

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

DATE: FRIDAY, FEBRUARY 27, 2015
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Acting Chairperson Carty Chang called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Carty S. Chang
Stanley Roehrig
Vernon Char
Ulalia Woodside

James Gomes
Thomas Oi
Christopher Yuen

STAFF

Colin Lau-AG
Ed Underwood-DOBOR
Sam Lemmo-OCCL
Gordon Heit-LAND
David Penn-DOFAW

Lisa Hadway-DOFAW
Cindy Young-Deputy AG
Russell Tsuji-LAND
Alex Roy-OCCL
Chris Takashige-ENG

OTHER

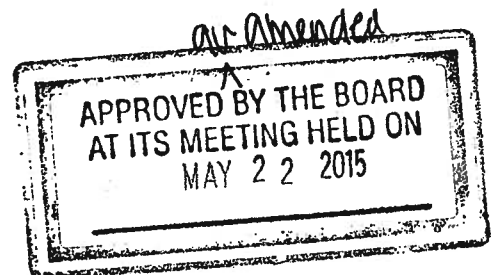
Lynn McCrory/ C-4
Christy Arakaki/ J-1, J-2
Donna Merron/K-2
Frank Hughes/ D-8
Michael Rudolph/D-5
Ruth Binyan/D-5
Brutus La Benz/ D-15

Dan Purcell/C-4, J-1, J-2
Jacqueline Gardner/ J-2
Shawn Smith/ D-8
Steve Lim/D-3
Dora Rudolph/D-5
Michelle Galimba/D-10

Item A-3 Approval of January 09, 2015 Minutes

Member Yuen noted that under the "C" items, the name "Burtfield" should be changed to "Bergfeld".

Unanimously approved as amended (Gomes, Oi)



- Item M-1** **Amendment to Extend Lease Term from September 30, 2027 to September 30, 2029 to Prior Board Action Taken November 14, 2014 Under 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) 1-1-03:001 (Portion).**
- Item M-2** **Issuance of a Grant of Non-Exclusive Easement for Underground Power Line Easements for an Electrical Power Distribution Substation Facility, Hawaiian Electric Company, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-03-001 (Portions).**
- Item M-3** **Issuance of a Revocable Permit for Staging and Construction Field Office, Index Builders, Inc., Various Spaces Located at Honolulu Airport, Tax Map Key: (1) 1-1-003:001 (Portions).**
- Item M-4** **Issuance of a Revocable Permit to Park a Storage Container, Ja-Mar Industries, Inc., Kalaeloa Airport, Island of O'ahu, State of Hawai'i, Tax Map Key: (1) 9-1-13:032 (Portion).**

Ross Smith Property Manager from the Department of Transportation Airports Division- DOT-AIR gave a synopsis of items M-1 through M-4.

Unanimously approved as submitted (Char, Gomes)

- Item C-4** **Request Approval for a Three Year Lease Extension of the Cooperative Game Development and Management Agreement Between Lāna'i Resorts LLC., DBA Pūlama Lāna'i, and the Department of Land and Natural Resources, for the Purpose of Maintaining and Managing Public Hunting Areas and Approval to Extend by Mutual Agreement of the Parties.**

Written testimony was submitted by Lynn McCrory and Lanai Hunting Advisory Council.

Lisa Hadway, Administrator for the Division of Forestry & Wildlife-DOFAW reviewed item C-4.

Member Gomes asked if there have been an increase in the inventory of the animals, a decrease, or stable since this agreement in the 60's. Hadway said she would have to confirm with staff, one thing is that they would be working together to be more cooperative. For example, they would be working together to do the animal count next month. DOFAW believes the numbers may be increasing depending on rainfall. There have been over 6,000 hunters every year that have been interested in coming over Lāna'i, it is one of the most popular hunting areas in the state. Member Gomes agreed. He believed this is a huge resource for the people of Hawai'i

Member Gomes asked what affect the erosion has had on Lana‘i also, would the cost of lease be covered. Hadway said yes, and with the new administrative rule, they will be able to charge a tag fee. Hadway deferred to Pūlama Lāna‘i in their land management.

Member Oi commented that when the hunters go to Lāna‘i it also helps the economy there.

Member Woodside asked if DOFAW knew what the population target was and how well that target is being managed. Hadway explained that DOFAW is working cooperatively with the staff at Pūlama Lāna‘i to gain a better understanding.

Member Gomes asked how the area is going to be confined so people don't go in that area. Hadway explained with the NARS rule amendments that will allow them to adjust the hunting areas.

Member Oi asked if there was a tracking list. Hadway said yes, DOFAW tracks hunters and how many animals are taken out day to day. They also take into account what hunters do not record.

Lynn McCrory with Pūlama Lāna‘i testified in strong support, and pointed out that this was brought to the hunter advisory committee. They reviewed the amendment, and have regular meetings with the hunters and they are in full support. It is critical that hunting continues. McCrory gave an overview of what they are doing now. She said fencing is to keep the deer out, not to keep them in.

Member Gomes said he knows how important hunting is to the island of Lāna‘i, being that it is owned by Mr. Ellison, he wouldn't want to see it turned into a private hunt only. He would like to continue the present relationship. McCrory said she didn't see an issue with what he was asking.

Member Oi commented that McCrory was once a Land Board Member and knew that as a manager of Pūlama Lāna‘i she would have the interest of the people and the resources.

Dan Purcell commended the Board for taking this seriously. Purcell encouraged the Board to have Mr. Ellison come in here. There is a perception that whatever he wants he gets it. He needs to show up and be personable. The Board needs to hear from him and he needs to hear from the Board.

Member Roehrig commented that he has only heard good things about Mr. Ellison.

