

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

DATE: FRIDAY, MARCH 13, 2015
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Carty S. Chang
Thomas Oi
Vernon Char
Ulalia Woodside

James Gomes
Stanley Roehrig
Christopher Yuen

STAFF

Bill Wynhoff-Deputy AG
Ed Underwood- DOBOR
Curt Cottrell-PARKS
Angela Amlin-DOFAW
Ian Hirokawa-LAND

Amanda Weston-Deputy AG
Keith Chun-LAND
Russell Tsuji-LAND
Bin Li-CO

OTHERS

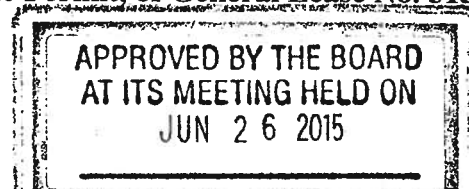
Ross Smith/DOT-AIR
Keith Kiuchi/ J-3
Russ Inoue/ J-2
Bob Hampton/ J-1
Kanani Kaulukukui/ E-2
Duane Kanuha/D-10
Stacey Foley/D-10
Benjamin Kudo/D-10

Dan Purcell/M1-8, D-10, D-4
Deron Akinoa/J-3
Lewis Perez/ J-2
Lehua Kaulukukui/E-2
William Brichante/D-10
David Brittin/D-10
Ed Bushor/ D-10

Interim 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:

Interim Chairperson Carty Chang noted that he would be leaving the meeting at 9:40 AM, at which time Member Gomes would Chair the meeting. Chair Chang also clarified that there were two agendas sent out, a word version and a PDF version. The PDF version is the correct agenda, and the one that was filed. On the word version there are 4 M-items that would not be heard today. Chair Chang read the 4 M-items.

Item D-1 Resubmittal: 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, Waiakea,
South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:023.**

Deferred

Item A-3 Approval of January 23, 2015 Minutes

Unanimously approved as submitted (Gomes, Oi)

**Item M-1 Issuance of a Revocable Permit for the Purposes of Parts and Equipment
Storage and Office Space, Vanderlande Industries Inc., Ewa Concourse,
Honolulu International Airport, Tax Map Key: 1-1-003:001 (portion).**

**Item M-2 Issuance of a Revocable Permit for Parking and Storage of Rental Car
Vehicles, Avis Budget Car Rental, LLC, Honolulu International Airport, Tax
Map Key: (1) 1-1-70:006.**

**Item M-3 Issuance of a Direct Lease for Space, New Cargo Building, Akeo Kula, Inc.,
Hilo International Airport, Tax Map Key: (3) 2-1-12:090 (portion).**

**Item M-4 Issuance of a Direct Lease for Space, New Cargo Building, Hawaiian
Airlines, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12:090
(portion).**

**Item M-5 Issuance of a Revocable Permit for a Tour Reservations Office, Blue
Hawaiian Holdings, LLC., DBA Blue Hawaiian Helicopters, Hilo
International Airport, Tax Map Key: (3) 2-1-12:090 (portion).**

**Item M-6 Issuance of Revocable Permit for an Administrative Office to Support
Aviation Operations, Hallmark Aviation Services L.P., Honolulu
International Airport, Tax Map Key: (1) 1-1-003:042 (portion).**

**Item M-7 Issuance of a Revocable Permit for Cargo Spaces, Federal Express
Corporation, Hilo International Airport, Tax Map Key: (3) 2-1-12:090
(portion).**

**Item M-8 Issuance of a Revocable Permit to Park and Storage Container, Kanae,
Clarence K. and Corrine, Kalaeloa Airport, Tax Map Key: (9) 1-1-13:32
(portion).**

Ross Smith Property Manager from the Department of Transportation Airports Division- DOT-AIR gave a summary of items M-1 through M-8.

Member Roehrig asked what the process was of a direct deal for the Hilo Airport item (M-3, M-4, M-5) and if anyone else was interested. Smith said yes and explained that DOT wanted to be sure all applicants were considered, notices were made to anyone in the cargo business. DOT got

responses from Hilo operators, and as of right now there is more space in the front of the building, than there are tenants to occupy.

Member Roehrig asked why Blue Hawaii is just getting a revocable permit. Smith said that Blue Hawaii is asking for space in the terminal building as part of their operations, back office space.

Member Yuen asked why Aloha Air Cargo was not listed. Smith said that Aiko Kula is Air Cargo.

Dan Purcell testified that it might be best to do a consent agenda.

Member Roehrig suggested that Purcell submit his comments/testimony in writing beforehand so he has time to review it.

Member Char said he needed to recuse from item M-3, his law office represents that organization.

Unanimously approved as submitted (Gomes, Yuen)

Item J-1 Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. for Site Assessment for Future Zip Line Operation Purposes from April 1, 2015 to September 30, 2015; Waikiki, Honolulu, Oahu.

Ed Underwood Administrator for the Division of Boating and Ocean Recreation-DOBOR presented item J-1. The trial was successful, it was found that the location on the lagoon property was low, so they are proposing to install the landing area in the area parking lot which will raise it up about another 12 ft. There will be not net loss of the public parking area. The applicant was present.

Member Roehrig asked if this item could be deferred until Keone Downing got here. He has major concerns.

Member Gomes made a motion to defer until later in the day. Member Woodside seconded.

Temporarily deferred.

Member Roehrig left to call Keone Downing.

Item J-3 Termination of Boating Lease No. BO-13120 dated December 6, 2013 between the State of Hawaii, Lessor, and Honey Bee USA, Inc., Lessee; Cancellation of BLNR Approval of Non-Exclusive Term Easement to Honey Bee USA, Inc.; Honolulu, Oahu, Hawaii. Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-037:012 (por.) & 020.

Underwood-DOBOR explained that in the beginning things were working well, but they started falling behind on their rent last October and a notice of default was issued. The developer has new developments and would like to address the Board.

