

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

DATE: FRIDAY, NOVEMBER 14, 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 9:15 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Thomas Oi
Christopher Yuen

Vernon Char
Stanley Roehrig

STAFF

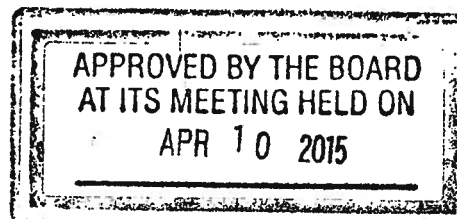
Russell Tsuji-LAND
Sam Lemmo- OCCL
Officer Wong-DOCARE
Dan Quinn-PARKS
Dave Smith-DOFAW

Ian Hirokawa-LAND
Larry Pacheco-LAND
Kevin Moore-LAND
Steve Soares-PARKS

OTHER

Colin Lau/ Deputy AG
Ross Smith/ DOT-AIR
Dawn Huff/ D-1
Kaleo Manuel/ D-1
Myra Kaichi/D-1
David Henkin/ D-1
Yvonne Izu/D-1
Jan Tenbruggencate/ D-1
Canen Hookano/D-1
Walton Hong/ D-2
Merrill Smith/K-5
Sulee Lloyd/ K-5
Ken Van Bergen/ K-5
Ed Bushor/D-5
Paul Noble/D-12
Edmund affery/K-1
Dean Hanzawa/K-1
Howard Hanzawa/K-1

Linda Chow/Deputy AG
David Bissell/D-1
Jobie M. K. Masagatani/D-1
Bill Meheula/ D-1
Paul Lockett/ D-1
James K. Manauku Sr./ D-1
Jason Hines/ D-1
Jim Anthony/ D-1, E-2
Warren Lee/ D-4
Ted Hong/ K-5
Ida Smith/ K-5
Celia Chen/ K-5
Michael Lam/ D-5
Mark Mansheim/D-5
Rodney Kilborn/D-12
Peter Young/K-1
Moses Rapoza/K-1
Kelly LaPorte/K-1



Bill Nations/ K-1
Ray Sanborn/ E-2
The Boy Scouts/ K-6
Winston Marbella/ K-2
Stanley Smith/ D-17
Makani Christensen/ C-2
Glenn Wachtel/K-4
Frank Carpenter/E-1
Iwa Kalua/E-1

Oryan Rayals/K-1
Craig Chapmen/E-2
Mary Roy/ D-18
Maria Marbella/ K-2
Joseph Griffiths/C-1
Gregg Kugle/K-4
Brock Stratter/ E-1
Rick Havicand/E-1

- Item D-22 Cancellation of Revocable Permit No.S-7629, Denial of Request for Revocable Permit for Residential and Home Gardening Purposes by Jacob Kaleo Hines; Waimānalo, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-1-018:050.**

Deferred

Chair Aila announced that Hawaii Island items will be deferred until the other Hawaii Island Board member arrived (Member Roehrig).

- Item M-2 Amendment No. 22 to Concession Agreement No. DOT-A-92-0018, Restaurant and Lounge Concession at Honolulu International Airport to Extend Lease Term Under Provision of Act 46, Session Laws of Hawai‘i 2012, as Amended by Act 126, Session Laws of Hawai‘i 2014, Tax Map Key: (1) 1-1-003:001 (Portion).**
- Item M-3 Amendment to Prior Board Action Taken June 14, 2013 Under Item M-1, Issuance of Concession Agreements and Facility Leases for the Non-Exclusive on-Airport Car Rental Concessions at Honolulu International Airport, Tax Map Key: (1) 1-1-003:001 (Portion).**
- Item M-4 Issuance of a Grant of Non-Exclusive Easement for the Installation, Maintenance and Repair of a Pole and Transformer Vault, Hawaiian Electric Company, Inc., Ualena Street, Honolulu International Airport, Tax Map Key: (1) 1-1-014:103 (Portion).**
- Item M-5 Consent to Sublease of State Lease No. DOT-A-91-0021, Pacific Aviation Services, Inc., to Cloud 9 Limousine Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-072:051 (Portion).**
- Item M-6 Issuance of a Revocable Permit for Aircraft Storage to Benjamin R. Williams, Honolulu International Airport, Tax Map Key: (1) 1-1-076:021 (Portion).**
- Item M-7 Amendment to Prior Board Action Taken June 14, 2013 Under Item M-2, Issuance of Concession Agreements and Facility Leases for the Non-**

Exclusive on-Airport Car Rental Concessions at Kahului Airport, Tax Map Key: (2) 3-8-001:19 (Portion).

- Item M-8** **Amendment No. 7 to Concession Agreement No. DOT-A-92-0014, Restaurant and Lounge Concession at Kahului Airport to Extend Lease Term Under Provision of Act 46, Session Laws of Hawai‘i 2012, as Amended by Act 126, Session Laws of Hawai‘i 2014, Tax Map Key: (2) 3-8-001:019 (Portion).**
- Item M-9** **Issuance of a Revocable Permit for Air Cargo Operations, Aloha Contract Services, LLC, Kahului Airport, Tax Map Key: (2) 3-8-001:019 (Portion).**
- Item M-10** **Issuance of a Revocable Permit for Commercial Helicopter Operations, Pacific Helicopter Tours, Inc., Revocable Permit No. 8248, Kahului Airport, Tax Map Key: (2) 3-8-001:019 (Portion).**
- Item M-11** **Issuance of a Revocable Permit for Commercial Helicopter Operations, Pacific Helicopter Tours, Inc., Revocable Permit No. 8249, Kahului Airport, Tax Map Key: (2) 3-8-001:019 (Portion).**
- Item M-12** **Issuance of a Revocable Permit for Parking, Conen’s Freight Transport, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-012:019 (Portion).**
- Item M-13** **Amendment No. 4 to Concession Agreement No. DOT-A-11-0006, Restaurant and Lounge Concession at Lihu‘e Airport to Extend Lease Term Under Provision of Act 46, Session Laws of Hawai‘i 2012, as Amended by Act 126, Session Laws of Hawai‘i 2014, Tax Map Key: (4) 3-5-0010:008 (Portion).**

Ross Smith from the Department of Transportation Airports Division-DOT-AIR reviewed items M2 through M13 and had no changes. The Board had no questions.

Unanimously approved as submitted (Oi, Yuen)

Item D-1 **Approval in Principle to Kaua‘i, Island Utility Cooperative (“KIUC”) for:**

- 1) Issuance of Direct Lease over Pu‘u Lua Reservoir for Water Storage Purposes, at Waimea, Kaua‘i, Tax Map Key no. (4) 1-4-001:002 (por.);**
- 2) Issuance of Pipeline Easement for Waterline Transmission Purposes, at Waimea, Kaua‘i, Tax Map Key nos. (4) 1-4-001:002 (por.), 1-4-001:014 (por.) and 1-2-001:006 (por.); and**
- 3) Issuance of Direct Lease of Water Rights And**

Approval of the Issuance of an Immediate Right of Entry to KIUC for Site Assessment Purposes, Tax Map Key nos. (4) 1-2-001:006, 1-4-001:002, and 1-4-001:014.

Written testimony was submitted by Kamanao'opono Crabbe, PhD-OHA, Lane Henkin, V. Kawai Warren and Jobie M. K. Masagatani-DHHL.

Russell Tsuji Administrator for the Land Division-LAND presented item D-1 by giving some background. Aside from this being a hydro project, the water used to power the facility will be returned back to the system at a lower elevation. Ian Hirokawa-LAND as well as a representative from KIUC were present for questions.

Member Oi commented that he hoped this project would not damage or interfere with any of the trout fishing that is going on in Kauai. He said it would be sad if something happened to the reservoir. If the improvements would enhance the fishing then that would be good. Tsuji explained that part of the requirements is that KIUC make improvements to the reservoir.

Hirokawa added that the water use process requires an EIS and they would still come back to the Board for final approval. He assured the Board that there would be opportunities for not just agencies, but for anyone to provide comments.

Member Yuen asked for a summary of the benefits of the project. Hirokawa explained that aside from it being a renewable hydroelectric project, the benefits immediately to the department would be that KIUC stated that they would be conducting all the necessary repairs on the Pu'u Lua Reservoir. The project proposal notes that they would restore the reservoir to full capacity. Right now it's running at maybe 20% of what it should be.

Tsuji said that ADC reviewed this project and they are okay with the project.

David Bissell KIUC CEO introduced Dawn Huff from the Joule Group. Bissell indicated that this was a closed loop, pump storage hydro project that would essentially recirculate water from higher elevations to a lower elevation. This project has many benefits; the pumps will be using low cost PV. They will be the first in the Country that's using PV during the day to run electricity at night. Bissell explained that this project would have lots of benefits to the State; they are going to get the dam up to standards, improve the roads, and improve the water flow both high and low down to the plains.

