrick added that the pastor on site would be notified and as part of his or her pastoral duty, they would try to help that person in other ways.

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

10:30AM RECESS  
10:49AM RECONVENE

**Item B-1 Request for Approval of the State of Hawaii Makai Watch Program and Authorization for the State Makai Watch Coordinator to Facilitate the Memorandum of Agreement Process with Compliant Makai Watch Site Programs.**

*Written testimony was submitted by Scott R. Atkinson, Kevin Chang, Jason Chow, Kamana’opono Crabbe, Ph. D-OHA, Liz Foote, Aarin Gross, Makaala Kaaumoana, Mike*

*Lameier, Julie Merrick, Mary and Michele Paularena, S. Kehau Springer, Kekaulike Tomich, Ed Underwood, Jenny Lynn Yagodich, Jhana Young, Jesse Yonover, and Richardo Zanre.*

Luna Kekoa- State Makai Watch Coordinator was present on behalf of the Division of Conservation and Resource Enforcement-DOCARE to request approval of the State of Hawaii Makai Watch Program. Kekoa gave history of the Makai Watch Program and shared some of his personal experiences. If this is approved, it will allow the program staff to work with compliant communities to develop memoranda of agreements (MOA) formalizing and memorializing the relationship and responsibilities of the various agencies and the community. This memorandum of agreement will be with DAR and DOCARE and applicable with DOBOR.

Member Gomes asked Kekoa to elaborate as to what the 50%FTE Funding for the Makai Watch Coordinator position for two years means. Kekoa explained that the funding group wants to support as many programs as possible, and by providing ½ salary would allow the Coordinator to use that as match to acquire additional funding.

Member Roehrig expressed some of his concerns about various issues on Hawaii Island; Kekoa responded by making it known that the Makai Watch Program cannot deputize volunteers. Volunteers need to be trained.

Member Woodside thanked Kekoa for bringing this forward. She asked if each Makai Watch site is able to find organizational sponsors to meet the requirement. Kekoa confirmed that it is part of the requirement to become a Makai Watch community, and that the identified Makai Watch communities presently have a sponsor.

Luka Mossman representing Conservation International and Mark Fox representing The Nature Conservancy both testified in support.

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

**Item K-2      Extension Request HA-15-01 for a Two-Year Extension of the Construction Deadlines for Conservation District Use Permit (CDUP) HA-3549, by Hawai'i Housing Finance and Development Corporation, for the Keōpū Well, Reservoir, and Transmission Line at Hienaloli, Lanihau, North Kona District, Hawaii, Tax Map Key: (3) 7-5-013:022.**

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands- OCCL conveyed item K-2. This is the second extension OCCL issued; Lemmo added that he was pulled to the side by the development manager regarding some new issues, so there could be some changes to the project in the near future. Lemmo suggested giving them an extension and when then come back have a more formal discussion. They may need even more time to complete the project due to financing and securing the necessary legislative approvals.

Ann Bousloug with Forest City said they had a partnership with Hawai'i Housing Finance and Development Corporation-HHFDC; they were the developers and HHFDC was present as well. They are working on a plan now with a draft EA which would use the State conservation parcel



less. The original plan was to activate the existing well, that is not currently in production and install a 2 million gallon tank above it. However, they have identified a situation that would utilize a County reservoir and could be done at lower costs. This new solution requires a tank above the well. The CDUP as stated would meet their current needs. The new plans were outlined in the application. The process will take longer because of the new route, and archeological research needs to be done, as well as some other permits for the new route and site. Bousloug suggested a time extension now or, they would come back to the Board to ask for a time extension if need be.

Member Gomes asked what kind of undocumented archeological resources were found. Ken Rapport explained that the archeologist found what they think are wall structures, so additional excavation and documentation is underway. This has been coordinated with State Historic Preservation Division-SHPD.

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

**Item F-2 Enforcement Action Imposing Fine Against Mr. Elpie Valdez For Engaging in Illegal Lay Net Activity at Kanahā Beach Park, Maui.**

*Written testimony was submitted by Kamana'opono Crabbe, Ph. D-OHA.*

David Sakoda, Marine Law Fellow for the Division of Aquatic Resources-DAR presented item F-2. Sakoda said that this is being brought to the Board because the DLNR and DAR have the responsibility to manage and protect the Aquatic Resources of the State. This is done by protecting fishing regulations, such as net restrictions. In this case, a member of the public witnessed this illegal activity and reported it to DOCARE. DOCARE then was able to witness the violation in action and cited the violator. DOCARE then prosecuted the violation in District Court on Maui. The District Court judge ended up finding the defendant not guilty. DOCARE then took the case to DAR and asked them to bring the case before the Board to recover the loss of resources, which is authorized by statute HRS-187A12.5. The \$4,000 being requested is based roughly on the value of the resources that were taken. There were 148 fish that were taken, most of them mullet or 'ama 'ama that were full of eggs.