Member Roehrig came back into the room.

Keith Kiuchi with Honey Bee USA explained that they have \$420,000 in escrow to cure the back rent. Kiuchi said they now have a strong equity partner that has given them a letter of intent. The equity partner is a large mainland company and does not want to be disclosed until the end of their due diligence. Right now they have two loan term sheets that are going to be different with this equity partner. Since 2009, they have obtained many permits, a key one was chapter 343. They have also obtained a sewer connection, which is the most important element. They are on track to obtain a building permit by May 13. Kiuchi introduced other members of the project team. Hawaiian Dredging was selected as their contractor.

Deron Akiona gave an overview that the genesis of the project was because at the Ala Wai, the property was underutilized. The Boat yard was in violation and was shut down. The fuel dock had contamination on the soil. He said staff did a good job getting this negotiation. Previous to Honey Bee, the State was getting \$11,000 a month from both sites, currently Honey Bee is paying the State \$68,000 for the same sites, just to develop. They have spent 3.2 million dollars so far. One problem that came up, was the issue of the PLDC. When that went before the legislature, the issue of whose jurisdiction came up in 2010. It wasn't resolved until 2013. He said the sewer permit, was the last permit until the improvements go in. Deron Akiona said if they are cancelled out, the department would face many issues, one with the boat yard and another developer will not be able to get a sewer hookup for the next 3-5 years. He asked that the Board allow them to proceed and move forward.

Kiuchi added that when you wash the bottom of the boat, it's considered a biohazard and this goes into a primary sewage treatment system before it goes into the sanitary sewer. To do that, they hired a company out of Portland that designs that kind of systems. Rain water goes into a different system. When the bottom of the boats are sanded, it has to go into a different system.

Member Roehrig disclosed that he was friends with Kiuchi. AG Lau said there was no need to recuse.

Chair Chang left 9:40AM.

Member Roehrig asked what the rest of the project was about. Kiuchi explained that this was a 4 story building along Ala Moana, a 2 story building along the channel, and the 3rd building would be built by Tutu Bridal House.

Member Gomes asked how Herb Fuller would be able to get income if he's operating at a loss.

Kiuchi said Fuller would have a 3,000 ft. marine supply store, there is nothing between him and West Marine in Iwalei. Fuller has been running 808 Boats with challenges. He expressed how lucky they were to have Fuller, his work is by far the best in the State.

Member Oi asked how if they were up to date with their performance bond. Kiuchi said the performance bond would come with the financing. Like mentioned before, they want to remain confidential but this was an impressive company. The due-diligence period runs through May 5th.

Deron Akiona said they would come back in the first meeting in June and update the Board. The back rent and the performance bond will be current. There will be a discloser equity partner at that time.

Member Roehrig asked if there would be a mortgage. Kiuchi said yes, there would be a loan commitment against the lease hold interest. Member Roehrig suggested they look at the statute as to what the requirements are. Kiuchi assured that there would be a minority partner, which will be a Hawaii partner. The lender will not be a Hawaii entity, because this project is much larger than what the local banks are used to. Member Roehrig asked how much money, Kiuchi said \$27-28 million dollars. He said he doesn't have a local lender that would do this.

Member Yuen said there were three items that are making this a default, the back rent, the improvement bond, and encumbrances against titles, specifically means. He asked Kiuchi to address the judgment against the corporation. Kiuchi explained that the judgment would be paid off the financing and loan arrangement has already been reached.

Member Oi asked staff if there was discussion about a mortgage. Underwood deferred to Keith Chun who was temporarily helping Underwood with this project. Chun said there has been no discussion in regards to the mortgage specifically; the submittal is the request to terminate. At the time the submittal was submitted, the three defaults had not been cured. The most recent conversation was yesterday, in which Honey Bee provided their proposal to cure which included an equity partner, money in escrow that would pay all the back rent by next week, and propose financing with a schedule. Chun acknowledged that at the first 3-4 years of the agreement Honey Bee was performing as required. To date the department has collected about 1.2 million dollars from them. Honey Bee also spent in addition another 2 million on things that the State would've had to pay for to put the property up to lease. Chun said their concern is that that receive the rent entitled, the property not be damaged, that the construction can and will happen in a timely matter, and that the property can be leased out. He said their recommendation is to still terminate the lease, but given the recent information staff is open to consideration.

Member Oi asked if staff was okay waiting until May for the performance bond. Chun said right now the bond amount is 1 million dollars, he told the Board they could increase the bond amount because the million dollars is equal to one year rent. The State standard is usually two times. If the Board grants them additional time, Chun suggested setting milestones, such as having rent paid on time.

Member Gomes asked if anyone else would be interested if the Board terminated the lease. Chun said he bet there would. Member Gomes said he felt Honey Bee has shown that they believe they can cure these defaults and have a plan. Member Gomes said he felt they should approve this with amendments.

Member Char suggest defer action on this for 60 days and see whether these other items mentioned come forward.

Chun said extra time was fine, but given the fact that Honey Bee has been going through delinquency since October 2014, he recommended the extension be subject to certain conditions that Kiuchi has agreed to. He also asked that the rent be paid up if they were going to go with 60 days. Member Gomes and Char agreed.

Member Char made a motion to defer action for 60 days subject to the payment of rents and other items required by the department to be in full compliance during that period of time.

Member Oi added that Honey Bee needed to pay rent on time.

Member Yuen confirmed rent needs to be brought current by next week Wednesday, commit, sign letter of intent to staff by the end of the day, keep rent current during next 90 days, provide the performance bond and cure the defects in the loan in 90 days. If Honey Bee is current and there are no issues, then they don't need to come back. Member Roehrig seconded.

Kiuchi said they will come back because of the equity investor.