Dawn Huff added that rehabilitating the reservoir, keeping it at full capacity and maintaining it over the long term will benefit all the long stream users, the existing ones along with any in the future. They have been working with ADC and the companies that have licenses on the downstream plains. The project is tailored to meet any irrigation needs. They hope the road improvements will improve hunting access.

Jobie M. K. Masagatani, Chair of the Department of Hawaiian Homes Commission-DHHL introduced Kaleo Manuel from her planning staff as well as Bill Meheula, counsel for this matter.

Member Roehrig arrived 9:37AM.

Masagatani submitted written testimony in objection to the approval and read it. DHHL objects to item D-1 based on the following: 1) The approval in principle of an issuance of a direct lease of water rights, as detailed in the submittal does not acknowledge, address, analyze ensure or protect DHHL's right to water under section 221 of the HHCA and the State Water Code 174C HRS, which is an obligation of the BLNR and State of Hawaii. 2) DHHL's intention to seek water of its lands in Waimea has been clear as it has for the past two years worked with DLNR and Commission on Water Resource Management-CWRM staff on determining the water needs and demands of DHHL in Waimea, Kauai, 3) DHHL was not notified by DLNR of the intent to execute a lease of water rights in violation of §171-58 (g) HRS 4) The "approval in principle", to DHHL's knowledge is not authorized by statute or rule, and the State of Hawaii should be concerned that such approval in principle may constitute detrimental reliance that may result in liability to the State. 5) Item D-1 also violates §171-95.3 (c) and (d) HRS which state that the Board may direct negotiate a lease to renewable energy producers without public auction but shall also: "(c)...inform the public prior to the lease of public land...for a proposed renewable energy project under the section, the DLNR shall conduct not less than two public hearings on the island where the public land to be leased for the proposed renewable energy project is located." And further, "(d) Any action taken by the Board upon a proposal subject to this section shall take place on the island where the public land to be leased for the proposed renewable energy project is located." 6) Lastly, there is an existing petition before CWRM to update the Interim Instream Flow Standard for the Waimea River, which is tributary to the same source of water that the Koke'e Ditch derives its water. The submittal does not address this existing petition and the potential impact it has on the proposed project.

Member Yuen asked where the hydro proposal was. Masagatani referred to the map attached to her testimony and pointed out the location. She said the pump station would be put where the existing reservoir is. Most of the water is being cut off from their lands. Masagatani said they were considering a water call.

Member Yuen didn't understand what the issue was; if DHHL wants water from this system, it goes back up to where it was before and it is still available. Masagatani didn't know the implications; they have not seen the details and have not had time to analyze the project. She made it clear that they are not against Hydro, or the benefits or the opportunity of Hydro. One issue is the location, because it's unlikely the KIUC or any other energy provider will just do one project there. The opportunity to opening up homesteading is then compromised. Their position is that these procedural issues are put in for a reason.

Member Oi asked if DHHL had a plan moving forward for Hydroelectric on their property. Masagatani said they have been in preliminary discussion. They were ready to drop request months ago, however in working with DLNR and CWRM staff and the recommendation was made to improve the requests they were going to make. She said that they weren't putting water on DHHL land now because Puu Lua is not in the capacity to receive the water, that doesn't mean they don't have the need for the water; they need the water.

Masagatani clarified that they are asking that the Board defer action on this matter until there is an opportunity to consult with DHHL as well as the beneficiaries to understand the implications.

Member Roehrig disclosed that he was in the same law firm as Bill Meheula, but assured that he was not involved in this case at all. AG Colin Lau said it was okay.

Bill Meheula counsel for DHHL added one major concern with this proposal on competition of water and that there is only going to be enough capacity for one hydro in the area. DHHL didn't understand why KIUC needed an approval in principle. He said that they were going to go forward with a petition for a contested case hearing for 15 million gallons per day.

Member Yuen understood Meheula's point and asked if they had an objection to a right of entry. Meheula said no, they are just concerned that there has been no time to review this and there has been no notice. An agreement in principle is going to directly or indirectly affect their application and maybe affect their ability to get financing. DHHL is going to ask for 15.2 million gallons per day, their consultant said they need the commitment that they have the right to that water in order to move forward.

Deputy Attorney General Myra Kaichi wanted to make clear that the ADC has been approach with many hydro projects in the area. Thus far they have not approved any projects in the area. The ADC Board has not approved anything; they are waiting for finite plans. There are competing plans in the area.

Chair Aila asked if there was enough demand for more than one project. Bissell said it would depend on the size of that project.

Member Roehrig asked why we haven't partnered up with DHHL. Tsuji thought Masagatani was referring to CWRM staff. He didn't recall discussion on priority right of water with LAND staff; this was the first he heard he heard of their desire to do a project with hydro. Chair Aila explained that there was a request for an approval in concept, there was a desire to take a look at the repair of Pu'u Lua Reservoir so that in the future more water could be collected and provided for many different users. Chair Aila admitted that there should've been more communication with DHHL. Now there have been legal issues that have been raised about the approval in concept. He suggested going into executive Session later to discuss. Member Roehrig wanted to know if this could be an approval in principle to everyone, not just one entity. Chair Aila said that needs to be asked in Executive Session.

Member Oi asked why this project omits DHHL lands. Hirokawa explained that was how it was submitted by ADC and yes it did omit DHHL land. Member Oi suggested the department notify all entities involved. Tsuji said they did notify all parties involved, they just failed to notify their neighbors.

Paul Luckett Director of Konohiki Hydropower testified by requesting a deferral of this project so that further consolation can be conducted. Their concerns were about the water license and control of the Pu'u Lua Reservoir.

Member Yuen still didn't understand what the problem was. There is a reservoir, a pipeline is going to be built to Haelele Ridge, then the water would be pumped back up to Pu'u Lua, where it was before. Luckett said this was an irrigation system that was constructed for agriculture.

What is being proposed is the licensing of the water and reservoir to the electric control, so they will control everything because they have control of the water.

Member Roehrig asked if the Board had declaratory authority to force all parties to work together on this. AG Lau said no.

David Henkin attorney with Earth Justice testified that by requesting that the Board expressly condition any "approval in principle" under this agenda item on the requirement that any final approval will be subject to (1) the CWRM's decision in the IIFS proceeding and (2) an independent investigation and determination by the Board that the requested lease of water rights is consistent with the constitutional mandates to protect Native Hawaiian rights and the public trust.

Member Roehrig asked if the Board had the authority to tie this docket with the CWRM docket so that the two have to go tighter. AG Lau said no.

Member Oi made a motion to go into Executive Session. Chair Aila asked that he hold that motion until all public testimony is complete.

James K. Manaku Sr. testified that his concern was how this will affect the river.

Bissell introduced Yvonne Izu and Jason Hines also with KIUC. Bissell wanted to address that KIUC is not a public utility owned by shareholders, they are a cooperative. They are owned by the people of Kauai that take power and buy power. He was concerned that there was a comingling of issues. There are two separate issues here today, there is a pump storage hydro project, which KIUC is proposing and there are multiple other projects. Those other projects are not what they were here for today. This is not taking water from DHHL or any other entity, other than this one time filling up of the reservoir. This project has been in the public domain. An agreement in principle is needed because this is a multi-year process. KIUC needs commitment that they are in line before they go and spend hundreds of millions of dollars on this project. This is not an approval, and they understand that.

Jason Hines clarified that what they are looking to do is repair the dam to use as a pump storage project, they are not seeking to use any water and are aware of other downstream needs of the water.

Yvonne Izu said this approval in concept is just to give comfort, to KIUC this project still needs to go through a CDUP process.

Jan Tenbruggencate Vice President of the KIUC Board addressed that there are Board policies in place to protect Hawaiian rights and agriculture.

Meheula, with DHHL said if they may grant this it would prohibit DHHL from improving its lands. He said KIUC didn't discuss with DHHL. Member Yuen said he understood that concern and will address that in Executive Session.

Jim Anthony testified that the BLNR should proceed with caution and should consider deferring until CWRM has made a decision.

Canen Hookano testified in support of DHHL's comments and asked the Board to defer this item.

Chair Aila asked KIUC if the water request was just to fill up the bucket. They said yes.

Member Oi 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 Yuen seconded.

11:19 AM EXECUTIVE SESSION
12:23PM RECONVENE

Deputy Attorney General Linda Chow present, replacing Deputy Attorney General Colin Lau.

Member Yuen made a motion to approve staff recommendation of approval in principle, including right of entry except to defer action on proposed lease of water rights and that the Board direct staff to fulfill the statutory requirements under §171-58 prior to bringing the matter back to the Board. Member Oi seconded. Member Yuen emphasized that the approval in principle allows the applicant to go forward with various studies that they want and does not commit the Board to any favorable action.

Member Roehrig urged everyone to get together and work together.