Member Gomes asked if there was any more Tuberculosis. Hadway said she would have to double check, but she thought all the testing came back clear.

Unanimously approved as submitted (Gomes, Roehrig)

Item J-1 Denial of Request for Contested Case by Jacqueline Gardner Regarding Transfer of an Offshore Mooring Permit (Permit No. RMO10837) at Nawiliwili Harbor, Island of Kauai.

Ed Underwood Administrator for the Division of Boating and Ocean Recreation- DOBOR presented item J-1 explaining that the hearing is premature because the Board hasn't made a decision on anything yet also, you have to have a property interest to request a contested case. In this instance, a mooring permit doesn't constitute as property interest.

Member Oi commented that he understood what was going on here, someone would have to be on the permit in order to have any interest in the property, and she wasn't on the permit.

Member Roehrig said if he was the sole decision maker, he would cut this lady some slack. Her situation is unfortunate.

Underwood addressed that the fact was Gardner was never on the mooring permit and the rules do not allow any discretion. Member Roehrig understood, but under these circumstances an exception should be made since her name was at least on the insurance policy.

Member Roehrig said he would vote to give her a contested case.

Christy Arakaki the attorney representing Jacqueline Gardner testified objecting, they feel Gardner does have a property interest. Although she was not listed on the permit, she is a co-owner of the boat as of 2011. As a co-owner of the boat she is entitled to have the permit transferred to her upon the death of the owner. They request at a contested case hearing be held.

Member Oi asked if Gardner would be able to sue the state, Arakaki said yes, they believe it would be appealable.

Arakaki suggested granting the contested case hearing to keep the record clean. Member Yuen asked if they were prepared to present their case today, he wanted them to have a fair hearing. Arakaki said yes.

Member Roehrig asked if J-1 could be deferred until J-2 was heard. AG Colin Lau said yes, however the AG working on this was present. AG Lau understood that these items were separated for a reason (Kilakila o Haleakala Case) being that they wanted to keep clean the request for a contested case prior to any action of the Board. In this instance, the applicant can ask for a contested case with regard to J-2, but with regard to J-1 since there was no action before, the idea was the denial of the contested case and move on to J-2, in which case they would have a right to a contested case there.

Arakaki had no problem deferring J-1. AG Lau asked if it would be possible for them to withdraw their request for a contested case in J-1 and then make a request if still willing in J-2. Arakaki was fine with that suggestion.

Arakaki withdrew the request for a contested on J-1 pending the decision on J-2, if they could have the option to file a contested case hearing if they find an unfavorable position on J-2.

AG Cindy Young (representing the department in this case) suggested the Board action be to accept the withdrawal of the contested case, then that would allow the Board to move on to J-2.

Dan Purcell testified that it's important to receive clarification on these contested case hearings. In a previous meeting it was mentioned that a mater could be deferred and go to a contested case without having even heard it. Now today, staff is saying that a decision can't be made because the case hasn't been heard yet. Purcell asked if someone could address what the correct procedure was.

Member Roehrig noted that the applicant withdrew their request for a contested case for J-1, it's clear, now they would move on to J-2.

AG Lau felt there needed to be an action on J-1, since it was before the Board. Member Oi said he would like to see action on J-1, not defer.

Member Woodside didn't feel like she had enough info on J-2 to approve the staff submittal on J-1. Member Roehrig felt the same.

Member Roehrig made a motion to approve the withdrawal, Member Woodside seconded.

Member Oi was not in favor.

Approved the request for a withdrawal (Roehrig, Woodside)

Item J-2 Denial of Jacqueline Gardner's Request for Transfer of an Offshore Mooring Permit (Permit No. RMO10837) Held by Earl Edwards (Deceased) at Nawiliwili Harbor, Island of Kauai.

Underwood-DOBOR summarized that there was an offshore mooring permit issued to Earl Edwards in his individual capacity. According HRS 13-231-13 the only time a mooring permit can be transferred is upon the death of a spouse and if it's in a will or a court decree. None of which occurred in this case. Gardner, who is believed to be the girlfriend of Edwards was working on the boat with Edwards. Gardner is not on the permit with Edwards. When Edwards passed away, Gardner asked that the permit be transferred to her. Since she is not on the mooring permit or the legal spouse of Edwards, and there is no will, the permit cannot be transferred to here. Underwood did say that if there was space available, they could issue another permit to her, but they can't because there is a waitlist. The mooring permit that was issued to Edwards expired last May 2014. Since then, no payments have been made; the boat is illegally moored in the harbor. There's over \$12,000 in illegal mooring fees owed. DOBOR cannot issue a new mooring permit to Gardner because there is a waitlist, and that's acting outside of the Hawaii

administrative rules. If there is documentation proving that Gardner is the spouse, then they would have proof.

Member Woodside asked if both people had to be listed on a mooring permit in order for a transfer to happen from spouse to when a spouse passes. Underwood said no, there is no common law in Hawaii.

Chair Chang asked what would be significance of ownership and if that could be provided. Underwood explained that Gardner could come on as a co-owner, but she cannot go on the mooring permit. She can own the boat, but not that Edwards has passed the mooring permit goes to the next person on the list.

Member Gomes asked in 2011 when Edwards transferred ownership that's not sufficient. Underwood said they weren't notified, but the issue is that Gardner's name isn't on the mooring permit.

Member Oi asked Arakaki what kind of documentation they had for proof. Arakaki said they had the proof of ownership. The issue they wanted to address that a co-owner could be brought on at any time, once a person is a co-owner, upon the death of the owner, that permit can be transferred to the co-owner, so Gardner is entitled (HRS 13-231-13(b2)). Underwood confirmed that ownership could be transferred; however ownership and the mooring permit are two different things. Member Yuen didn't understand the context, and asked Underwood to give the department's understanding.