The Board deferred action on this matter for sixty (60) days, subject to the following conditions:

- 1. Honey Bee shall submit a fully executed letter of intent for equity funding of \$5,000,000.00 by no later than the close of business on March 13, 2015;**
- 2. Honey Bee shall pay all past due rents, service charges, and interest by no later than March 18, 2015;**
- 3. Honey Bee shall keep lease rent payments current; and**
- 4. Honey Bee shall submit the required performance bond and cure all defaults of the Lease within ninety (90) days.**

If Honey Bee is in compliance with the Lease terms and there are no outstanding issues, no further action by the Board will be required.

Unanimously approved as amended (Yuen, Char)

Item J-2 Termination of Boating Lease No. B-11-01, dated April 1, 2011 between the State of Hawaii, Lessor, and the Sandbar Group, Inc., Lessee; Honolulu, Oahu, Hawaii. Tax Map Key (1) 4-6-006:Por. 067.

Written testimony was submitted by Russ Inouye.

Ed Underwood-DOBOR disclosed that this was a notice of violation with the Sandbar Group, Inc. They are currently a year behind on rent and DOBOR has not received the insurance or the bonds and have not heard from them. At this point, DOBOR is recommending termination of the lease. There have also been complaints that the fuel dock that they operate has not been operational. Once this is terminated DOBOR would have to go back out to see if anyone is interested.

Russ Inoue President of the Sandbar Group, Inc. introduced Lewis Peres from Akamai Capital. Inoue presented their updated written statement and apologized for any miscommunication. Inoue said he had been in contact with agent Bill Andrews who is no longer with DLNR. Inoue summarized that he got to meet with Akamai, who has been helping him get the business back on track. Unforeseen circumstance have occurred such as renovations of piers and losing parking. The Sandbar Group now has a plan and has and wants to get more involved in the community. Inoue was shocked to hear about the complaints; he said they were present to ask the Board for an extension to catch up with everything going forward.

Member Woodside commented that it has been a long time since the Sandbar Group has paid rent. Inoue said that they have been current, it's the back rent that they are behind on. They feel that if there weren't these construction problems, they would be current.

Member Gomes asked how much Inoue needed to cure the back rent. Inoue said they were asking for 12 months. Inoue introduced Louis Perez, and said that he would be able to better explain the financial side.

Lewis Perez managing director with Akamai Capital explained that Akamai is a 501c3 charity that a mission to provide technical assistance training and capital for small companies in distressed communities. Perez explained that when they stepped in in the early March 2014 they predicted a 12 month process. They went in with capital; however the deconstruction cut the revenue in half. The revenue they allocated had to be diverted which is why they are asking for another 12 months. They are hoping for a 12 month extension, remain current, roll the arrears and the bond into the financing for the renovation.

Member Roehrig asked if anyone from the County spoke to them before they started the project. Inoue said no, they got no notice. Member Roehrig asked if the State asked them. Perez said no, but they had been in communication.

Member Woodside asked if their lease included some of the parking or just the buildings. Perez said just the buildings but productivity is based on having access to that parking. Their main parking stalls are the 2 that are reserved for their establishment. Member Woodside commented that parking stalls being occupied for construction was different from stalls being occupied by tour busses. She suggested the lessee and DOBOR need to have better communication.

Member Oi asked why the performance bond wasn't paid. Perez said that they were naïve about the start up. They had to do a lot of repairs before they could open up for business. Member Oi then asked how they would cure this bond. Inoue said they want to do it with equity and want to avoid consent to mortgage. Member Oi asked Inoue if they ever tried working with the department on a special installment agreement, where they would pay monthly. Perez said they were unaware that was available, but had approached the department with the idea of deferring the payments assuming construction would be done assuming it would be in 12 months, but construction delayed it. They said they could try the special installment loans, but it depends on the company.

Member Roehrig commented that Perez and Inoue need to work closer with the department, chances of success are greater.

Member Yuen asked who funds Akamai Capital. Perez disclosed that Akamai was funded by another nonprofit that Perez co-founded and chaired by another nonprofit that is a native Hawaiian organization.

Underwood commented that DOBOR does not currently have a property manager. Bill Andrews, the previous property manager took another position in the Harbor. Keith Chun, who was previously before the Board is on loan from Land Division, has been doing a review of all RPs and Concessions right now, which is how this item came up; along with complaints from the public. Underwood again indicated that there was a year rent that wasn't paid and no performance bond. Regarding the construction in the Harbor, Underwood said that they did not contact him or DOBOR to let them know that this construction was so detrimental to their business. The lease also stipulates that they will assume and improve all buildings and maintain them in good working order. DOBOR said they need to get the back rent caught up and stay current. The lease allows the Board to reduce the performance bond if they choose.

Member Oi indicated that he had a problem with the Performance bond being doubled.

Member Yuen said he was concerned because there are so many people that are in default on their lease payments, and they don't have a performance bond. He said he hoped that the regular practice of staff would be to make sure that the performance bonds have been kept up to date and not that it just comes up at the worse time. Member Oi agreed.

Underwood agreed and explained that that was why DOBOR was working to improve their property management division. Member Oi felt the department was more at fault than lessee.

Member Yuen asked how long the rent had been delinquent. Underwood said the rent was outstanding about \$39,012, so that's about a year. Member Yuen said the submittal said they were delinquent 1 year, but they were behind 2 years in back rent. Underwood as the administrator took fault for not noticing this sooner, but this the reason for the changes in the

property management. Member Yuen asked if there was a tracking system to track who pays rent. Underwood said yes, it gives reports telling who's current and who's not.

Member Roehrig asked Underwood why he didn't receive a copy of the report. Underwood said the report doesn't go to him, but he can request it. Member Roehrig said the reports should go to Underwood.

Member Woodside understood that Underwood was revamping the property management system. She asked if the Board should expect more similar situations. Underwood said as of right now, other than Honey Bee that was brought before, there have no others that have been this delinquent. They are seeing that a lot of RP's are below market, and they really need to be raised. They will be coming to the Board with a lot of subleases that need to be cleaned up.