Approved as amended. The Board approved as submitted all staff recommendations except recommendation C, approval in principle of the lease of water rights to KIUC. The recommendation was deferred in order for Department staff to fulfill the requirements of Section 171-58g, specifically providing notice to, and consulting with, the Department of Hawaiian Homelands regarding the proposed lease water rights. It was specifically mentioned and agreed to by all parties that none of the approvals in principle granted as aforesaid shall commit the Board to any future final approval or any other type of action.

Unanimously approved as amended (Yuen, Oi)

Item D-4 Issuance of Right-of-Entry Permit to the County of Hawaii, Fire Department and Department of Public Works, Onto Unencumbered State Lands at Keonepoko Iki and Keonepoko Nui, Puna, Hawaii, Tax Map Key: (3) 1-5-008:001, (3) 1-5-009:018, (3) 1-5-010:012.

Warren Lee Director of Public Works, representing the County of Hawaii reviewed item D-4.

Member Yuen commended Lee saying that the County has done an excellent job.

Unanimously approved as submitted (Roehrig, Yuen)

Item D-2 Request for Grant of Term, Non-Exclusive Easement to David G. Jorgensen and Annette Thatcher Jorgensen, Trustees of the David and Annette Jorgensen Revocable Trust for Seawall Purposes, por. of Kukuiula, Koloa, Kauai, Tax Map Key: (4) 2-6-012:seaward of 001.

Walton Hong representing the applicant asked if there was any way they could get their own appraiser. Tsuji told Hong that the department has to contract their own appraiser. Hong asked that this be expedited.

Member Roehrig suggested Hong and Tsuji take a look at ACT 168.

Unanimously approved as submitted (Oi, Yuen)

Item K-5 After the Fact Conservation District Use Application (CDUA) HA-3715 by Merrill and Ida Smith for the Conversion of the Rycroft Mill into a Single Family Residence and Subdivision of Land for Public Park Purposes Located at Pohoiki, Puna, Hawai'i, Tax Map Key (3) 1-3-008:037.

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands-OCCL asked that a correction be made to the Tax Map Key, the parcel should read (3) 1-3-008:34 not (3) 1-3-008:37. Lemmo briefed the Board that this was the old Rycroft Coffee Mill from the beginning of the 20th Century. The owners of this land Merrill and Ida Smith own this property and converted the coffee mill into a single family residence some years ago. OCCL was asked to go out and look at the site. OCCL did and opened up a violation proceeding because the owners didn't receive any authorization from OCCL for the conversion. They were taken through a violation proceeding before the Land Board. The owners agreed to pay the fine and convert a portion of the house that needed to be modified to comply with existing rules and regulations. The County wants to buy about 20 acres from them to be incorporated into the Park. Presented today is the after the fact CDUA to authorized the modification and authorize the use of land. OCCL is also asking for an extension of time required to pay the fines that were imposed in the violation proceeding until March 2015. This is going to be made part of the escrow payment of the fine. If for whatever reason his falls apart or the money is not received, then the violation proceeding kicks back in (pursuant to condition #16).

Member Yuen asked how come the Board can't just make an action to collect the money. Lemmo said the action was already in the record to collect the money. OCCL wants to give them an extension to collect the money and if they fail, then it's not resolved. Then they would have to come back to the Board to resolve it.

Member Yuen asked Lemmo if the Board/Department has the legal right to collect the money since they have agreed to pay it. Lemmo said they were trying to collect it, he has had situations where they impose fines and people haven't paid them.

Member Yuen asked what it means to re-open an administrative proceeding. Lemmo said that means to turn it over to the attorney general at that point. Member Yuen felt like if you reopen the proceeding then the whole decision went away, like the permit goes away. Lemmo said he

thought they would just turn it over to the attorney general and they would give advice on how to collect the money. Member Yuen suggested re-wording that part. He also asked that in regards to the time frame, it be stayed #1 that they shall be put in as a payment item in the escrow of the property and #2, put an outside date that is somewhat further into the future, whichever comes first.

Lemmo didn't have a problem extending the time frame, but defiantly wants to have a time frame. If the sale doesn't, go through, they still need a time frame. Lemmo also clarified that in regards to Member Yuen's earlier question, condition #16 states that it will be turned over to the Attorney General.

AG Chow suggested for the extension of time, condition #8 the Board may want to add on, or such further consent of the Chairperson; that way if the escrow is going beyond that, the Chairperson can extend the deadline for that, rather than coming back. The Board seemed satisfied.

Ted Hong representing Ida and Merrill Smith introduced Ida Smith. Hong also introduced some of his staff that have helped in the process Suelee Lloyd, Celia Chen, and Ken Van Bergen from the County. They have reviewed the report and accept the recommendation.

Suelee Lloyd planner for Hong gave a report of the process. After this is approved, the approval will be taken to the planning department, they will finalize the subdivision application, they will next move into executing a purchase and sale agreement.

Ida Merrill thanked the Board.

Vanbergen Deputy Director for the City and County, Parks and Recreation noted that there is money in the open fund today for the purchase. Once this is approved they will be able to move forward with this right away.

Member Yuen made a motion to approve as the staff recommendation, with the time pertinent amended so that it can be extended by the Chair for a good cause. Member Roehrig seconded.

Member Roehrig commented that this was an excellent surfing spot.

Unanimously approved as amended (Yuen, Roehrig)

Item D-5 Status Report to the Board of Land and Natural Resources on Performance Bond, Improvement Bond, and Outstanding County of Hawaii Building, Electrical and Plumbing Code Violations; Approval of Plans and Specifications Submitted by Lessee for Review under General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

Tsuji explained that this was a status report. The performance bond has been provided satisfactory to staff from the lessee, on the 1 million dollar performance bond that had been

outstanding. Secondly, there were several improvement bonds that were outstanding; for old work by the previous lessee, and new work under the new lessee. The Lessee has proposed in lieu of an improvement bond, the Board accept a personal guarantee from Ed Bushor that should any liens come up for that old work, that he would cover that personally out of his own assets. In addition, Bushor gave commitment that should a lien come up the Lessee would immediately bond and hold harmless the State of Hawaii for any claims arising out of that prior work. As to future work, there has been commitment to provide a surety bond in the form that has been accepted in the past by the State for the Naniloa.

At the last meeting as part of the deferral Member Gomes requested that the lessee provide a letter from the County that articulates which specific violations were cured and which ones were being allowed by the County during construction. The Lessee tried to obtain such a letter from the County, but was unsuccessful. What is attached to the submittal is a list of past violations with the Lessee's updates of where they're at. They have been submitting plans to the department, and land division has retained an engineer to help review those plans and DLNR's consultants have provided comments and concerns on the plans (a copy of DLNR consultant's Brown and Caldwell's comments were in the submittal). The Lessee submitted their comments in response just that day and Tsuji said he hasn't had time to review it. Tsuji was most concerned about issues related to the fire/electrical system, ADA and the waste system/grease trap. Tsuji didn't think the Lessee was agreeable to DLNR's consultant's comments, but would let them speak on their own behalf. Staff's consultant was available for questions.

Tsuji disclosed that land agent Gordon Heit went out to the site yesterday and it appeared that demolition work had been started.

Michael Lam, counsel for the Lessee testified that there were 4 issues that he would address. First, Lam assured the Board that no demolition has begun. It was Lam's understanding that what work was done was cosmetic, exploratory and in anticipation of getting approval to go forward with the work. One area that was done was to remove cosmetic beige tile so the subcontractor could determine what issues may arise, if any, once approval of the plans has been made. There was also some dry-wall that was removed for the same reason. Stu Miller, the subcontractor, and Mark Manshiem, who was on the construction side, were present to address any questions. Lam assured that there was no intent to proceed without approval. Next was the bonds: two of the three bonds have been resolved; the performance bond of 1 million dollars, the second bond was the Kilauea tower. The last bond is the section 41 bond, it is under final approval by the surety. The last issue was the notice of violations which were part of the initial list of violations. The prior owner's violations have been systematically addressed by the Lessee. The County has worked closely with the Lessee to address these issues. They have requested a letter from the County but have been unable to receive a formal letter for a number of reasons, one being that staff has been inundated with the recent number permit requests due to storms they have had in the past several months. Attached to the staff report is a letter that addresses each of the County's concerns and highlights the current condition or work provided by the

Lessee for the County. Lam concurred and requested that the Board approve the recommendation so that this project can get going. The entity that is seeking to develop this now and has purchased the lease has been working diligently. There are lots of contractors and local subcontractors on board and ready to go. Lam explained that the response to Brown and Caldwell's comments was distributed to the Board members and all comments have been deemed satisfactory.

Ed Bushor expressed his excitement and addressed two issues. 1) Bushor authorized the construction team and construction contractor to let all the subcontracts out for the project and the phase that starts if approved. There are over 110 subs and employees, all local. He stressed that those people have been told and awarded subcontracts to start.