Underwood said the principal owner, Edwards, is on the mooring permit. He was on the mooring permit. Edward's brought on a co-owner; Gardner. That doesn't change the principal owner, because she's not on the mooring permit.

Member Woodside asked for the definition of a principal owner.

Arakaki indicated that they feel Gardner is a principal owner because she owns 50% of the boat. Also, the department appeared to be talking an inconsistent position.

Underwood read that the definition of principal owner is a person whose name appears on a certificate of number or is named as a managing of a coast guard documented vessel. Gardner is not on either (HRS 13-234-8).

Member Char suggested deferring this to another meeting. He would like to get advice from council, also see a briefing by both parties. Member Char said he would like to see this more concrete. Member Roehrig agreed.

Member Oi asked AG Cindy Young, the AG working on this case if she went over the facts of this case. Young informed the Board that the permit expired on May 31, 2014, because it was not renewed or requested to be renewed.

Member Char made a motion that this matter be deferred to a future meeting and have council submit what authorities they have, including factual issues to be reviewed. Member Roehrig seconded.

AG Young explained that the AG may provide the Board written advice that is generally attorney client privileged or the department may submit a submittal to the Board. This matter is not wanted written advice that would be fine, that's attorney client privileged. Member Roehrig said he believed the Board has precedence.

Jacqueline Gardner testified that she was Earl Edwards' significant other for 31 years; they build the vessel together for 21 years. 5 years ago the State presented them with a mooring permit; they were never on a list. Had Edwards known that she needed to be on the mooring permit, they would have immediately gone and done that. Gardner said she had Edwards' 6 page will that states her position. His mooring permit did expire in May. She has always paid the moorage, she went in April right after his passing and her check was accepted. She has played a part of this and been involved in this boat. In October she went to harbor with intent to get a temporary mooring. She was told that before she could get a temporary permit, she needed to pay for a fee without permit of \$2,737 their mooring has been \$232.02. Gardner said she was advised not to pay anything because it would be difficult to be reimbursed. It would be difficult for her to move the vessel. She explained how difficult it was her to deal with.

Member Yuen supported the motion on the floor and suggested spending time on the mitigated circumstances.

Chair Chang asked what would happen to the mooring if this item were deferred. Underwood indicated that the boat is illegally moored in the harbor and is currently up to about \$12,000, it will continue to accrue illegal mooring fees. The permit expired, and the fees will keep growing.

Member Roehrig asked how to maintain the status quo and if there was some way to have in interim payment and what would be a fair amount. Member Char said the parties should be able to work something out, his motion is to defer.

Dan Purcell testified submittal was incomplete and it is unfortunate that we don't have a common law. He explained that all these items need to be heard, even though the agenda is long. He also encouraged video conferencing.

Member Char reiterated that his motion was to defer to a future meeting and ask staff to submit a memo and affidavits. Member Roehrig seconded.

Member Yuen commented that the department has stated its position. He said he had difficulty making decisions on spoken words and would prefer to see them in written in black and white. Member Yuen suggested that the applicant present their memo and the department or the

attorney general bring this back. He felt this would turn out to be a question on whether there is a way in the law to permit the extension or not.

Unanimously moved to defer (Char, Roehrig)

Item C-1 Review of Project Recommendations for Funding from the Fiscal Year 2015 Legacy Land Conservation Program (Land Conservation Fund) and Approval of the Following Grants:

Kaluanono at Waipā; Waipā Foundation, at \$398,250 for Purchase of 1.8 Acres in Hanalei, Island of Kaua‘i;

Ka Iwi Coast Mauka Lands; Department of Land and Natural Resources, Division of Forestry and Wildlife, at \$1,000,000 for Acquisition of 181.14 Acres in Ko‘olaupoko, Island of O‘ahu;

Wai‘opae; County of Hawai‘i, at \$1,330,000 for Acquisition of 322.167 Acres in Puna, Island of Hawai‘i;

Pua‘ahala Watershed Acquisition; Department of Land and Natural Resources, Division of Forestry and Wildlife, at \$855,625 for Acquisition of 800 Acres in Kamalō, Island of Moloka‘i;

Kalua‘aha Ranch Conservation Easement; Moloka‘i Land Trust, at \$500,000 for Acquisition of a Conservation Easement Over 969 Acres in Moloka‘i District, Island of Moloka‘i; and

Pūpūkea Mauka; Department of Land and Natural Resources, Division of Forestry and Wildlife, at \$416,125, for Acquisition of 3,716 Acres in Waiālua, Island of O‘ahu.

Written testimony was submitted by Edwin T. Misaki-TNC.

Member Woodside recused.

Lisa Hadway Administrator for the Division of Forestry and Wildlife-DOFAW reviewed item C-1. She noted that DOFAW would like to defer the Ka Iwi Coast Mauka Lands. Originally they had requested to approve 6 grants; they are requesting to defer #2 on page 2, which is the Ka Iwi Coast Mauka Lands. The attorney general’s office has given the okay to do this.

The total amount also needed to be amended from \$2,271,750 to \$1,271,750.

In June 2014 the department announced the funding for proposals for the acquisitions of lands to protect lands having value as a resource to the State. After consultation with HDC, HDOA and

DLNR applicants submitted 7 project proposals by the deadline. The Legacy Lands Conservation Commission, reviewed applications, conducted site visits, and formed recommendations at two public meetings in December 2014. The commission recommended projects as listed to the extent that the funding is available. Pursuant to HRS 173-A the senate and the House speaker reviewed the proposals and offered no comments (their letters were attached). Staff and the chair of the Legacy Land Program were available for questions.