Member Oi asked the lessees what their timeline was in curing the performance bond. Perez said they would like to roll it into the renovation finances. Inoue said they would like to pay it off sooner than the 12 months, move forward, and get the master plan approved. Member Oi said the performance bond is the main thing that needs to be paid.

Inoue asked if there was a possibility to lower their performance bond.

Member Roehrig asked what the department had to do with the construction on the pier and what role the department played in that construction. Underwood said that was an in harbor project where DOBOR replaced the finger piers in the harbor, DOBOR hired the contractors to work on the pier. Underwood said they notified lessees, Inoue said they weren't aware until construction began. Underwood told the Board that there were always meetings at the harbor, there has to be access because that's where DOBOR offices are. There may have been limited parking, but there was parking. Inoue said he just thought it was what it was, he didn't think to complain about anything.

Member Gomes told Inoue that prior to this construction, he knew what the performance bond was, and was making it. Inoue agreed, he said that when he started with this project he had a partner that put up the money for the performance, but that partner stepped out.

Member Roehrig made a motion to defer this for a year with the conditions for them to work with Underwood and staff, figure out how this is going to come together. Once they get it figured out, someone report back to the Chairperson. The lessee is to give the Chairperson a heads up every 3 months in writing the progress that is being made and try to cure the bond. Also to give a progress report on rolling the bond over and rent payments. Underwood was okay with that.

Member Woodside clarified that the motion was to remain current on the lease rent, work with staff to establish a payment plan to resolve back rent in 12 months, and resolve performance bond within the one year.

Member Yuen wanted to be clear that the back rent needs to be paid back within the year.

Underwood asked if the Board was going to reduce the performance bond. Member Roehrig said no, the Board would set a bad president if they did that.

Member Yuen said he was fine with looking at the performance bond, once everything is current.

Member Roehrig suggested the Chairperson looking at the balancing of the rent and the performance bond amount on smaller leases.

Member Yuen said he would rather have a performance bond for one year's rent be a requirement in the rent. Member Yuen seconded the motion. All were in favor.

Unanimously approved as amended (Roehrig, Yuen)

Item J-1 Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. for Site Assessment for Future Zip Line Operation Purposes from April 1, 2015 to September 30, 2015; Waikiki, Honolulu, Oahu.

Senior Board Member Gomes went back to item J-1 that was temporarily deferred.

Ed Underwood-DOBOR conveyed item J-1. Back in December of 2014 the Board authorized a one day trial that worked well, but they found that it could be raised higher for safety. DOBOR is okay in the small boat harbor with them putting the landing truck in the public parking lot as long as it didn't reduce the number of parking stalls. In a prior Board action DOBOR agreed that they would not allow that, but instead would move around some landscaping. During this six month trial, it will give them time to do due diligence and then data will be gathered to peruse an environmental assessment if needed.

Member Woodside asked Bob Hampton Chairman of Waikiki Beach Activities, Ltd. if the line would be retracted each evening during the 6 month period, just like it was during the first trial period. Hampton said that was the intent.

Hampton added that one of the conditions was that they retain the ability to provide open access to all of the property at all times, so the zip line has to come down. Parking was another issue that came up. The Hotel is providing parking for this activity so there should be no impact on State parking. The launching area is the top of the parking structure.

Member Gomes asked what kind of public feedback they got. Hampton said there were 50/50 tourist/locals. 180 people were questioned and the responses were supportive that they would like to do it themselves.

Member Oi asked if this activity would not be operational if there was another function going on. Hampton said yes, if there was another function, then this zip line would not be in operation. It's one of the conditions that Hilton Hawaiian Village has.

Member Roehrig commented that the locals need to be taken care of. He has strong reservations against zip lines.

Member Woodside asked if there were other recreational activity operators in that area, if so who and what kind of activities are they operation. Hampton said yes, there are activities in the Ala Wai, parasailing and jet skis, there are various beach stands along the beach with surf schools and surf boards. Member Woodside said if this does go through, she would like to see more in depth surveys that would include other recreational operators, such as those who do the surf boards and parasailing. The last test was only for one day, she was curious about what other activities at the lagoon that might cause that line to be closed for the day and what activities were appropriate to not have that line up. She said there was a lot to consider. Hampton said they would consider those surveys.

Member Oi asked what would happen after 6 months. Hampton said they would be asking DOBOR for a longer permit, maybe a year to year revocable permit to continue operation assuming that it will be as successful as the assume it will be.

Member Oi asked if DLNR should be involved in line coming over the lagoon, because if that's State property, then there should be an easement on that lease over that property, because that's a liability to the state. The State can generate income of an easement over that area. If the State owns the lagoon, they should be property over this activity too. Hampton said they work with LAND and Hilton has the responsibility of maintaining the lagoon.

Member Roehrig added that if someone gets hurt, the State is going to get sued just as bad as the hotel, so the State has to weigh the responsibility.

Member Char was concerned that this was for tourist only, since this is State property it needs to benefit locals as well as tourist. Member Char also commented that charging \$1.50 per person offends him. He feels as if the State is creating an event for the tourist and getting paid for it. Hampton said they go out of their way to serve kama'anina and there will be a kama'ania rate. The \$1.50 a head is the same structure they use for their catamaran, they use the exact same rent protocol that they have been. They also provide public access to locals.

11:28 AM Interim Chairman Carty Chang returned.

Member Oi made a motion to approve with the amendment that DOBOR communicate with the AG's office to see what kind of liability there was over the lagoon and if any kind of easements would be necessary in this situation within that 6 month period. Member Gomes seconded.

All were in favor except Member Roehrig who was opposed (6:1).