Chair Aila asked Sakoda to explain the difference between a lay net and a surround net. Sakoda identified lay net as administrative rule 13-75-1. The main characteristics are an open net configuration where the net is stationary, set in the water and whatever aquatic life is entangled in that becomes harvested. Another method is where the net is actively surrounding a school of fish, and the net is gathered immediately after the school is surrounded; this method is surround net fishing. In the rule the main characteristics are a closed net configuration, the moving net, person or persons chase the aquatic life into the net and only the aquatic life within the net are captured. In the DOCARE report, the respondent had two nets in the water and one on shore. The nets were always stationary and were unattended; that fits the definition of a lay net. When the respondent was confronted, he said he was aware of the law against lay netting, but claimed that he was surround netting.

Member Roehrig asked if the department's Attorney General-AG has looked into this, since the defendant has already been acquitted and this is a double jeopardy situation. AG Dan Morris said no, he did not look into this particular case. Member Yuen suggested discussing legal questions in executive session. Member Roehrig said he was fine with that, but wanted to hear the defendant's side of the story.

Louell Valdez, the son of Elipe Valdez testified on behalf of his father, who doesn't speak English well. L. Valdez explained that even with an interpreter in court, some things were still misunderstood. Member Roehrig asked to have a copy of Valdez' court papers.

Member Roehrig asked if there was anyone present that was at the criminal trial and present when Mr. E. Valdez testified. Erik Vuong a DOCARE officer from the island of Maui testified that he was present for the trial but he wasn't allowed to be in the courtroom while Mr. E. Valdez was testifying.

Member Gomes asked if administrative costs were included in the fine. Sakoda explained that since the DOCARE officers were responding in the normal course of their duty, there weren't any additional administrative costs. Sakoda told the Board that if they wanted they could add on the cost for the time that was taken to prepare this submittal, but that time wasn't included in the \$4,000. He said the primary cost of the fine was based on the loss of the resources. Member Gomes felt that the State should be compensated with some sort of administrative fee. Sakoda added that this was not the first violation for Mr. E. Valdez, he was found guilty in district court prior to this citation for illegal lay net activity in Keehi.

L. Valdez explained that from what his father was told, all he had to do was connect the net from end to end; that was considered surround gill netting. He said his dad was surround netting.

Chair Aila asked Officer Vuong if any of the nets were in the shape of a circle when Mr. E. Valdez was cited. Vuong said no.

Member Yuen clarified that there were two nets in the water at the same time, with this one individual being responsible for both nets and neither one was in a circle. Vuong confirmed and stated that the two nets that were in the water were not connected. There were 3 nets total and Mr. E. Valdez claimed that he was trying to use all 3 nets to make one large net. Each net was approximately 330 ft. in length.

Member Roehrig commented that he would like a transcript of the criminal proceeding.

Member Woodside asked if there was an issue with the net being unattended. Officer Vuong said yes, the complainant that called to report the violation said the nets that were in the water were left unattended while Mr. E. Valdez walked back to the parking lot to make a phone call.

L. Valdez told the Board that from his understanding his father had to break the net piece by piece to bring the net back up to shore.

Sakoda presented the statue in full for Member Roehrig to review. Member Roehrig noted the penalty and asked Officer Vuong if this was the same charge that was done criminally. Officer Vuong confirmed.

Sakoda wanted to make it clear that even if the violator wasn't aware that his actions were illegal, the division doesn't want to set a precedent that makes ignorance of the law a reason to break the law. The fact that he brought the net back up in pieces is a violation; that's considered lay netting. Member Roehrig commented that the sitting judge has already reviewed this and disposed of this differently, so that presents a problem.

Dan Purcell testified that he was concerned about procedure and whether the double jeopardy is legal or not. He was also concerned about the difficulty imposed on those from the neighbor islands who had to fly to O'ahu to testify. Purcell added that he was concerned about people who violate natural resources and take them illegally.

Member Yuen 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.