Chair Chang made it known that discussion can occur for the Ka Iwi Coast Mauka Lands even though there was a motion to defer it.

Member Gomes asked why this was being deferred. Hadway disclosed that DOFAW would like to further discuss this. There is a non-profit that is working with this project as well, with the City and County of Honolulu. They want to be sure they have a clear understanding of how the conservation easement would be held.

Unanimously approved as amended (Roehrig, Char)

10:44 AM RECESS

10:53 AM RECONVENE

Item K-2 After-The-Fact Conservation District Use Application (CDUA) OA-3711 Regarding the August and Veronica Monge Existing Rock Seawall, Located at Hau'ula, in the Ko'olauloa District, Island of O'ahu, Seaward of Tax Map Key: (1) 5-4-003:035.

Written testimony was submitted by Donna C. Marron, Esq.

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands-OCCL clarified that on the agenda, item K-2 appears as K-1 and K-1 appears as K-2. He amended the K-1 submittal to the K-2 agenda title.

Lemmo told the Board that he has received a request for a contested case from the representing attorney. This is a violation, it is clear that the owner will have a standing in a contested case. Lemmo explained that this is regarding an unauthorized use of conservation lands. There are a number of issues. OCCL received a complaint that there was erosion work being done. OCCL noticed it as a violation and are recommending 3 fines. \$15,000 for un-authorization of erosion control, \$15,000 for unauthorized landscaping, \$10,000 for modification of onsite drainage, and administrative costs of \$25,000, totaling \$42,500. There are other conditions if they agree to this.

Donna Merron representing Norman Caris stressed that even though they requested a contested case, they stated that their emphasis is to determine whether there were violations, if there were the extent and the appropriate penalty. She explained that Mr. Caris was extremely concerned about the erosion control activities that he has conducted. They want to be sure that whatever restoration might be ordered by the State does not undo any environmental protection that is now in place. Merron stressed that they wanted to be cooperative with the State through the contested case.

Lemmo suggested a deferment at this point.

Member Roehrig made a motion to allow a contested case. Member Gomes seconded.

AG Colin Lau explained that the Board was just deferring the enforcement action; it would have to come back to the Board in regards to the contested case.

Unanimously moved to defer (Roehrig, Gomes)

Item D-8 Amend Prior Board Action of December 12, 2014, Item D- 7, “Grant a 65-Year Term, Non-Exclusive Easement to Summit Biofuel LLC for an Underground Transmission Pipeline to Transfer Biofuels from Cargo Ships to an Off-Site Privately-Owned Storage Facility, Hilo Harbor, Waiākea, South Hilo, Hawai‘i, TMK: (3) 2-1-009: portion of parcels 007 & 031.” And

The purpose of amendment is to change the name of the grantee from Summit Biofuel LLC to Hoku Kai Biofuels LLC.

Russell Tsuji Administrator for the Land Division-LAND conveyed that this is back to change the name of the easement owner to Hoku Kai.

Former Land Board Member Shawn Smith was present for the owner.

Member Roehrig asked if this was for ethanol. Shawn Smith representing Hoku Kai explained that he was a friend of the group, for further information on the product he would defer to Frank Hughes.

Frank Hughes an officer of Next Fuels, the parent company that is majority owner of Hoku Kai.

Member Roehrig asked if there was another ethanol/biofuel line at Hilo pier. Hughes addressed that there was a difference between ethanol and biofuel. This is the only line at Hilo pier that is going to import biofuel. This is a palm oil, soy based fuel that can be turned into biodiesel. This pipeline is specifically dedicated to the former asphalt facility across from the harbor. Hughes explained that they are their own company, and are not affiliated with anyone else. These biofuels are going into the diesel, not the gasoline.

Member Roehrig asked if the fuel made from corn had anything to do with them. Hughes said no, they are trying to help Hawaii’s renewable green footprint by bringing in a renewable product that can be sold by the retail market and can help with the footprint that is left by fossil fuels.

Member Roehrig asked Tsuji if the Board was allowed to change the person getting the lease under these circumstances. Tsuji said yes, because this was an easement not done by a public process.

Member Yuen asked if this was being done as a change of name of non-assignment because they have not executed the easement. Smith and Tsuji confirmed.

Unanimously approved as submitted (Roehrig, Gomes)

Item D-3 Authorize a One-Year Holdover of General Lease Nos. 3265, 3266, 3267 and S-4252, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit, to Lessee Hilo Bay Hotel, Inc., at Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-005:033, 034, 035 and 045.

Written testimony was submitted by Jane M. Dellaria, Joani Duncan, Judyth A. Bruno, Thomas G. Bruno, Nancy French, and Marianne Brady.

Tsuji-LAND explained that this was the lease regarding Uncle Billy's. Like other leases that have been expired, LAND is asking the Board to authorize a one year holdover under the existing lease. If at that point they are still not ready, to allow issuance of a revocable month-to-month permit.

Tsuji clarified that recommendation 3(c) says that when the permit moves to a revocable permit, the rent will be determined by an appraisal. Tsuji wanted to be clear and make an amendment that the cost of the appraisal will go in by the applicant. Steve Lim was present representing the applicant.

Member Yuen said there was an appraisal for the Country Club and asked if an appraisal was done for Hilo Bay. Tsuji said the County Club was not an appraisal for specifically for a one year time period. The cost being borne by the applicant is based upon the appraisal statute on any new application for disposition of a lease. LAND is recommending an appraisal. Under revocable permit the rent can be determined by the Board. The appraiser is selected through a committee within LAND division. They followed the procurement code to a T.