Approved as amended (Oi, Gomes)

11:36AM RECESS

11:46AM RECONVENE

Item E-2 Establishment of a Curator Agreement with the Kuamo'o Foundation for Kukuipahu Heiau State Historic Site, North Kohala, Island of Hawai'i Tax Map Key: (3) 5-6-001: 7.

Curt Cottrell Acting Administrator for State Parks-PARKS introduced Lehua and Kanani Kaulukukui. Cottrell reviewed item E-2, they were available for questions. Leihua explained that they were in a co-creatorship for the last 5 years, and just found out that the State is no longer doing co-creatorships and they would like to under their family foundation, the Kuamo'o Foundation. Cottrell said they do excellent work, and PARKS is pleased.

Unanimously approved as submitted (Char, Roehrig)

**Item D-10 (1)Progress Report to the Board of Land and Natural Resource and Decision Making on Outstanding County of Hawaii Building, Electrical and Plumbing Code Violations at Naniloa Hotel;
(2) Decision Making on Lessee's request for Consent to Mortgage;
(3) Decision Making on Lessee's request for approval of Plans and Specifications for Mauna Loa Tower and Related Renovation Work; 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.**

Written testimony was submitted by John White, Dennis Langer and Mayor Billy Kenoi

Russell Tsuji Administrator for the Land Division-LAND conveyed that the last time this item was before the Board was November of 2014 at that meeting, the lessee indicated that he would submit further plans at a later date, at that meeting the Board listed specific items they wanted to be brought back. 1) A progress report of violations- a letter was received yesterday from the County about the violations. 2) With respect to the remaining plans, construction looks to be about 10-11 million dollars additional in phase II. The Board wanted the construction bond today, LAND has asked the lessee to provide that, and they indicated they intend to submit the construction bond upon the Board approving its plans. 3) The Board asked for a time table for all remaining improvements; Exhibit 9 is a phasing schedule that indicates the completion or planned completion of improvements, with the exception of the Kilauea Tower. LAND has asked for a schedule of those plans, but was told it would be provided in or around December of 2015. 8-10 million dollars of the plans have been completed; the department's consultant has looked at it, and was present. The consultant went out to the hotel for a site inspection; the report has been submitted to the Board as testimony. The consultants concur that the lessee has addressed the immediate health and safety concerns. What is before the Board today is the request to approve the remaining plans for constructions. The department's engineers have no reason to deny the approval. The lessee is asking the Board consent to up to a 16 million dollar loan. A budget was submitted that indicates about 19 million dollars of costs of the total project. The County Director is also here and will be asking for a deferral of this item until they have more time to consult with the lessee.

Member Roehrig called the County up for questioning.

William Brichante with the City and County-C&C introduced Duane Kanuha Planning Director for the C&C. Brishante detailed how unique Hilo was, and how unfortunate it was that there isn't a facility where people can stay. He gave an overview of the Naniloa Hotel leading up to now highlighting that 12 months ago the applicant said there would be a grand opening before the end of 2014. The County of Hawaii is disappointed, the new possible opening date is the end of 2015. Representations have been made that have not been cured. The fire alarm system still has not been corrected, an alarm or system needs to be put in to notify guests of a fire. Instead there is a manual person watching if there is a fire. Another disappointment is that there are no new jobs. What was most problematic was the reports from DLNR staff. The first report from December 11, 2014 as well as February 6, 2014 staff reported that they observed 6 workers working on construction at the hotel. On February 26, 2015, the report from Brown and Caldwell read "not much work going on". When this project started, they heard figures of 6 million dollars to bring the hotel up to speed, and then they hear a report from Tsuji that it's more like 10 million dollars, now today they need 16 million dollars of capital investment to correct the violations. What is really problematic about this 16 million dollars is that the lessee is going to a third party for this money, so they are going to request that the Board consent to the mortgage so there can be an assignment under the mortgage to the third party. The C & C has never heard of this third part. The final disappoint is there is a sense that the focus has been lost in this process from the lessee. It has been brought to the C&C's attention that the lessee has obtained a facility on Kauai for 60 million dollars. They fell maybe this Hilo hotel hails to the 60 million dollar hotel on Kauai. Brishante is concerned that history will repeat itself, it will be another 10 years. The County is requesting that this item be deferred, this will give everyone the opportunity to sit down and address the concerns that the County has raised here today. They also ask that ample time so the outstanding violations can be corrected under the financing that should have been in place at the time the bid was awarded. The County has preliminary plans as to where the Banyan Drive peninsula should be moving.

Duane Kanuha Planning Director with the C&C disclosed that this was his third go round with this, so he has a lot of history. When the Naniloa went bankrupt, the mayor convened a Banyan Drive task force to access the impact of Naniloa and Banyan Drive as a whole. Kanuha explained that what the Mayor would like to do is to look at what it would take to consolidate everyone's efforts in Banyan Drive under the authority of the Hawaii redevelopment act and come up with a master plan for the Banyan Drive area. C&C hasn't yet determined where those boundaries would be, but they see that improvements have already been made. They just need to structure a master plan effort.

Member Roehrig stated that the Board is here to facilitate the development of Banyan Drive, and if it occurs within the next 3 years, he would like to be a part of that as a Board member. The Board is not going to tell the County what to do; they have the authority to do what they want to do. He said it was up to the existing holders of the one year holdover and month to month need to talk to the County. Member Roehrig expressed how distressed about how many defaults there were. He said he wanted a written opinion from the AGs office. Member Roehrig said he wasn't prepared to vote on consent to mortgage until he knows what the statutory authority is and what the implications are of putting a 16 million dollar mortgage on this. Member Roehrig also asked

to see what Naniloa financial sheet looks like to see whether or not Bushor has the ability to do this.

Member Roehrig added that testimony was received from PRP saying that they believe that Naniloa is violating the wedge an hour law. He wanted an attorney opinion because if it applies to this lease, it could apply to other leases. A representative from PRP was present, but would be called up after Naniloa to testify.