Member Roehrig told Bushor that he keeps hearing that Bushor is hiring mainland contractors. Bushor said right now in this first phase, all the workers are local. He further addressed that hotel operators are a separate entity, called Aqua Resorts, they manage the Hotel. The lobby has temporarily been moved in doing so, the fire panel has been moved down due to County requirements. Bushor authorized \$1,000 of exploratory work. Demolition work has not started, only exploratory work. He committed that if approval is granted, it can be conditioned that the developer, the owner, will comply with all County, and applicable law on any of Brown's comments.

Member Yuen asked if there were County violations that Bushor was unable to start work on until this Board acts. Bushor said yes, the biggest one was fire, life and safety. They have sprinkler violations, with people in the hotel right now, but the County is allowing them to stay open as long as they have this permit. At any time the County could change that, but the fire sprinkler system needs to be done in this first phase, this will start the day after the Board authorizes approval.

Member Yuen asked if there were County notices of violations that are able to be worked on without Board approval. Bushor said yes, they have been completed if the County has authorized them to complete them.

Member Roehrig asked where County staff was today and asked if they have been notified. Gordon Heit-Hawaii Island Land Agent disclosed that Warren Lee, from the County Public Works was present but he had to leave early. Bushor told the Board that the response he got from the County was that they have given the permits, now it is out of their hands. There have been 5 different permits issued by them for months, now Bushor needs the Board's approval on these permits so these notices of violations can be cured. Lam added that the issue wasn't that they didn't ask the County for the letter, it's the County has said that they are too busy and have bigger problems to tend to.

Member Yuen asked when the bond would be submitted for X amount of future construction. Bushor said if the form has been agreed to, then he could get it to the department by Monday or

Tuesday at the latest. Bushor held the permitted plans that would be attached. Lam said the bond would be specific to the specification plans. The first permit of demolition was 1.3 million dollars, the second is 2.3 million, the third set is 8.9 million. Lam further clarified that the bond will be at least 5 million dollars. Bushor detailed that only two phases for the bonds have been contracted.

Mark Mansheim, Bushor's contractor, confirmed that the total would be 2.5 million in all and would cover the lobby and fire, life and safety. The next phase will be for the guest rooms, which will be about 8 million to start round the beginning of the year.

Member Yuen asked if there was anything further, Bushor said it's looking like 1.5 to 2 million for the restaurant, that will not come in till halfway through 2015. Willie K. has executed a contract to set up a concert hall in the Crown Room, that set of plans is expected to be complete by March 30th. That construction amount is \$250,000 to \$500,000. For the Kiluaea tower, plans will be submitted for permitting between the 2nd and 3rd quarter of next year, and construction can begin.

Member Roehrig told Bushor that the Hilo community wants to work together to build a structure on the golf course and suggested everyone work together. Bushor was all for it.

Chair Aila suggested moving these discussions forward to the Banyan Drive working group.

Member Yuen said he was inclined to make a motion to approve this, but he wanted to make sure this moved forward timely so he wanted something to come back to the Board. He asked if the plans for the Mauna Loa tower would have to come back before the Board. Tsuji said no, unless there was some issue.

Member Yuen said he misunderstood, he thought Bushor was ready to go. Member Yuen said the plans need to be approved, then bid the job, then bring it back with a bond to the department. Bushor confirmed. When the next 25% of the 75% of the bids come in then he would sign the contract for whatever the price that is, then give it to the bond company, they issue a bond, then that goes to the department. Bushor said January 1, 2015 everything will be ready to go.

Member Roehrig asked about the Kiluaea Tower, Bushor said he hoped the plans would be submitted and approved by DLNR by the end of the 3rd quarter.

Member Yuen made a motion to approve but add some things. He wants this project to come back to the Board sometime early next year because there are still a number of things outstanding. The second part of the motion would be no later than the second meeting in March, they return to the Board for the Mauna Loa tower for Board approval, a time table for further construction, and a progress report on the County violations. This can be done in two parts. Member Roehrig seconded.

Member Roehrig suggested Bushor talk to Hilo Hawaiian.

Approved as amended. The Board amended the staff submittal by adding a condition that lessee return to the Board (for the Board's review, approval or rejection) no later than the second meeting in March 2015 with: (i) a progress report on the County of Hawaii violations (building, plumbing electrical, etc.); (ii) an improvement bond covering the Mauna Loa tower renovations represented by Mr. Bushor to be in the range of \$8.0 million; and (iii) a timetable for all further construction of improvements. Staff shall present these matters to the Board for its review and decision as an action item, and not merely as an informational status report. Finally, the Board noted that these items may be presented in two parts at Board meetings occurring on and before the second meeting in March of 2015, but stressed that lessee must have returned to the Board and completed all the aforesaid requirements no later than the second meeting in March of 2015.

Unanimously approved as amended (Char, Oi)

Item D-25 Grant of Perpetual Non-Exclusive Easement to the City and County of Honolulu on behalf of the Honolulu Authority for Rapid Transportation for Elevated Guideway; Issuance of Immediate Construction Right-of-Entry; Honolulu, O'ahu, TMK (1) 1-1-003:portions of 003, 004, 138, and 239.

Tsuji reviewed item D-25. Morris Atta with HART thanked the Board and the department for supporting the project.

Unanimously approved as submitted (Char, Oi)

Item D-12 Impose a \$5,000.00 Fine, an Additional \$1,000.00 Per Day Violation, and \$220.00 in Administrative Costs Against Maui Kayaks Inc., for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Por. of Keauhou, Kalihi, Waipao, Papaanui, Kaeo, Honuaula, Makawao, Makena, Maui, at TMK: (2) 2-1-007: Seaward of 083 and 093.

Tsuji explained that this was a second offense; in the first offense the Board fined Maui Kayaks \$1,000. They requested a contested case which was still pending.

Chair Aila asked the representative from Maui Kayaks if he did or did not withdraw his request for a contested case. He said he didn't.

Chair Aila asked AG Chow what her recommendation was on proceeding since a request for a contested case on a previous violation is pending. AG Chow suggested proceeding, if the first violation isn't and this one is, it will be on the record.

Member Roehrig asked how this could be the second offense if the first offense is unresolved. Tsuji said he was having staff check the statute on the \$5,000 fine, whether it is required on the first offense or if it can be issued on the first offense.

Larry Pacheco, land agent from Maui disclosed that this is being brought to the Board as a first offense. In the contested case the first violation did not go through yet. This is the penalty for a first offense up to \$5,000.

Paul Noble owner of Maui Kayaks testified that he was present to contest this violation. He explained that they only use the area for ingress and egress. No commercial activities are done on unencumbered lands. On this day August 21 there were 6 other operators within 100 ft. of each other. He felt like if he got a violation, then the 5 others should've got one too. Noble said they were told numerous times that they can ingress and egress by land agents. He said no instruction was done on the beach. Noble said they go from the land to the water, and do their activity on the water and get off the beach in a reasonable amount of time. He said it's confusing because there is selective enforcement.

Member Roehrig asked for HRS 13-221-35. Tsuji read that it said no person shall engage in commercial activities without a written permit from the Board or its authorized representative. Tsuji also read 13-221-2.

Member Yuen asked for the department's clarification on what ingress and egress means. Tsuji said that the training would occur on private property, and then the business owner takes the participant to the water, that is not considered commercial activity. However to park equipment on the beach no matter how short can be viewed as commercial activity.

Member Roehrig asked Noble if he had a special written permit, he said no. Tsuji explained that staff didn't feel a special permit would be appropriate on Maui because the beach locations are not appropriate for commercial activity.

Chair Aila further explained that the previous Board decided that they did not want to issue special commercial activity permits for beaches in Maui for numerous reasons, one of which is the beaches are too narrow. The new Board can decide they want to take that up again, but as of right now there is a violation.

Member Roehrig expressed his concern about this process.

Member Yuen reviewed the report by officer Vuong and Noble's interaction with clients while the kayaks were placed on the beach and the putting up of tables and serving food would be a violation. Not the carrying of the kayak across the beach. Noble did acknowledge that sandwiches were served but it was believed to be above the high water line, they were trying to avoid the unencumbered land issue.

Officer Vuong with DOCARE was called up for questioning. Vuong explained what he saw that day. He said he observed the people come back from the water. The two employees brought the kayaks up to shore and left it on the shoreline. He then noticed there were two tables set up, the customers start to sit down and start eating and talking. He was there for about 30 minutes, not once did they try to move the kayaks. Vuong noticed that one of the other companies immediately took the kayak from the water to the trailer as soon as the customers got off the kayak. There were about 10-15 kayaks on the beach. Exhibit 1 shows pictures from that day. The

other operators didn't serve food. Vuong indicated that he has had dealings with Maui Kayak since 2008 and has spoken with Noble numerous times regarding this. His employees have challenged him. They told him that Noble told them that they have the right to be there and Vuong can't do anything about it.

Noble said he told his employees they have to quickly traverse the area and asked for clarification as to what was legal and what wasn't. Chair Aila stated that it was clear that if they load their kayaks, go into the ocean, do the briefing in the ocean, conduct business, come back to the beach, take the kayaks put them back on the trailer and go have lunch someplace else. Noble complained that other people serve food on the beach, that Maui Kayaks were the only ones to get cited.