12:12PM                    EXECUTIVE SECESSION  
12:54PM                    RECONVENE

Member Roehrig made a motion to defer this item for one meeting and have the AG look at the docket and in the meantime look at the transcript from the court hearing. If the district judge found the defendant had presented adequate evidence of his defense that he was conducting surround netting, then it would set the wrong precedent for this Board to rehear the case. Member Yuen seconded for discussion purposes, but was not inclined to vote for the motion.

There was no further discussion. Chair Aila took a vote for the motion on the table; the vote was 1:5. The motion failed.

Member Gomes made a motion to approve the fine as stated by staff given the information presented. Member Yuen seconded.

Member Roehrig commented that the \$4,000 fine was unreasonable, and set a bad precedent. He agreed that the staff recommendations should be followed, but this is bad public policy to throw the book at an elderly Filipino man. Member Roehrig's recommendation would be to fine Mr. E. Valdez \$500.

Member Woodside addressed that the submittal describes by statute ways of evaluating the \$4,000 fine, but she felt that \$4,000 was below what the fine could've been based on the size of the take. Member Gomes agreed with Member Woodside.

Chair Aila called for a vote, the vote was 5:1 (all in favor, Member Roehrig opposed).

Chair Aila advised L. Valdez that there was a contested case process, where they can contest the decision that was just made. The Board will waive the oral request, since his father wasn't present, however should he want a contested case; he needed to follow up in writing in ten days requesting a contested case.

**Approved as submitted (Gomes, Yuen)**

**Item K-1 Extension Request OA-15-02 for a Two-Year Extension of the Construction Deadlines for Conservation District Use Permit (CDUP) OA-3589, by Tropical Sands Apartments, for Reconstruction of the Kainalu Seawall, on the Kaluahole Coast, Waikiki Ahupua'a, Kona District, O'ahu, Tax Map Key: (1) 3-1-033:001.**

Lemmo briefed the Board on item K-1, the applicant was issued a permit to do repair of this seawall structure; however they haven't been able to proceed because of the pending 401 water certification issue that has been going on for years. Since they are being held up by other agencies, Lemmo is recommending the extension.

Brian Campbell representing Tropical Sands Apartments said that they submitted their request in February of 2013 and got comments back in March 2014 and are working on the reprocessing. They are hoping to resubmit this month.

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

**Item D-3 After-the-Fact Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC for Beach Activities Purposes on October 11, 2014, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:Portion of 021.**

Kevin Moore representing LAND had no changes to item D-3. Moore explained that this was after the fact because the permit has already been issued. If they wait for Board approval for an event that is tomorrow, then the timeline is very compressed to try to get the document out.

Dan Purcell wanted to know why there were so many after the fact approvals.

Member Yuen asked what the scope of the delegation was and if it allows the Chairperson to issue the right of entry. Moore explained that the Board gave the Chairperson authority to issue these kinds of late request.

Member Woodside asked if there was a cutoff date, Moore explained that there was no cutoff date; the fee would just be higher. They could come in the day before.

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

**Item J-1 Request to Write-Off Uncollectible Accounts. (See Exhibit A)**

Kevin Yim representing the Division of Boating and Ocean Recreation-DOBOR noted that these accounts will not be covered under the new law, but the collection agency has asked that these

items be written off, some of these cannot be found or are out of DOBOR's jurisdiction. Should any of these come back, DOBOR will collect.

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

**Item F-1 Request for Final Approval of Special Activity Permit 2015-33 for Mr. Timothy Brown, Mokupapapa Discovery Center, to Take Regulated Live Corals From the East Hawaii Coastline Around Hilo, Hawai'i.**

Alton Myiasaka representing the Division of Aquatic Resources-DAR conveyed item F-1 and asked to amend the declaration of exemption so the numbers match the permit.

**Unanimously approved as amended (Roehrig, Yuen)**

**Item F-5 Request for Approval of Department of Land and Natural Resources (DLNR) Operational Policy Governing the Aquatic Restoration and Mitigation Trust Fund.**

Adriana Phillips, the protected species and marine mitigation law fellow with DAR conveyed item F-5. DAR would like this to move forward so that there can be administrative guidelines to guide the management. The purpose of this trust fund is to ensure that ecological and sustainable activities are being conducted that benefit the aquatic resources in the State. This is an operational policy.

Member Yuen asked for the statutory basis for the fund. Bill Tam Deputy Director explained that the department receives funds from different sources, and as an accounting matter that goes into a separate Trust Fund. The statutory authority to manage this comes from the fact that the department is receiving damage claims, for example. These are non-appropriated funds.