David Brittin with Case Lombardi representing the applicant introduced Ed Bushor. Brittin distributed a letter from Hilton Worldwide and a letter from the bonding agency. Member Roehrig asked if they had a draft of what the consent to mortgage looks like, he's not prepared to vote on it without AG advice because of the size of the mortgage. Brittin believed that the department's AG's did have a copy of the mortgage. He also explained that there were two different concepts 1) the lender had asked for consent to agreement or an estoppel agreement. Russell Tsuji indicated that he wasn't comfortable with an estoppel agreement given the outstanding violations from the previous lessee. Member Roehrig told Brittin they need to talk to the County of Hawaii and propose their proposals to them because to Member Roehrig, the estoppel agreement is the same as a forbearance agreement. Brittin made it clear that they are just asking that the State not call the lease in default and not to move forward on the County violations as a grounds to terminate the lease rule so long as they are working in good faith with the County, and the County is allowing them to remediate those violations through the renovation process. They are asking that the forbearance last until December 31, 2015 then they would be in default under the lease if they didn't comply with the terms of the lease. Member Roehrig asked if they agreed to that, if everything isn't done by that date then the lease is canceled. Brittin said he would have to discuss with his client.

Stacey Foley an attorney with Case Lombardi testified that she has been working AG Linda Chow with respect of the loan documentation and the background between the estoppel certificate and the forbearance is that Russell Tsuji made it very clear that a blanket estoppel certificate where the State says that the lease is not in default is was not going to be possible because of existing issues that they have with the County and because of performance obligations that remain open under the lease. She explained that the lease is the lender's primary source of collateral. The lessee would mortgage its interest under the lease as security of the loan. The idea of the forbearance agreement is so to come up with a way where they would identify what is open and what still needs to be performed with the County. They would agree that the County would give X amount of time with respect with the outstanding violations and as long that the County is satisfied that they were performing and those deadlines haven't gone unmet than they would stand still. That would be the basis of the State issuing the forbearance agreement.

Member Roehrig asked if they would come back every month to find out what they were doing. Brittin agreed. Member Roehrig again addressed that he would like to give them a set date, if they comply by that date, than the lease ends. He said 60 million is a lot of money and didn't understand why they wanted to mortgage. Member Roehrig expressed that he had a problem with them putting a mortgage on State land. Foley explained that what was being requested here is not an unusual arrangement as far as construction and renovation. Member Roehrig told Foley

that he wasn't satisfied by any verbal statements, he wants a written opinion for the department's attorney because the amount for the mortgage is so high.

Ed Bushor, the managing partner of WHR wanted to put on the record where they were today. What was supposed to be discussed today was a status report of what they have done since November 13, 2014. That was the date that the Board issued permits and issued the start for the first time. Bushor said he could be done by December 31, 2014 because the permits were approved on November 13, 2014. The Board asked him to come back in March to give an update of what had been done. Bushor was happy to report that the Kiluea tower has a wet fire system sprinkler working today, that fire life and safety is ongoing and is scheduled to be done on the whole project. They have completed all demolition, and gave a report of what was done before November 13th, and after. They have completed the demolition of the new staircase and all the framing in the lobby. They have spent 11 million dollars and the balance of the construction was to be triggered by the loan. All the violations that are not done today are subject to the permits that have been issued or need to be approved today. They are here today to gain approval of new permits to finish the project. Those violations can't be cured without Board approval of the additional permits. Bushor explained that they have executed an agreement with Hilton to have them come in and call this the Hilton Naniloa. Hilton has submitted a letter of support. As far as the implication that Bushor delayed the opening of the December 31, 2014 date, he clarified that he will have this hotel done within 8 to 10 months of the okay, he can go. If he gets the permits today and the loan approved in the next 30 days, then they will open a Hilton Hotel this year. They are excited and ready.

1:07PM Chair Chang returned.

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

1:08PM EXECUTIVE SECESSION

1:51PM RECONVENE

Member Char was no longer present.

Member Yuen asked Bushor what was preventing the improvement Bond. Bushor explained that once the plans are approved by the Board then he can bill the permitted bond and have the bond applied to those permitted plans. They aren't allow to bond plans that haven't been permitted. 1) The plans are approved 2) a surety agreement is executed.

Member Yuen told Bushor that back in November his representation was that he would be ready to go around the first of the year on the 8 million dollar Bond and further construction, Member Yuen asked what happened. Bushor said that they didn't receive the permits that needed to be approved by the County by December 31, 2014 so they couldn't be ready. The County has now approved those permits so they can now begin as long as those permits are approved by this Board.

Member Yuen addressed that there was no discussion that all this was subject to him getting a loan. Bushor apologized, every hotel has a construction loan but the loan comes after plans are approved. Before he wasn't building a Hilton, he thought he would be building a better product.

Member Yuen asked if \$ 908,000 was the amount that Bushor spent on the Naniloa hotel on construction in the last year and 3 months. Bushor said it was a lot more than that, the fire sprinklers alone \$250,000. He said it was probably around 1.5 million dollars since January 1, 2014.

Member Yuen asked how many employees Bushor had and what the total hotel staff was. Bushor said the total hotel staff was 38. The number 126 is the total number of people working on the project.

Benjamin Kudo representing the Pacific Partnership testified that they monitor what going on in the State and are very diligent on weather contractors are getting paid prevailing wage or not. There has not been a clear determination of weather prevailing wage under chapter 104 applies to a project of this nature. They believe it does on February 11, 2015 Pacific Partnership filed a request with the department of labor weather this request of this lease, which uses a state lease and state assets would qualify under public works. The Department of Labor told them that it would take the next 30 days to make a determination. The requirement is that the applicants comply with all the County and State and Federal laws. Kudo asked that this matter be deferred until a determination can be made on whether prevailing wage applies to this particular project or not.