Pacheco suggested Noble file a complaint, and the department would investigate just as they did in this situation.

Rodney Kilborn from Maui testified as a citizen of Maui. Kilborn commended DLNR enforcement. He said that these kayak companies were inconsiderate; they park their vans sideways with their trailers of 10-12 kayaks. They take away parking and are taking away from the fishermen.

Member Yuen made a motion to approve staff recommendation. Member Char seconded.

Unanimously approved as submitted (Yuen, Char)

2:58PM RECESS

3:11PM RECONVENE

Paul Noble requested a contested case.

Item D-16 Amend Prior Board Action of December 13, 2013, under Item D-21, for the Approval in Principle for the Issuance of a Right-of-Entry Permit to Rodney Kilborn dba Handsome Buggah Productions for a Professional Women's Surf Event. The Purpose of the Amendment is to Change the Event's Duration, and Increase the Cost for the Additional Day of Use at Lipoa Point, Honokohau, Honolua, Lahaina, Maui, Tax Map Key: (2) 4-1-001: Portion of 010.

Pacheco-LAND explained that this event was changing from a 1 day event to a 2 day event, from 16,000 square feet to 20,000 square feet which will make an additional cost for a per day use.

Approved as amended. Pursuant to staffs' oral report, the Board accepted staffs' oral recommendation at the meeting to amend the submittal and approve the time period for the ROE permit to extend for 2 days, and increased the area of the ROE permit to 20,000 square feet, and adjusted the fee accordingly.

Unanimously approved as amended (Yuen, Char)

Item D-21 Grant of Term, Non-Exclusive Easement to Eve G. Anderson Trust for Seawall and Steps Purposes; Assess Administrative Costs of \$500, Waimānalo, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-1-002: Seaward of 007.

Tsuji had nothing to add to the submittal.

Unanimously approved as submitted (Yuen, Roehrig)

Item K-1 Alleged Conservation District Use Violation (OA-14-62) by Grand View District, O‘ahu, Seaward of Tax Map Keys: (1) 6-8-010:013, 012 & 011.

Written testimony was submitted by Goodsill Anderson Quinn & Stifel, Kelly G. LaPorte, and Gregory W. Kugle.

Sam Lemmo- OCCL explained that this item is an enforcement action regarding the alleged unauthorized construction of erosion control structure in the Mokuleia area. The owner is Grand View Apartments, the case involves two privately owned pieces of land, a publicly owned beach right of way managed by the City and County of Honolulu and State conservation land on the seaward side. Lemmo received position statement submitted by Mr. Saffery and Marissa Owens. Lemmo brought to the Board’s attention that the attorney on behalf of the land owner is going to ask that the Board either allow the unauthorized uses to remain or to defer the matter so that the City can be brought into the matter, otherwise this may end up in a contested case hearing. That was the language Lemmo thought he was understanding. With that being said Lemmo, asked the Board how they would like him to proceed.

Member Yuen requested a briefing to the Board by OCCL or anyone else generally involved with shoreline armoring seawall issues about laws and policies practiced. Other than that, he had nothing further and was ready to hear from the applicant.

Lemmo gave a brief description of what is being done. This area of Mokuleia is in an area of where the Beach has been eroding over a century, there has been a trend of shoreline armoring in this area which has resulted in flanking erosion on down drift properties. During the last winter, there was a huge winter surf, many people panicked. One neighbor, the Mitsunagas installed an unauthorized boulder to protect her house, OCCL instructed them to remove it, and they removed it and paid a fine. Another neighbor, the Suttons, came in with a violation and have asked for a contested case. Now Grand View has failure to shoreline structures because of the large winter surf, they claim the failure is due to the fact that water was going into the public County right of way, which was causing undermining. Grand View decided to unilaterally fix it.

Lemmo said he had 2 problems with this case 1) his perspective they took unilateral action, because they never went to Lemmo and asked for a permit 2) they went further out when they rebuilt onto unencumbered lands which made Lemmo open up an enforcement action. OCCL is recommending a fine of \$15,000 for the two private properties, a fine of \$15,000 for the public

right of way and some administrative fees. OCCL is also recommending that they remediate the area.

Edmund Saffery introduced himself and disclosed that his law firm represented Dean Hanzawa and Grand View Apartments. Saffery summarized their written statements and asked that the Board defer this item so that the City & County of Honolulu can either be brought into this matter or compelled separately to address the pivotal role its failure to maintain the public access right-of-way had in forcing Dean Hanzawa to take the measures he did in this case.

Peter Young testified that he was assisting with this case and that he has only been involved with this for a couple of weeks which was another reason for the deferral. Young gave a detailed presentation of the location of the properties and location of the public access. He gave before and after pictures.

Member Roehrig told Young that as long as there is no state action, and erosion contentious, the state has no responsibility as long as the state hasn't done anything; it's State Law. AG Linda Chow confirmed that generally the State doesn't have liability, if something is done, than there is the potential for liability.

Young added that the erosion was coming from the side, not the front. If the walls are removed per the recommendation that will happen to the rest of the property they want to work with the City to resolve this issue. If not, it will happen during every high wave event.

Member Oi thought last time this was deferred was to determine where the old wall was and what was the encroachment area before. Young put up a picture showing a survey that was taken that described what appeared to be a huge placement of rocks on state land is actually a new wall inside, a huge placement of rocks on private land, and some rocks seaward of where the old wall was. The old 10 ft. wall was lowered to 5 ft. and covered with rocks.

Chair Aila made it clear that per staff, all that work was done without a permit. Young said he could imagine how a homeowner would feel when they see a seawall collapse; they did what anyone would do to protect their home.

Member Roehrig asked how this was any different from the Sutton's. Saffery said the difference was that there was a City right-a-way, the waves were rushing up, the City was called and they did nothing about it. Sutton felt at the least the City should be involved.

Dean Hanzawa with Grand View Apartments Inc. testified that their main gripe was with the easement. He didn't think they would have been present if the easement was maintained like it was supposed to be. Public Safety was his main concern at the time of this incident.

Moses Rapoza testified that he was called by the Hanzawas to help save their house explaining the work that was done. Rapoza said they only did what they needed to do, which is what the City told them.

Howard Hanzawa, Dean Hanzawa's brother, an engineer, explained that he designed the revetment that was at the south parcel. His assessment was that if the City and County right-of-way was enforced in some way the damage wouldn't have occurred.

D. Hanzawa felt that they should not have a fine, because this was fault of the City and county.

Member Char asked for clarification of what the recommendation was. Lemmo explained that OCCL asked the Hanzawas to survey the area of the original wall, anything outside of that is what OCCL wants them to remove. The idea was that they would re-develop the structure and take the portions out that they placed in the conservation area and the conservation district. They would have to do that under a County guidance or authorization. All of the encroachments that the Board has voted on were encroachments that have occurred in the 60's and 70's. Lemmo said there has never been a time where the Board has allowed people to retain a shoreline structure that was built without authorization in the conservation area in existing times.

Chair Aila asked if what was being asked was that the entire wall needed to be removed or just the part that is encroaching. Lemmo said just the encroaching part. Chair Aila told Lemmo that an engineer would be needed to make sure that portion could be removed and how to reinforce it. Lemmo agreed that they would consider that.

D. Hanzawa said he felt like if the rocks were removed then the wall would go down. Chair suggested maybe OCCL and the County would then consider full wall removal. D. Hanzawa expressed how much money that would cost and how much money he has already put in. Chair Aila suggested asking the County for help.

Member Roehrig suggest reducing the fine.

Member Oi asked if it would be possible to test a portion of the wall to see if fell down. Lemmo said they could do it, it's going to be expensive, it can be engineered, it's just going to be costly. He told the Board that he can't just let this go.

Member Roehrig asked Lemmo how he felt about the fine, Lemmo said he just wants compliance. He said if the Board wants to make the work done in one fine that would be okay.

Chair Aila asked Lemmo if he would be okay holding off on the time frame. If the Board acts on this now, the Hanzawas have 120 days take the rocks out, in the 120 days, there could be a high surf event. Lemmo said it would be okay to give them a longer period. Chair Aila said another option would be to defer.

Member Char said he was in favor of a deferral, but if the City didn't does anything, then the Board still needs to take action. He didn't want to make an action that would automatically destroy their property suggested the Hanzawas work with the Board, come up with possible solutions to safeguard their house without destroying it. He is most concerned with the house; the fine is something they can look at under mitigating circumstances. Member Char recommended this item be deferred until the first quarter of 2015 and have them report back.

Young agreed and said that's what they wanted. He asked if they could get an after the fact permit from the City. Lemmo said the Suttons were given that because the water went right over the wall and the wall was originally built in the urban land use district. It wasn't in the conservation district.

Member Yuen seconded.

Member Oi added the surveyor impose exactly what would need to be taken out.