Member Yuen indicated that there was testimony that alleged that the appraisers being selected have raised their charges for the private people who have to bear them. Tsuji explained that the appraisers charge what they charge just like attorneys charge what they charge. It could easily cost \$5,000. Member Yuen commented that this needed to be looked at because the rent had been based

Steven Lim representing Hilo Bay Hotel Inc. introduced Sandy Yokamizo, President and General Manger of Hilo Bay Hotel Inc. Lim disclosed that the lessee cannot accept any duty to remove existing improvements at the termination of the lease, the one year holdover or the revocable permit period. That's what they understood happened with Reed's Bay Hotel. Lim felt it was of limited value to get an appraisal on a month to month revocable permit. The Banyan Drive redevelopment plan is currently underway and Hilo Bay hopes that will be done in the near future so Hilo Bay will know whether or not to continue with the project. They are willing to as long as it looks like Banyan Drive will be moving forward. Lim asked that the Board allow Hilo Bay Hotel Inc. to receive a minimum of 6 months' notice of the State before they start cutting them off.

Member Gomes asked if 6 months was sufficient. Lim said they would like more, but they understand that the Board has its restraints.

Member Roehrig commented that Reed's Bay didn't ask for 6 months. The long range goal is to have a master plan for Banyan Drive. He expressed his concern about the appraisal. Lim said his understanding was the appraisal was on a month-to-month.

Member Yuen said his inclination now was to appraisals done for the land and the building for the first year of the revocable permit, the rent should be set for the land only. At the end of the first year it be brought back to the Board to be examined for what's a fair rent. He felt like the effect of what they did with Reed's Bay was to grant a year's revocable permit subject to the fact that the appraisal would be based on the land only. Lim said they would be okay with that, so long as the second appraisal gets done earlier so they can plan. Member Yuen was okay with that, he wasn't comfortable with continuing the lease rent as the same as the revocable permit.

Member Yuen asked the AG if there were such things as revocable permits with assurances. Tsuji commented that anything longer than 30 day is supposed to go to public auction. AG Colin Lau agreed with Tsuji.

Member Gomes asked Tsuji to clarify if the applicant was not responsible for tearing the structure down if they decide not to move forward at the end of the year. Tsuji confirmed and said it would then revert to the State and the department would then have to decide what to do with it.

Member Yuen made a motion to accept staff recommendation with the following amendments. 1) the State retains the improvements 2) the State obtain an appraisal for land and improvements and that the rent for the revocable permit be set at land only for the first year of the revocable permits and that the department bring this back to the Board for consideration.

Heit clarified that this would be treated as one revocable permit. Member Yuen added that the costs be borne by the permittee. Member Char seconded.

Staffs' recommendation 3(c) was amended to clarify the costs of the appraisal shall be borne by the permittee, and the rental for the 1st year during the revocable permit shall be based on land value only, but for any subsequent years the Board may set the rent based on the value of the land and improvements. The permittee shall not be required to remove the improvements upon the termination of the revocable permit.

Unanimously approved as amended (Yuen, Char)

Item D-5 Deny Lessee's Request for a One-Year Holdover and the Issuance of a Month-to-Month Revocable Permit, of General Lease No. 3156, Michael F. and Dora Lee Rudolph, Lessee, Ocean View Lease Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-007:022.

Tsuji-LAND explained that this the Ocean View Estates. Staff is recommending a denial of putting them on a holdover and month to month because there were some issues. Gordon Heit, Hawaii Island Land agent was present for questions.

Michael Rudolph introduced himself and his wife Dora Rudolph. M. Rudolph detailed how they have spent most of their adult lives in that house. He addressed that one of the complaints were untimely payment. He said wanted to pay on time and would really like the payments to come out of their checks at the beginning of the month automatically. M. Rudolph understood that this would be the situation with the new leases. He also addressed that they were cited for have many cars on the land. M. Rudolph explained that they did have cars on the land, but they have removed 3 vehicles, and they have some present, Ruth Binyan to attest to that. He also indicated that there were other issues that he had taken care of, one of which was the damage cause by termites. M. Rudolph said they would like to stay until the conclusion of the lease and asked the Board to reconsider this matter.

Member Roehrig asked Heit how he felt about reconsidering. Heit said it was up to the Board to make that decision.

Member Yuen asked what would happen if the Board followed this, would the house be torn down. Heit explained that an assessment would need to be done. Due to the amount of cars on the property LAND suspects there will be petroleum seeped into the ground. The age of the house predates lead paint. An evaluation of the property would need to be done before the proceeding of the demolition.

Member Roehrig said that all the lots in this area have the same problems, if one house goes, all the houses in the area go.

Member Woodside asked staff if a system could be set up so Mr. and Mrs. Rudolph where there can be automatic deductions. Tsuji said that payments are in by check and he didn't know of anyone on automatic deduction.

Member Woodside suggested an automatic bill payment with their bank. Tsuji said that right now there was not automatic payment, in the future they are looking into it.

Member Yuen said that if the Board was going to allow the Rudolph to stay, then asking him to mail his check in shouldn't be a problem. Tsuji suggested paying month to month, instead of every 6 months. There's nothing wrong with paying more ahead of time, they would just be credited.

Member Woodside commented that in a short amount of time a considerable amount of clean-up has been done in a short period of time. She appreciated the amount of work that they have done, but recognized that should the Board allow the Rudolphs to stay; the level of work would also need to continue. M. Rudolph understood.

Member Oi said he can't see kicking them off the property. He would like to accommodate them, but they need to help the department/State too.

Chair Chang asked staff if the Board would allow a one year holdover, do the Rudolphs need to come back after that one year for the issuance of the month to month or do they need to come back before the one year. Tsuji suggested the Board amend the submittal at reflect the similar approvals as item D-4 to avoid having to come back.