Member Roehrig asked what this has to do with the Board. Kudo explained that the general lease would be in breach.

Member Yuen disclosed that he had a conversation with the Hilo Land agent that a similar letter was sent to the department of labor in 2006 and asked what happened with that. Kudo believed there was an informal opinion saying that the State law at that time did not apply, but since that time there have been amendments.

Member Yuen commented that if this has been going on, then Kudo has missed a lot of projects. Kudo said that their review found that the department does use contractors who use prevailing wage (98%).

Member Oi asked what the penalties would be if they were found in violation and why do they want to defer. Kudo wasn't sure of the penalties, but they may have to make up for what wasn't paid. As far as the deferral under the lease, the lessee is to comply with all state laws. If the lessee is violating a law, they shouldn't continue, so decision making should be deferred.

Jeff Harris a labor and employment lawyer reminded the Board that this was a new proposal and the department of labor and industrial relations has never held that chapter 104 applies to DLNR leases. Harris said weather or not chapter 104 applies is kuleana of the Department of Labor. If

chapter 104 does apply in the future of course Bushor and WHR will comply, but that's not the law now.

Duane Kanuha with the County want to make it clear what has been represented of the County's position. During the break Kanuha contacted the Public Works director Brandon Gonzalez and requested an updated status report. Gonzalez said that the Department of Public Works did not agree to anything with Bushor. They did not sign a forbearance document. They issued a status report that clearly shows they have not corrected the violations. Kanuha wanted to correct the record from representations that were made.

Dan Purcell testified that he was concerned with the decorum of the Board, of the meetings and the way Board members address the public. He also encouraged the Board to consider video conferencing.

Ed Bushor respectfully requested the Board to authorize the completion of the loan document consistent with the state law and the lease. He had no problem with the loan process. He made clear that they are going to complete unfished violations in consistent with the permits that are going to be approved by DLNR .

Member Yuen made a motion requiring the lessee to: (1) Acknowledged having received the Progress Report on the Outstanding County of Hawaii, Building, Electrical and Plumbing Code Violations at the Naniloa Hotel; (2) Deferred the Lessee's Request for a Consent to Mortgage the Leasehold of up to \$16.0 million dollars at the Naniloa Hotel; (3) Requested the form of the Consent to Mortgage and any Forbearance Agreement be brought back to the Board for review and approval; and (4) Requested the Lessee come back in 3-months to report to the Board its progress of actually constructing the improvements approved to date by the Board. Member Roehrig seconded.

Unanimously approved as amended (Yuen, Roehrig)

Item D-6 Consent to Extension of Lease Term, General Lease No. S-4306, Sears, Roebuck and Co., Lessee, Lot 2, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-58:04.

Russell Tsuji-LAND presented item D-6, he advised the Board that the lessee may be back in another 5 years.

Member Roehrig asked if Sears agreed with this. The reprehensive for Sears said they agreed.

Unanimously approved as submitted (Roehrig, Yuen)

Item C-1 Request for Board Approval to Terminate by Mutual Agreement the 2008 Board-Approved Habitat Conservation Plan for the Construction and Operation of the Lana'i Meterological Towers, Lana'i, Hawai'i, and Accompanying Incidental Take License.

Written testimony was submitted by Lynn P. McCor.

Angela Amlin representing DOFAW reviewed item C-1 detailing that the Habitat Conservation Plan was due to terminate in 2010, but there were two amendments made to extend it to 2016. Subsequent to the last amendment the meteorological towers have all been taken down. There was never any take of any endangered species while the towers were in operation and all mitigation measures were met. Testimony was submitted in support by Pulama Lanai, the new land owner. DOFAW would like to request early termination.

Unanimously approved as submitted (Gomes, Oi)

Item D-9 Issuance of Direct Lease of Building Space to United States of America, Department of the Army for Nursery, Storage, and Staging Area Purposes, Kaena, Waialua, Oahu, TMK (1) 6-8-001:Portion of 004.

Russell Tsuji-LAND had nothing to add. The reprehensive was here earlier.

Member Gomes asked why they were only asking for a 5 year lease. Tsuji wasn't sure, LAND only brought what they asked for before the Board.

Unanimously approved as submitted (Gomes, Oi)

Item D-2 Resubmittal: 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, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:023.

Written testimony was submitted by Natalie McKeen.

Member Yuen made a motion to defer until the April 10th Land Board meeting to allow the Lessee to appear before the Board.

Item E-1 Grant of Perpetual, Non-Exclusive, Slope Maintenance Easement and Issuance of an Immediate Construction and Management Right-of-Entry Permit to the Department of Transportation Highways Division, for Rockfall Mitigation Purposes, Wailua River State Park, Tax Map Keys: (4) 4-1-002:003 (por.) and (4) 4-1-003:008.

Unanimously approved as submitted (Gomes, Oi)

2:44PM RECESS

4:35PM RECONVENE

Member Gomes is now the acting Chairperson (Chair Chang left).

Attorney General Amanda Weston has replaced Attorney General Bill Wynhoff.

Item E-3 Approval to Renew Volunteer Agreements at Six (6) State Parks for a 5-Year Term: Kīholo State Park Reserve, Hawai‘i [TMK: (3) 7-1-02: 02 and 08 and 7-1-03: 02 and 07]; Russian Fort Elizabeth State Historical Park [TMK: (4) 1-7-05: 03] and Nāpali Coast State Wilderness Park, Kaua‘i [TMK: (4) 1-4-01: por. 7]; Mākena State Park [Tax Map Key: (2) 2-1-06: 32 and 74] and ‘Iao Valley State Monument [Tax Map Key: (2) 3-3-03: 12], Maui; and Diamond Head State Monument, O‘ahu [Tax Map Key: (1) 3-1-42: 06, 10, 14, 15, and 21].