Kelly LaPorte resident of Ho'omana Place showed pictures of the land and explained that it was a crime to use Ho'omana beach. LaPorte said his solution would be to take staff recommendation because they have incentive to come up with a solution. LaPorte felt like the equipment the Hanzawas used caused the erosion on the public right-a-way. He didn't feel like natural resources were being protected because that's a public beach, not a private beach. LaPorte was against a deferral.

Bill Nations a local resident testified that he would like to see the community get their beach right-a-way back. Nations would like the fence taken down and the boulders the Hanzawas put up angled back so they can get their right-a-way back.

Oryan Rayals owner of a property on Farrington Highway opposite of the Ho'omana beach access said he was also a realtor testifying on his own behalf. He is a realtor trying to sell a house next to the Hanzawas and was having a hard time because people are scared to buy the property, because they don't know if they can protect their property. Rayals said he was present to educate himself on what he can tell buyers to be prepared to do. He believed the public right-a-way should be opened back up.

Chair Aila asked Lemmo if he made any recommendations to the Count regarding beach access. Lemmo told the County to look at the situation.

Member Yuen said there was a motion and a second, and Member Oi added one of the purposes was to have the applicant come back with a survey that shows the location of the old walls. Member Yuen said he wants to know what would happen next if the staff recommendation goes forward and what happens with erosion control and beach access.

Lemmo felt like this was the wrong decision. He felt like the City should be drawn into this by following through with the action, if it is deferred, then they will come back with a survey, but it must be done in a time frame.

Member Roehrig suggested amending the motion to the first meeting in April. Member Char was okay with that. He said he would expect the Hanzawas come up with reasonable assumptions and how much of the rocks would need to be removed. The issues on the fines are still out there.

Member Roehrig suggested the community work together and find a joint solution.

Chair Aila clarified that the motion included deferring the fine.

Unanimously approved as amended (Char, Yuen)

Item D-24 Approval in Principle for Issuance of Direct Lease to Friends of North Shore Charter School for Charter School Purposes; Authorize the Issuance of an Immediate Right-of-Entry for Due Diligence Purpose; Waialeale, Koolauloa, Oahu, TMK (1) 5-8-001:053.

Written testimony was submitted by Gil Riviere.

Kevin Moore Assistant Administrator for LAND presented item D-24.

Unanimously approved as submitted (Char, Yuen)

Item K-3 Conservation District Use Application (CDUA) KA-3714 by Kalihiwai Investors, LLC for the Construction of a Single Family Residence (SFR) and to Conduct Agriculture for Personal use at Princeville, Hanalei District, Kaua'i, Tax Map Key: (4) 5-3-001:016.

Lemmo said OCCL stood on their submittal and had no changes. Jim Fields, the owner was satisfied with the staff recommendation.

Member Yuen said he was concerned about the view plan on this from Hanalei along the ridge and couldn't imagine what it would look like. To him the ridgeway is an important view plain from Hanalei. Lemmo pointed out exhibit 7, showing the residence visible. Member Yuen said this wasn't a good picture.

Jim Fields handed out pages showing where they took photos from, to show what the house looks like. They took 3 photos from 3 different spots. Fields explained where each picture was taken. Fields explained that he wanted this done in a way that would not be identified. He wants everyone to be happy with this.

Member Yuen commented that someday someone may live there and may feel they would have a better view if they cut some of vegetation. Member Yuen thought it was cover by the conditions, its general and says that all representations about mitigation shall be kept. Member Yuen suggested adding a sentence to include landscaping.

Fields suggested going further by saying that the landscaped plan shall be implemented and maintained. Member Yuen agreed.

Lemmo confirmed that condition #20 would be amended to read for all landscaped plans shall be implemented and maintained as shown on the landscaping plan.

Member Oi made a motion to approve as amended. Member Yuen seconded.

Unanimously approved as amended (Oi, Yuen)

Item E-2 Approval of a Five Year General Lease to Malaekahana Beach Campground, LLC for Campground Purposes at Malaekahana State Recreation Area (Kahuku Section), Lā'ie (Ko'olaupua), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65.

Dan Quinn Administrator for State Parks-PARKS introduced Steve Soares, Property Manager. Quinn summarized the history explaining that the current tenant has been in the area from about 20 years. In 2003 the Board approved an RFP process and got one submittal from Malaekahana LLC which required an appraisal and development agreement and an EIS. PARKS came to the Board a couple of times, but weren't able to materialize a lease. Staff determined that there was a considerable capital investment requirement that was put on the bidder. Staff feels this is the major cause for the lack of participation on the number of bids. PARKS is looking toward building restrooms and building infrastructure that the state can put in. Then moving toward a 5 year term operation while doing these capital improvements, then going out to a longer term arrangement where a concessioner can invest more capital. In 2012 PARKS came back to the Board and the Board approved the issuance of this RQ-RFP and issued an RP to the existing tenant to continue operating. PARKS went through a process (part of HAR 171-59) for the disposition of this property, it included an evaluation committee. In 2012 the Board authorized to Board to select members of this committee and authorized him to select the best offer and negotiate and execute the new lease. The Board asked that this be brought back so that they could see the conditions on it, which is why PARKS is before the Board today. Members included 3 from the community and 3 from staff. The proposal is that there is no increase in the current capacity or the current level of use in the area. The campground rates are going to be at or below the existing levels. The successful bidder scored the highest based on the evaluation criteria set by the committee. PARKS has a successful bidder who is ready to start on January 1, 2015. The state is in the process of removing the old beach houses which have fallen into disrepair. Staff recommendation is that the Board declare that after considering potential effects provided by HARs chapter 343, there is minimal or no significant impact on the environment with the exempt from the preparation of an EA and to authorize the issuance of a lease to Malaekahana Beach Campground LLC. Also, delegate authority to the Chairperson to make changes to the lease form necessary to accomplish the lease form of this lease.

Ray Sanborn the successful bidders shared the plan and what it was that they were going to do. They are in the process of constructing huts and will be ready to occupy on the 1st of January. Sanborn handed out pictures of the anticipated look of the campground.

Craig Chapmen the current applicant wanted to get it clear that during the time he has been there, not one dime was spend in Malaekahana, he took it from \$50,000 a year to \$40,000 a year on a month to month. Chapmen explained that he has had nothing but problems a lot of them came from PARKS. He is concerned and doesn't want a new lease to be signed until PARKS trims the trees at Malaekahana, this is a safety issue. He didn't want Ray to take on the liability of an unsafe park. Chapmen feels the SOQ is flawed and was upset that he didn't have a shot. He asked the Board for an extension to get his units out. Chapmen didn't feel it was right that there were people on the committee that hated him, it's not right and should be a fair playing field.

Jim Anthony gave his analysis of the staff submittal that if failed to disclose a number of other materials that ought to be the subject of disclosure. He said there was no process of public consultation and has never been the discussion of the community. Anthony said if the process is flawed, he suggested the submittal be sent back to review. 36 acres of state land owned by taxpayers is at stake. Chapmen ran the park for 20 years; in that process he earned disrespect from the staff in PARKS. He said there was a plot to get rid of Chapmen. Anthony said he asked for a request of all the documents of all discussion between the department and Sanborn. The department told him he would have to by \$2,600 to get the requested documents. Anthony asked Quinn to make the documents available for him to come in and review. Quinn told him there were over 500 documents, from that Anthony inferred that this was a tinted process to get rid of Chapmen.

Member Roehrig expressed his concern about this going to litigation.

Anthony suggested if this is deferred and sent back to the drawing board under the issue of public participation. Anthony submitted documents under a matter of formality.

Member Roehrig asked Quinn if he's heard of these allegations before. Quinn said essentially yes, not directly.

Member Roehrig asked Quinn if the committee was operating in a fair fashion. Quinn said he thought it did.

Steve Soares-PARKS property manager told member Roehrig that when they came to the Board in 2012, they asked for the RFP process to be approved by the Board, the Board granted that request and also gave the Chairperson the authority to empanel the evaluation committee. The evaluation committee met, established criteria whether an applicant was qualified for a bid and determined which bidder after the qualified bidders were determined was the recommended bidder. Soares said Chapmen didn't directly apply for a bid; his spouse had an ownership interest in one of the applicants, that application was addressed through the RFQ portion by the evaluation committee, the evaluation committee scored that application as well as 4 others and determined that out of the 5 there were 2 applicants that were qualified. In that process if an applicant who was not selected believed that they were not treated fairly, there is a process in the RFP to seek the chairperson's reconsideration of that decision. That was done, so when the request was received PARKS submitted a report to the Chair's office with a summary with of the findings. The Chair then issued a letter to the applicants that they are deemed not qualified. Soares explained the scoring process and how the applicants were deemed qualified. The evaluations committee made the recommendation to the Chairperson and the Chairperson agreed with that recommendation.

Member Roehrig suggested to Anthony that if he felt some kind of "hanky pank" was going on with the Chairperson and the department then he go to litigation. Anthony said he could've but he's coming to the Board first, but does feel this process was tainted. He was appalled that the Chairperson said community involvement was one of the requirements.