Ruth Binyan, another lessee of the Ocean View Lease Lots. Binyan testified supporting the Rudolphs.

Member Roehrig made a motion to give the Rudolphs the same recommendation as contemplated for item D-4, with the understanding the Rudolphs will be prompt on their rent payments and will keep the yard clean. Member Yuen seconded.

The Board amended staffs' written submittal by reversing the recommendation of denial to an approval of the one-year holdover and the issuance of a month-to-month revocable permit. Terms and conditions should be similar to another Ocean View Estates item, D-4; the amount of the rent during the revocable permit period to be determined by staffs' analysis as approved by the Chairperson.

Unanimously approved as amended (Roehrig, Yuen)

Item D-10 Grant of Term, Non-Exclusive Easement to Kuahiwi Contractors, Inc., dba: Kuahiwi Ranch for Water Pipeline Purposes, Kaiholena, Ka'ū, Hawai'i, Tax Map Key: (3) 9-7-001:001 & 021.

Tsuji-LAND conveyed item D-10. Tsuji said Board member Yuen stated that the submittal incorrectly cites parcel 16, its actually parcel 21. Parcel 16 is the neighboring parcel, which is conservation.

Member Yuen said he had no problem with the submittal, he just found it strange that the CDUP parcel reference was 16.

Gordon Heit, Hawaii Island land agent explained that the map shows a very faint line between parcel 16 and parcel 21, so they may have just thought the whole property was parcel 16.

Member Yuen took it that the correct is 21, because it's on the agenda, but in the body of the submittal and the CDUP says 16.

Michelle Galimba said that it was 16, but DOFAW asked that it be moved.

Michelle Galimba testified that she works for her family's ranch, Kuahiwi Contactors. They have had ongoing drought for years, currently they use overflow from the mountain house tunnel. The primary use is for domestic supply for Naalehu, and they just get the leftover. Kuahiwi Contractors wants to put a pipeline into this plantation tunnel. They have been working with the Nature Conservancy. The agreement is that they would be working with a number of other ranchers and farmers in the area.

Unanimously approved as submitted (Roehrig, Yuen)

12:36 PM RECESS
1:08 PM RECONVENE

Item D-9 After-the-Fact Consent to Assignment of Grant of Easement No. S-4105, Michael W. Gibson, Timothy E. Johns, and B.G. Moynahan, Successor Trustees of the Richard Smart Revocable Personal Trust dated August 3, 1978, Assignor, via Mesne Assignments to Mark D. O'Brien and Nicole O'Brien, Assignee; Amendment of Grant of Easement No. S-4105 to Allow the Easement to "Run with the Land" and be Assignable without the Prior Written Consent of the Board of Land and Natural Resources Pu'ukapu, Waimea, South Kohala, Hawai'i, Tax Map Key: (3) 6-4-001: portion of 060.

Tsuji-LAND reviewed item D-9, the applicants were present for questions, Tsuji had nothing more to add.

Member Roehrig asked if this ran in perpetuity. Tsuji explained that this had a term easement of 65 years, however but allows them to sell the property without having to come back. This is benefiting the land.

Unanimously approved as submitted (Roehrig, Oi)

Item K-1 After-The-Fact Conservation District Use Application (CDUA) OA-3711 Regarding the August and Veronica Monge Existing Rock Seawall, Located at Hau'ula, in the Ko'olauloa District, Island of O'ahu, Seaward of Tax Map Key: (1) 5-4-003:035.

Lemmo-OCCL amended the submittal to item K-1 to match the title on the agenda. Lemmo presented item K-1 noting that this is partially located on state unencumbered lands. Lemmo gave some history explaining that this came up in the 1990's/ early 2000's; it came to OCCL's attention as a potential violation. In 1975, there was a certified shoreline done, sometime after 1975, the previous owner had built the wall. They aren't sure exactly when, but it's about 20 years old. It came in as a violation because when OCCL looked that the 1975 shoreline compared to the location of the wall, a very small sliver of that wall came up seaward of the shoreline (map in submittal). Based on that, OCCL determined that would be a violation. Lemmo believed the intent was to build the wall behind the 1975 certified shoreline, but it didn't happen. This came in as a violation case and the Board said the new owner may apply for an after the fact CDUP or remove it. They are now applying for an after the fact CDUP. The new shoreline shows that the majority of the wall now seaward of the shoreline. This isn't due to any physical changes, it's administrative. Now there is an after the fact CDUP for the whole wall. Back in 2007 it was just for a portion of the wall. They also need to get an encroachment from the Board, because OCCL considers this to be an encroachment in this area. OCCL doesn't have a major concern and recommended the use subject to the standard conditions.

Member Roehrig said he feels the State needs legislation that treats everyone identical. He said that there is going to be a time where every beachfront will be in the conservation zone with the sea level rising. He suggested some kind of insurance covering everyone that lives on the shoreline and suggested someone from the attorney's office and Alex Roy-OCCL planner get together and workout how to do this. Member Roehrig said the State needs a policy on how to handle global warming so that every time this happens, it doesn't need to come before the Board. He also commented that he didn't appreciate the condition in paragraph two of the staff submittal.

Member Yuen agreed with Member Roehrig that this brawls out to a big level of solution but disagrees about taking out conditions in paragraph two The applicant has a seawall which is currently illegal has applied for the permit to make it legal and the staff has recommended that we grant the permit (read paragraph two). Member Yuen said that it was reasonable that they hold the State harmless for things done by them. The State is asking the applicants not to hold the Sate responsible liability for us granting you the permit you asked us to grant. This is also the standard clause for most CDUPs.

Member Roehrig recognized what Member Yuen was concerned about, but he was concerned that once the wall is below the high wash of the waves, you don't have a choice but to do something about it. The State says you're wrong even if it's no fault of the landowner.