Curt Cottrell-PARKS added that recommendation #3 is a for future agreements to be delegated to the Chairperson verses coming back to the Board each time. Representatives from the Diamond Head State Monument were present for questions. They were satisfied with staff recommendations.

Member Woodside asked if recommendation #3 had a new volunteer, they would come before the Board. Cottrell confirmed, it’s only for renewals.

Unanimously approved as submitted (Oi, Woodside)

Item E-4 Sale and Independent Award of Six (6) Concession and Mobile Concession Agreements by Means of Sealed Bid Auctions and Delegation to the Chairperson to Issue the Invitation for Bids (IFB), Independently Award Each Bid and Give Notice to Proceed for the Following State Parks:

- (1) Hapuna Beach State Recreation Area, Waialea Bay Section, for Mobile Food, Beverage and Beach Equipment Rental Purposes, Tax Map Key: (3) 6-6002:031 (por.);**
- (2) Kua Bay at Kekaha Kai State Park, for Food, Beverage and Beach Equipment Rental Purposes, Tax Map Key: (3) 7-2-004:009 (por.);**
- (3) Akaka Falls State Park, for Food, Beverage and Gift Item Sale Purposes, Tax Map Key: (3) 2-8-011:018 (por.);**
- (4) Wailuku River State Park, Rainbow Falls Area, for Food, Beverage and Gift Item Sale Purposes, Tax Map Key: (3) 2-3-027:001 (por.);**
- (5) Waianapanapa State Park, for Food, Beverage and Gift Item Sale Purposes Tax Map Key: (2) 1-3-005:009 (por.) and**
- (6) Waianapanapa State Park, for Beverage Vending Machine Purposes, Tax Map Key: (2) 1-3-005:009 (por.)**

Delegate Authority to the Chairperson to Terminate Revocable Permit No. SP0022 to Maui Soda and Ice Works, Ltd, for Beverage Concession Vending Purposes, Waianapanapa State Park, Tax Map Key: (2) 1-3-005:009 (por.).

Cottrell-PARKS explained that these were renewal agreements concession agreements throughout the State. They are also asking to terminate one for Wainapanapa then go out to bid for all 6. These are all for soda machines, vending machines or mobile concessions.

Unanimously approved as submitted (Oi, Roehrig)

Item D-4 After the Fact Consent to Assignment of General Lease No. 3166, Robin T. Jensen, as Successor Trustee of the John W. Jensen Self-Trusteed Trust dated March 31, 1994 and as Successor Trustee of the Adele M. Jensen Self-Trusteed Trust dated March 31, 1994, Assignor, to Peter M. Jensen, Assignee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032. And

After the Fact Consent to Assignment of General Lease No. 3166, Peter M. Jensen, Assignor, to Benjamin Krusche, Assignee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032. And

Authorize a One-Year Holdover of General Lease No. 3166, Benjamin Krusche, Lessee, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit and Issuance of a Bill of Sale Transferring All Improvements on the Property to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:032.

Member Woodside asked if item #4 and #5 were going to the same person. Tsuji wasn't sure why the name appeared differently on the two submittals.

Member Roehrig made a motion to approve with the condition that these are two different people, if not then the condition is triggered and this needs to come back.

Member Gomes commented this could be father and son.

Dan Purcell encouraged the Board to look into this.

(Unanimously approved as submitted; however, staff is to report back to the Board on whether the assignee Benjamin Krusche is the same individual as Benjamin Jack Krusche listed in D-5 below; and if so, why is the names presented differently to the Board.)

Unanimously approved as submitted (Oi, Yuen)

Item D-1 Rescind Prior Board Actions of February 14, 2014, Item D-2, Consent to Assign General Lease No. S-5405, Yvonne K. Okamoto, Lessee, to Deanna Pilialoha Kahookaulana, Assignee, Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-043:005. And

Authorize the Mutual Cancellation of General Lease No. S-5405 to Yvonne K. Okamoto, Lessee.

Item D-3 Authorize a One-Year Holdover of General Lease No. 3161, Heidi Finkle, Personal Representative of the Estate of Robert Alvin Finkle, Lessee, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit and Issuance of a Bill of Sale Transferring All Improvements on the Property to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:027.

Item D-5 Authorize a One-Year Holdover of General Lease No. 3167, Madeleine Krusche and Benjamin Jack Krusche, Lessees, to be Immediately Followed by the Issuance of a Month-to-Month Revocable Permit and Issuance of a Bill of Sale Transferring All Improvements on the Property to the Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:033.

Item D-7 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on March 28, 2015, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).

Item D-8 Issuance of a Right-of-Entry Permit to the Na Wahine O Ke Kai for a Canoe Race Event to be held on Sunday, September 27, 2015, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.

Unanimously approved as submitted (Oi, Yuen)

Item H-1 Request for Approval To Appoint Bin C. Li And Ian C. Hirokawa As Hearings Officers for the Civil Resource Violations System For a Term of Two Years and to Delegate to the Chairperson the Authority to Extend Their Appointments for Additional Two-Year Terms.

Bin Li with the Chair's Office-CO introduced Ian Hirokawa and presented item H-1. The Board had no questions.

Unanimously approved as submitted (Yuen, Roehrig)

Item F-1 Informational Briefing re: Hawaiian Monk Seal management in Papahānaumokuākea Marine National Monument. *Non- Decision Making; Item will NOT be heard any earlier than 1:00 pm.*

Deferred (Woodside, Yuen)

There being no further business, Senior Board Member Jimmy Gomes adjourned the meeting at 4:49 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,

A handwritten signature in black ink, appearing to read 'Ku'ulei Moses', with a stylized, wavy line extending from the end.

Ku'ulei Moses
Land Board Secretary

Approved for submittal:

A handwritten signature in blue ink, appearing to read 'Suzanne D. Case', written over a horizontal line.

Suzanne D. Case
Chairperson
Department of Land and Natural Resources