Chair Aila asked staff to clarify what meetings were held in the community. Soares first clarified that the request before the Board today was based on the RFP process PARKS feels has played out. When the Chair made the decision on the bidder, the RFP process had already made its course. We are here today because the Board asked to bring back the terms of the lease back when the RP process was approved.

Anthony still wasn't satisfied that the Chair person's question wasn't answered. Quinn explained that issue was discussed with the community it wasn't something that was asked for approval for this particular lease. Chair Aila added that the community input was in 2012 when the staff submittal was before the Board, anyone interested had the opportunity to testify.

Member Yuen addressed Chapmen's request to get his stuff out and asked staff for more information on that. Soares explained that Chapmen's company has a revocable permit. The revocable permit expires at the end of next month. Only the Board can continue that revocable permit. PARKS goal is to make the transition as quick as possible because they want to minimize the downtime in the park. The plan was to bring this to the Board now, allow for the transition between now and the end of December, then January 1, 2015 the new lease would become effective. Chapmen wants to be able to operate until the end of the year verses being able to transition his personal property out of the park. Soares said PARKS would be willing to work with Chapmen if there was an overlap if it would give them time to help them get their property out.

Member Yuen asked Sanborn what his thoughts were. Sanborn said Chapmen asked him if he would be okay with him moving some of his stuff out. Sanborn said, it's not his position but it was fine with him. "Stuff" meaning cabins, containers, etc.

Soares said the impression he got from Chapmen was that he thought he had until the end of the calendar year to operate, and needed more time to move out. Soares said he didn't receive any communication from Chapmen in regards to moving things out.

Member Yuen asked that the staff and the new applicant to be reasonable with Chapmen on moving his things out. He didn't feel like the Board needs to deal with operational issues. AG Chow said she felt the Board does, because as of December 30, 2014 Chapmen no longer has the right to be on the property. In order for him to still be on the property the Board would have to issue him another short term permit.

Member Roehrig didn't agree with that.

Member Yuen asked if the Board could issue him a permit for the sole purpose of removing his things. AG Chow said yes, but it can't be addressed today because it wasn't on the agenda.

Member Yuen commented that the department needs to be reasonable with Chapmen and if need be, then they can come back in the December meeting. Member Yuen made a motion to approve item E-2. Member Char seconded.

Jim Anthony requested a contested case.

Unanimously approved as submitted (Yuen, Char)

6:46PM Member Roehrig departed.

6:47PM RECESS

6:55PM RECONVENE

Item K-6 Conservation District Use Application (CDUA) OA-3718 for the Camp Pūpūkea Master Plan by the Boy Scouts of America Aloha Counsel Located at 59-780 Pūpūkea Road, Ko‘olau Loa, O‘ahu, Tax Map Keys: (1) 5-9-005:002 & 077 + Road Remnant Parcel Between Parcels 002 and 077.

Lemmo briefed the Board that the Boy Scouts want to make renovations to their camp so they have a master plan set out in 3 phases. The staff report lists the actions in each phase. They are here to get approval on phase one approval. There were a number of issues raised, Lemmo explained that in the future if the Boy Scouts are going to come in and ask to purchase a remnant, and then they will need to go through State Parks to ensure the public has access.

Lemmo had amendments, the Boy Scouts asked for a 2 year initiation instead of 1 year. Also an amendment to condition #13 says that the committees submit a landscape plan. The Boy Scouts would like the condition reduced because the way they do things are informal projects, so that planting shall be appropriate to the site location with presence given to plant materials that are indigenous to Hawaii, the introduction of invasive plant species is prohibited. With this OCCL recommends approval.

The Boy Scouts representatives that were present were okay with staff amendments.

Unanimously approved as amended Char, Yuen)

Item D-23 Sale of Remnant to Steven Katzman and Marilyn Katzman; Withdrawal from Governor’s Executive Order No. 1598, Waimanalo, Koolauloko, Oahu, Tax Map Key: (1) 4-1-025:039 (Portion).

Moore-LAND conveyed item D-23. Marilyn Katzman was okay with staff recommendation.

Unanimously approved as submitted (Char, Yuen)

Item D-18 Amending Prior Board Actions of June 27, 2014, Item D-11, and August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to the Association of Unit Owners (AOUO) of Hale Kai Condominium for Seawall/Revetment Purposes and Inclusion of Additional 1,287 Square Foot Encroachment Area; The Purpose of the Amendment is to Include Requirement for a New Appraisal Process to Determine Valuation of the Added Easement Area at Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001:Seaward of 042.

Moore reviewed item D-18. Mary Roy representing the Hale Kai explained this was a nonconforming seawall that provides critical protection for the building. They have been working with staff and the processing of the easement since 2011. Roy stated that the Hale Kai is committed to fulfilling the requirements set forth by the AG's office.

Unanimously approved as submitted (Char, Yuen)

Item K-2 Alleged Conservation District Use Violation (OA-14-50) by LTC Winston M. Marbella for Alleged Unauthorized Repair of an Erosion Control Structure in the Conservation District at 'Ewa Beach, 'Ewa District, O'ahu, Seaward of Tax Map Key: (1) 9-1-027:016.

Sam Lemmo-OCCL conveyed item K-2. The parcel is not in the conservation district, but borders the shoreline. Mr. Marbella purchased the property in May of 2013. Hurricane Flossie came through, there was flooding and Marbella reconstructed a splash guard to keep the splash from going into their house. They were issued a cyst and desist order; the County also got involved and are perusing some actions. In the 1990's there was a wall there, the issue is that he didn't extend the wall in a seaward direction. When he took the wall down, the waves recessed mauka of the wall. This has been characterized as the repair of an existing wall. Even though the old wall had no permit, Marbella didn't build the original wall. The other issue is that there is an encroachment. A portion of this property encroaches on state land. Lemmo wants him to get an easement so that he can be within state regulations. This is being characterized as a repair of a structure. Staff is recommending the fines be paid in 120 days and asking that Marbella file an after the fact permit for the seawall repair project.

Lemmo asked to amend the staff report to say that he should either comply with the department or remove the improvements.

Member Char acknowledged that there was a typo in condition #3. It says 90 and should be 120 days.

Winston Marbella concurred with staff recommendations but asked to repeal the fine. Marbella said they have already been penalized. They anticipate spending between \$60-70,000 on repairs.

Maria Marbella said she was humbled by the process and thanked the Board.

Member Yuen said he would be inclined to cut the fine to \$500.

Member Char made a motion to accept the staff recommendation with the amendment that the fine be reduced from \$2,000 to \$500, and the administrative fee would continue. Member Yuen seconded.

AG Chow told the Board that they also need to incorporate the amendments that Lemmo noted earlier and the correction to item #3, should read 120 days and item #4 should read 180. Member Char accepted the recommendations, so did Member Yuen.

Unanimously approved as amended (Char, Yuen)

Item E-1 Approval to Continue Twenty-three (23) Revocable Permits for Use of State Parks Lands on the Islands of Kaua'i, O'ahu, Maui, and Hawai'i for the following: Kaua'i: NaPali Kayak Inc., NaPali Outfitters, Inc. dba Kayak Kaua'i, Rick Haviland, dba Outfitters Kauai, Ltd., (Na Pali Coast State Wilderness Park for commercial kayak landings), Clancy Greff and A Na Pali Eco Adventures, Inc, Na Pali Sea Tours, Inc., Lady Ann Cruises Inc., (Na Pali State Wilderness Park inflatable boat landings), The Lodge at Koke'e, LLC (Koke'e State Park lodging accommodations/retail and restaurant use), Ka Imi Naauao o Hawai'i Nei, Hawai'i United Methodist Union, Kaua'i Christian Fellowship, Camp Hale Koa Association, (Waimea Canyon State Park non-profit recreation-residences/camps), Hawai'i Conference Foundation, United Church of Christ (Koke'e State Park non-profit camp), Sukhothai Corp. (Waimea Canyon State Park mobile food vendor); O'ahu: Curtis K. Hong (Diamond Head State Monument food and beverage vending), Erlinda Molina Villanueva (Ahupua'a O Kahana State Park, agricultural use), Young Men's Christian Association of Honolulu (Ka'ena Point State Park, Outdoor Recreational Activities), Sand Island Off-Highway Vehicle (OHV) Association, Inc., (Sand Island State Recreation Area, Off-Road Vehicle Use), Maui: Maui Soda and Ice Works, Ltd. (Wai'anapanapa State Park, Beverage vending), Island Inspirations, LLP (Makena State Park food service Vending), Hawai'i: Republic Parking Northwest, Inc. (Hāpuna Beach SRA, Parking Concession), Adventures in Paradise, Inc., Kona Boys, Inc., Iwa Kalua (Kealahou Bay State Historical Park, Commercial Kayak Tours).

Dan Quinn-PARKS had no changes to item E-1. Brock Stratter, Frank Carpenter, Rick Haviland and Iwa Kalua were present.