Member Woodside asked about non-project related expenditures. Phillips explained that these were things that don't need to go through the process of approving a project.

Member Yuen asked where the money from fines went that were collected. Sakoda said that they go into Sport Fish Special Funds and Commercial Fish Special Funds.

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

**Item F-3 Informational Briefing on Proposed Amendments to the Division of Aquatic Resources' Administrative Sanctions Schedule For The Processing of All Aquatic Resource Violations. (Non-Decision Making Item).**

David Sakoda with DAR explained that this was a non-decision making item. Sakoda referred to item F-2 detailing those types of cases highlight the need for a process within the department to process these types of natural resource violations where there will be a greater understanding of the law and the value of the resources. The Civil Resource Violation System-CRVS requires the adoption of a sanction schedule which will allow DOCARE officers to issue civil citations.

Under the current system DOCARE is only allowed to issue criminal citations and that goes through district courts. The only other alternative is a Board action such as the earlier one. With the civil citation, the respondent has 3 options; 1-pay the fine, 2-contact the Administrative Hearings Officer and request mitigation or 3- Contest the violation. DAR will present the request for the adoption of this schedule in a few weeks.

Member Yuen asked what the officers' discretion was when making a citation. Sakoda informed Member Yuen that the officer has discretion as to the number of specimens he is citing for, but he cannot alter the amount for the fine. DAR doesn't want officers' to cite for the take of undersized fish, then have to make the discretionary determination as to how much the value of that fish is worth. The penalty schedule will establish a flat fine of \$200. Member Yuen was concerned there was a legal issue.

Member Woodside asked if there was a system so the officer will know how many offences a person has. Sakoda said they were working redoing the system so that officers have the ability to look up that information.

Member Yuen feels the penalty needs to meet the violation, he suggested looking into how much leeway there can be. He was concerned that if a person is setting a net that is too long and they haven't caught anything, it's a \$200 fine, but if they catch 50 fish, they are up to a \$10,000 fine.

Bin Li the Administrative Hearings Coordinator introduced himself and explained that he manages the civil resource violation system. The system now is designed to where people can voluntarily pay it off so they can be in compliance. The concept has always been that the department charges a small fee.

Member Yuen added that this is an excellent idea and recommended touching all basis.

Bill Tam added that this would be the beginning of the transformation on how enforcement would be done in this department. Last year there were about 7,500 criminal violations by DOCARE, those all require going to court, and this process will speed everything up. This will reduce the courts case load as well.

**Item F-4      Informational Briefing on Community Based Subsistence Fishing Area Designation Under Hawai'i Revised Statute §188-22.6. (Non-Decision Making Item).**

Frazer McGilvray administrator for DAR introduced Emma Anders, staff planner and Erin Zanre DAR Community Based Substance Fishing Area- CBSFA planner. The purpose for designation is to reaffirm and protect fishing practices customary and traditionally exercised for the purpose of Native Hawaiian Subsistence culture and religion. This gives the authority to DLNR to designate CBSFA upon receiving a proposal upon a community. One size doesn't fit all when it comes to fisheries management; it needs to go back to the way it used to be. Since the department doesn't have enough staff to get out, they rely on the community. Co-managed areas can be abundant as co-take areas.

McGilvray pointed out that there are currently 17 areas that would like to be CBSFAs. Building on previous work, DAR has been working with the communities to move this forward.

Zanre explained that they don't want communities to have to go through legislation; there is already a statute in place.

Member Woodside thanked and commended Frazer and his staff. Member Yuen thanked staff as well and added that he hoped the department is prepared.

Dan Purcell asked where the fish would be consumed. Chair Aila said that the fish would be consumed within the community. Zanre noted that this is about sharing and family consumption.

**Item M-1 Mutual Termination of Harbor Lease No. H-91-22, Dated December 20, 1993, Issued to the Honolulu Fire Department, City and County of Honolulu at Pier 15, Honolulu Harbor, Honolulu O'ahu.**

Chair Aila presented item M-1 to the Board, DOT was unable to be present. However both parties have agreed to terminate the lease.

Dan Purcell asked why the lease needed to be terminated. Chair Aila explained that the fire boat was in need of repairs and the City & County of Honolulu was trying to determine whether or not it's feasible to repair the fire boat.

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


There being no further business, Chairman William Aila adjourned the meeting at 2:17 p.m. 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:



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Carty S. Chang  
Acting Chairperson  
Department of Land and Natural Resources