Lemmo appreciated the comments and his articulation about how people feel. He said that it is supposed to go before legislation in 2017. Member Roehrig said that's too late and suggested forming a team to handle this before the next legislative secession 2016 and at least start the discussion.

Tsuji added that Land Division works with Lemmo, and OCCL handles regulatory issues on the shoreline, Land Division gets the issue of disposition on state land.

Member Yuen asked what happen with the certification in this case. Lemmo explained that if the shoreline goes around the wall on your property, it's a new shoreline.

Member Roehrig was concerned about global warming and theses cases are going to keep coming up. Lemmo told Member Roehrig, the department was working on a plan.

John Monge introduced his wife and thanked the Board. He detailed that when they moved in the property in 2001 he was ignorant about the shoreline. Their property sits on a right of way so whatever affects their property affects the right of way. Monge said they just want to make things right and get this settled.

Unanimously approved as submitted (Char, Yuen)

Item D-15 Authorize the Chairperson to Consent Regarding the Removal of Trees on the Lease Premises; General Lease No. 5478; Office of Hawaiian Affairs, Lessee, Haleiwa, Waiālua, O'ahu; Tax Map Key: (1) 6-6-009:023.

Tsuji-LAND explained that this lease to OHA requires the consent of DLNR before they cut down any trees. Land Division is seeking this approval to allow the Chairperson to deal with these kinds of situations.

Brutus La Benz representing OHA testified in support and was available for any questions.

Unanimously approved as submitted (Gomes, Oi)

Item D-2 Approve a One-Year Holdover for General Lease No. 3269 and Subsequent Issuance of Month-to-Month Revocable Permit, to Lessee Country Club-Hawai'i, Inc., at Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-005:020.

Tsuji-LAND told the Board that this matter was similar to Reed's Bay. The representative was present for questions.

Member Roehrig asked counsel if it was okay for him to act on this matter, he represented the representative, Arata from 2002 to 2003. AG Colin Lau asked Member Roehrig if his client was directly related to County Club Hawaii Inc. Member Roehrig said no, Herb Arata was one of the shareholders at the time; he had no involvement in the dispute.

Tsuji said Herb Arata is currently the lessee. Lau told Member Roehrig that if he felt he has special knowledge that was inappropriate to making a decision on this item or that he somehow bias his decision here then he should recuse. Member Roehrig said he doesn't know any of this, Arata is a personal friend, but had no reservations on voting on this item.

Richard Emery representing the condo association said they have an agreement with the Aratas to apply for the assignment of the lease to the condo association. There is no current litigation at this moment pending. For them to move forward in a positive way, they need to have a lease extension or month to month.

Member Roehrig asked Emery if there was any reason to think that he should not vote. Emery said no.

Emery asked for the same approval as item D-3.

Chair Chang asked Tsuji if the same recommendations were in place here as item D-3. Tsuji asked if the Board was going with the appraisal land only for the first year. Member Yuen said yes, but had questions about the language in the submittal that read "the condo dissolves at the end of the lease". Emery explained that because the association has a lease that will expire, it'll sublease. The owner has to agree to the extension of the sublease. Owners could say they weren't interested in a sublease and walk away. The sublease/ the individual apartments has to be extended within the terms you would hypothetically approve.

Member Yuen asked if the unit owners had subleases. Tsuji said yes, long term subleases. The State does have to consent to those subleases. Tsuji thought by approving the RP for a year, it would be under the name of the association.

Member Char asked for clarification, that the present action was only for the holdover at such time if there is consent in to assignment, will they come back to the Board. Tsuji confirmed, it's in the works.

Member Yuen made a motion to approve staffs' recommendation 3(c) was amended to clarify the costs of the appraisal shall be borne by the permittee, and the rental for the 1st year during the revocable permit shall be based on land value only, but for any subsequent years the Board may set the rent based on the value of the land and improvements. The permittee shall not be required to remove the improvements upon the termination of the revocable permit. Member Oi seconded.

Unanimously approved as amended (Yuen, Oi)

Item D-6 Deny Lessee's Request for a One-Year Holdover and the Issuance of a Month-to-Month Revocable Permit, of General Lease No. 3157, Natalie Marie McKeen, Lessee, Ocean View Lease Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-007:023.

Written testimony was submitted by Natalie McKeen.

Tsuji-LAND said the lessee called earlier in the week and said she couldn't make it, Tsuji thought she would ask for a deferral, but she sent in lengthy testimony in opposition. This expires March 13.

Member Roehrig recused, he disclosed that he had a relationship with this family and didn't feel comfortable voting on this item.

Member Yuen said he was inclined to defer this item. Member Gomes seconded.

Unanimously moved to defer (Yuen, Gomes)

Item D-4 Authorize One-Year Holdover of General Lease No. S-3155, Maya Nicole Baylac, Lessee; Issuance of Revocable Permit; and Issuance of a Bill of Sale Transferring All Improvements Upon the Premises to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:021.

Item D-7 Authorize One-Year Holdover of General Lease No. S-3164, Electrical Workers, Local 1260 Building Trust, Lessee; Issuance of Revocable Permit; and Issuance of a Bill of Sale Transferring All Improvements Upon the Premises to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:030.

Member Roehrig made disclosures in regards to items D-4 and D-7, but there was no need to recuse.

Member Woodside asked the Board if they reduced the cost of the buy back of one of the others that came at a previous Board meeting. Member Roehrig said yes, the Board reduced it to \$1,500 and Gordon Heit later told him they shouldn't have, it should've stayed at \$3,000.