Unanimously approved as submitted (Char, Yuen)

Item D-17 Grant of a 55-Year Term, Non-Exclusive Easement to the Association of Apartment Owners of Hale Ono Loa for Seawall Encroachment Purposes, Por. of Māhinahina, Lāhainā, Maui, Tax Map Key: (2) 4-3-006: Seaward of 044.

Moore presented item D-17.

Stanley Smith representing the applicant said they were happy with the staff report, but would like to ask for a reduction of the fee because the exhibits in the submittal identify the wall as something being established before in the 1950/60's. Exhibit E shows the professional engineer report. Smith also clarified that they would have a year to meet other requirements because they are a zero based association and funding is tight so they would like the opportunity to work this into their budget. As far as the appraisal the encroachment was originally sandbags made for the seawall, they hardened over time and became concrete slabs, which is now under water. As

money is tight, they would like to know if the appraisals needed because a lot of the time the wall is covered by water.

Moore said the appraisal needed to be done, but was surprised because a fine normally isn't included in a grandfathered encroachment. Sometimes administrative fees are collected but they aren't itemized here.

Member Char made a motion to approve staff recommendation with the removal of the fine.

The Board waived the \$500 fine at applicant request.

Unanimously approved as amended (Char, Oi)

Item C-1 Acceptance of a Hearing Master's Report; Set Aside of Approximately 342 Acres as an Extension of the Pu'u Maka'ala Natural Area Reserve, Tax Map Key no. (3) 2-4-08:09 Por, South Hilo, Hawai'i; and Set Aside of Approximately 169 Acres as an Extension of the Kipahoe Natural Area Reserve, Tax Map Key no. (3) 8-8-01:08 Por, South Kona, Hawai'i.

David Smith representing the Division of Forestry and Wildlife-DOFAW presented items C-1 and C-2.

Member Oi said that it was brought up to him by reprehensive Onishi that last time this item was brought up, there was an agreement that a meeting would be held with Lisa Hadway , but that meeting was never held. Onishi is requesting that meeting asked that this item be deferred until that meeting can be held with him and Public Safety. Smith there have been numerous discussions with Public Safety and Ted Sakai, the Director of Public Safety was present this morning to testify, but he had to leave. Sakai did submit a letter of support. It was Smith understanding that the department has been in contact with Onishi's office.

Member Oi said he would request to defer this item.

Joseph Griffiths testified that no fencing should be done until a game management plan is done. He didn't feel like Member Yuen should vote on this item because his daughter was the head of the NARS program. Griffiths stated that he, Makani Christensen, and Nathan Brown want documentation in writing to land title and ownership to lands discussed in this meeting. Until these documents are presenting (they are asking 30 days to show title), this meeting is being declared as unlawful and fraudulent.

Chair Aila said that would be accepted, and he will respond, but it will not include the items requested. It will include a response, and the response will be that the state exists and the state exists as part of the United States. As far as the game management plan, Chair Aila said the department will continue to look at lands on a case by case basis. Chair Aila said there is a game management plan but it isn't up to par with most hunters. Griffiths said he hasn't seen it. Chair Aila heard the request and said he wouldn't recommend holding off any transfers in the future

until a game management plan is in place. Griffiths said they can't coexist without it. Chair Aila told him that they have been coexisting for years.

Makani Christensen supported hunters. The fact that a meeting wasn't conducted, he feels like a deferral would be a good idea.

Smith commented that they are trying to help and work with hunters. They support the hunting program. DOFAW would like to move forward, they just haven't had the staff to do that.

Member Yuen commented that this was deferred before, because a comment from Onishi about the position of the Department of Public Safety, and there is a letter of support from Public safety. Member Yuen also commented that his daughter does work for DLNR, but is not the head of NARS. He said he did discussed that with the AGs and they cleared his participation on this and other matters. Griffiths asked if she was the head of NARS and what her position was. Member Yuen disclosed that she was never the head of NARS, that she is a staff planner within the NARS program.

Smith said he received a text message from Lisa Hadway saying that she did speak with Onishi and he said his main concern was that he wanted to have proof from Ted Sakai that they supported this proposal. The department has a letter from Sakai and he was here earlier to testify in support.

Member Oi said he would still request to defer.

Member Yuen said his preference would be to act on this, if Member Oi wants a deferral, the vote won't pass (due to lack of quorum). Member Yuen asked that the Board act on C-1 item 1 and item 3 Kipahoe, which has nothing to do with Pu'u Maka'ala.

Griffiths said nothing was ever corrected; there is no balance in what is being done.

Member Oi made a motion to approve item 1 and item 3 and defer item 2. Member Yuen seconded.

Unanimously approve items 1 & 3 defer item 2 (Oi, Yuen)

**Item C-2 Authorization for the Chairperson to Negotiate and Sign a Memorandum of Agreement (MOA) with the State of Hawai'i, Department of Public Safety (PSD), for Access, Conservation Management, and Maintenance Obligations for Kulani Correctional Facility and Pu'u Maka'ala Natural Area Reserve, Wai'aleale, South Hilo, Tax Map Key no. (3) 2-4-08:09.
And**

Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Subject MOA.

Member Yuen said the MOU is need and the department needs to work with the Department of Public Safety-DPS. Smith said this wouldn't include the set aside because it wasn't included in item C-1 but this would include that the department work with DPS in the existing areas.

Member Oi was willing to consider this; this should be brought back to the next meeting to satisfy Onishi.

Unanimously approve as submitted (Yuen, Char)

Item K-4 Alleged Conservation District Use Violation (OA-15-3) by Glenn M. Wachtel for Alleged Unauthorized Excavation and Installation of an Erosion Control Structure in the Conservation District at Pūpūkea-Paumalū (Sunset) Beach, Ko'olau Loa, O'ahu, Seaward of Tax Map Key: (1) 5-9-002:017.

Lemmo-OCCL communicated that this was an enforcement case. Glenn Wachtel's attorney submitted a response to the staff report. Wachtel has applied 3 times to install a temporary erosion structure, OCCL has said no 3 times. After the 3 request, OCCL was on site and noticed a giant excavator digging a hole in front Wachtel's property. When Lemmo went over, it was in fact drilling a trench. Wachtel said he was building a jute bag, coconut fiber erosion prevention structure. Lemmo told him he didn't have authorization and it would be wise to stop because he could receive fines up to \$15,000 per day. Wachtel was issued a cease and desist order on August 26, 2014. Lemmo went back to the site on August 27, 2014 and witnessed metal at the bottom of the trench that was meant to contain the jute bag structure. On August 28 work was still being done and on August 29 Lemmo met with Wachtel and the County, the County asked Wachtel to stop work. The County has management of this area from the ownership side. The two main issues are 1) this is one of the finest beaches in the state and needs to be protected and 2) the willfulness of this. Wachtel was asked to stop and continued. There was a huge excavator on the public beach without assistance from any government agency.

There is fine of \$15,000 in three separate instances and a \$25,000 administrative fee. It is biodegradable so as long as it's not maintained it will decay over time, the applicant should be required to clean this up.

Member Oi expressed that this was a major concern of the public. They don't want the bags going into the ocean.

Gregg Kugle introduced Glenn Wachtel the property owner. Kugle commented that what are there today is coconut fiber bags. It's natural and does not damage the reef. Kugle clarified that Wachtel does not have a seawall in front of his property, an ad joint property does. At the time Wachtel was facing a 20 ft. sand cliff, and water was coming in pulling sand out. Wachtel lost 10-15 ft. of yard. This occurred in October, during the big winter month. As a result of that Wachtel took the initiative to meet with the State, Federal Government and the City. The Army Core of Engineers issued a permit to allow all the property owners to install armor rock, lava boulders, and geotextile to protect private property and public safety. The City also sent out a letter saying it was okay to install geotextile. Wachtel hired a coastal engineer who came up with the solution of what Lemmo described, which was submitted under DLNR's emergency approval

for temporary structures. The proposal was submitted but was denied. In December there was a Christmas swell, and the request was resubmitted. In early 2014 the request was submitted again asking what could be done, and the answer was no. This was in spite of the fact that the department said they would issue emergency permits. As time ran out

The Board approved the recommendation but changed the fine to \$15,000 with administrative fees.

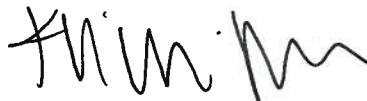
Unanimously approved as amended (Yuen, Char)

8:39PM Member Oi departed and quorum was lost.

Chair Aila announced that all items that were on today's agenda that were not heard today will go on to the next meeting agenda December 12, 2014.

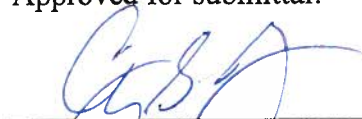
There being no further business, Chairman William Aila adjourned the meeting at 8:40pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Ku'ulei Moses
Land Board Secretary

Approved for submittal:



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