Heit explained that \$3,000 wasn't a random number, it was in lieu that the letter that was written back in 2011, when they notified these lessees that these leases would expire, that land division would offer them a one year holdover, in the letter they were notified that the cost of the appraiser would be borne by the lessee after the holdover. Land division thought against it, at the time the appraiser cost was about \$3,000, so they took that as a means to buy back into the property. These leases are different from the Banyan Drive leases give the lessee the opportunity to take the improvements with them. Since they have decided to stay on the month to month, it then becomes the property of the State. The value of those properties varied and the average cost of the appraiser was around \$3,000, which is where LAND came up with that number. Once the lease expires it becomes the property of the state.

Unanimously approved as submitted (Roehrig, Oi)

Item D-11 Issuance of Right-of-Entry Permit to Maui Community Theater dba Maui Onstage at Waiohuli-Kēōkea Beach Homesteads, Kihei, Maui, Tax Map Key: (2) 3-9-009: Portion of 011.

Item D-12 Issuance of a Right-of-Entry Permit to MC&A Inc. for Team Building Sand Sculpting Beach Activity Event, at Kapalua, Lāhainā, Maui, Hawai'i: Tax Map Key:(2) 4-2-004: seaward of 015.

Item D-13 Issuance of Right-of-Entry Permit to Ale'ale'a, LLC, dba Feast at Lele to Access State Unencumbered Lands for the Removal of Shoreline Encroachments at Lāhainā, Maui, Tax Map Key: (2) 4-6-002: Seaward of 007.

Item D-14 Grant of Term, Non-Exclusive Easement to Wilton Allen Doane, Jr. and Christina Dao Doane for Pier Purposes; Amend Prior Board Action of December 12, 2014, Item D-26; (Issuance of Revocable Permit to Tokyo News Service, Ltd; Termination of Revocable Permit No. S-7589); Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 3-6-001: seaward of 017. And

The Amendment is to Change the Applicant from Tokyo News Service, Ltd. to Wilton Allen Doane, Jr. and Christina Dao Doane.

Tsuji-LAND had no changes to items D-11 through D-14.

Unanimously approved as submitted (Gomes, Oi)

Item C-2 Request for Approval of Federal Funds Sub-Grant to the County of Hawai'i for the Free Acquisition of 3,128 Acres of Land in Kahuku, Ka'u, Hawai'i, Tax Map Key Number (3) 9-2-001:075.

Written testimony was submitted by Hamana Ventura-County of Hawaii and William L. Moore.

David Penn representing DOFAW reviewed item C-2, this is on the makai side of the Kahuku Ranch.

Member Roehrig asked about PASH-Public Access Shoreline Hawaii rights. Penn said there is a possibility that it is there but there is no indication of anything specific at this point.

Unanimously approved as submitted (Roehrig, Gomes)

Item C-3 Request Authorization for the Chairperson to Negotiate, Sign, Execute, and Amend a Memorandum of Agreement with the Edmund C. Olson Trust No. 2 for the Establishment of a Public Access Route to the Ka'u Forest Reserve, Ka'u, Hawai'i, Tax Map Key: (3) 9-5-015:001 and

Request Approval of Declaration of Exemption from Chapter 343, Hawai'i Revised Statutes, Environmental Compliance Requirements for the Subject Memorandum of Agreement.

Written testimony was submitted by The Nature Conservancy-TNC.

Penn indicated that this is a project that DOFAW has been working on for 4 years to open up vehicular access to the Ka'u Forest Reserve from the Mountain House Road side and along the lower forest reserve. After this is passed the next step would be to work with Michelle Galimba and her company to continue this route through her pasture and work with the Department of Agriculture. In the end it would run about 5 miles.

Member Roehrig disclosed that he was involved in 15 years of litigation against Olson.

Penn pointed out the one page revision that was sent to the Board members. These amendments were based on recent consultation with the Deputy Attorney General (amendments to page 3, 4 and 5).

Member Yuen made a motion to approve as amended and commended DOFAW for this project. Member Roehrig seconded.

Unanimously approved as amended (Yuen, Oi)

Item J-3 Request Approval to Initiate Rule-Making Proceedings, Including Public Hearing, to Amend Hawai'i Administrative Rules (HAR) §13-256-93 and to Repeal HAR §§13-256-94 to 97 in Order to Revise Thrill Craft Zones and Restrictions within Ke'ehi Lagoon, Island of O'ahu.

The rules can be reviewed online at: <http://dlnr.hawaii.gov/dobor/draft-rules/> or can be reviewed in person at any small boat harbor from 8:00 am to 3:30 pm, Monday through Friday, except Holidays.

Written testimony was submitted by Glenn Shiroma.

Underwood -DOBOR conveyed item J-3, this was to clean up the rule.

Member Yuen asked DOT-AIR gave consent. Underwood said he didn't think so, this area is on the outside area and would be a better area.

Unanimously approved as submitted (Char, Gomes)

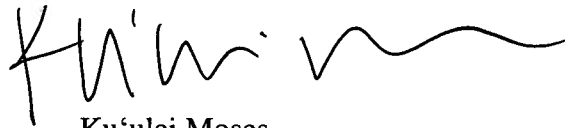
Item L-1 Request Acceptance of the Final Environmental Assessment and Approval for the Issuance of a Finding of No Significant Impact (FONSI) for the Department of Land and Natural Resources Administrative Building, Wailuku, Maui, Hawai'i.

Chris Takashige Acting Chief Engineer-ENG had no changes to item L-1.

Unanimously approved as submitted (Gomes, Oi)

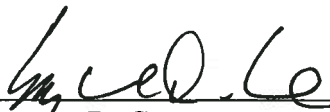
There being no further business, Acting Chairman Carty Chang adjourned the meeting at 3:00 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Ku'ulei Moses
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land and Natural Resources