

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

DATE: FRIDAY, JUNE 12, 2015
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Suzanne D. Case called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS

Suzanne D. Case
Thomas Oi
Christopher Yuen
Keone Downing

James Gomes
Stanley Roehrig
Ulalia Woodside

STAFF

Kevin Moore-LAND
Randolph Lee-SHPD
Lauren Yasaka-OCCL

Sam Lemmo-OCCL
Maria Carnevale-PMNM
Alton Miyasaka/DAR

OTHERS

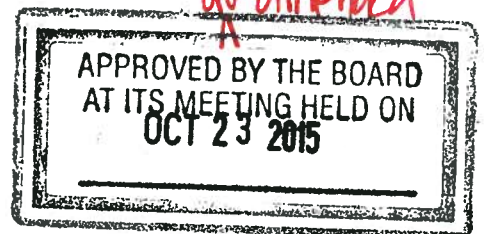
Linda Chow/Deputy AG
Drew Stotesbury/D-9
Sidney Hayakawa/DOT-AIR
Jim Stone/M-7
Sterling Wong/K-3
Andrea Ilima DeCosta/K-3
Tom Woods/I-1
Carl Meyer/ F-4
Secina Kihoi/K-2
Shauna Keahunani Springer/F-3

Doug Chin/Deputy Attorney
Ross Smith/DOT-AIR
Deomonte Conner/ M-7, K-3
Stephanie Nagata/K-3
Shelly Muneoka/K-3
Candice Fujikane/K-3
Matt Wingate/F-5
Ryan Nases/D-3
Herbert Kihoi/K-2

Item A-2 Approval of March 27, 2015 Minutes

Unanimously approved as submitted (Gomes, Roehrig)

Item D-4 Cancellation of Governor's Executive Order No. 3398 for the Bond Memorial Public Library, Kapa'au, North Kohala, Hawai'i; Tax Map Key: (3) 5-4-005:030 and Issuance of Direct Lease to The Dorrance Family



**Foundation for a North Kohala Community Heritage Center Purposes,
Kapa'au, North Kohala, Hawai'i; Tax Map Key: (3) 5-4-005:030.**

Withdrawn

Item K-1 Request to Deviate from the Hawai'i Administrative Rules (HAR) , Chapter 13-5, Exhibit 4, Single Family Residential Standards, Pursuant to HAR § 13-5-41 (a), to Place a Water Tank Within the Setback Area of a Parcel, by Sandy L. Feng, Located at 121 Forest Ridge Way, Tantalus, O'ahu, Tax Map Key: (1) 2-5-016:023.

Withdrawn

Item D-9 Informational Briefing by the Attorney General Regarding the Acquisition of Private Lands and a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort situate at Kahuku, Ko'olauloa, O'ahu, Tax Map Keys (1) 5-6-003:033, 040, 041, 042, 043, 044; 5-7-001:001 (por.), 016 (por.), 017, 020 (por.), 022 (por.), 033 (por.); 5-7-006:001, 002, 023 (por.).

Kevin Moore Assistant Administrator for Land Division-LAND presented item D-9.

Doug Chin Attorney General explained that this was an informational briefing. In several weeks they will be back before the Board to move this transaction along to the next step, which is the approval of the acquisition of a conservation easement at Turtle Bay.

One of the nonprofits created a promotional video that explains what the transaction is about. Chin played video.

Chin explained that he would describe the history and the transaction and allow time for questions, comments and public testimony. Today at 10am Governor Ige is going to be signing Senate Bill 284, which is this bill which allows this acquisition to go forward. It just happened to work out this way, this wasn't planned.

What meant a lot to Chin that he got from the video was that they are one step further in the process that has lasted since the late 1960's. Those steps that have occurred are the result of many administrations, legislatures and agencies that have been involved. Historically this has been around since the 1990's and the controversy has existed for the past 40 years.

Chin pointed out portions of the map, showing the existing hotel, the road that leads to it, and existing town homes, and the golf course.

Chin explained that this is essentially 665 acres in total that would be essentially turned into a conservation easement, an agreement to retain this area perpetually in conservation. What the State is proposing to purchase along with the City and The Trust for Public Land as well as US army funding is to spend \$45 million in order to acquire a portion in conservation easement and a portion in fee. The portion in fee is 52.8 acres (RR1 & RR2) and the portion that is about 570

acres would be owned by the resort; however the State would have a perpetual conservation easement over that portion of the land. About \$35 million or about 78% is coming from the State and the City is contributing \$7.5 million for their portion and the Trust for Public Land with the US Army funding is putting together 2.5 million to complete the entire transaction.

The conservation easement involves maintenance and liability coming from the resort. This isn't meant to be an active park; however what exists right now is a green space that contains about 8 miles of pathways where you can walk through the medium green area and enjoy an area that is preserved and conserved. A fee simple is a purchase by the City in fee with a lease back to Turtle Bay for 65 years at a nominal rate. With the lease back for 65 years the owner will lease back from the State the yellow portion, along with that an agreement to assume liability that exists upon this property, as well as the responsibility to maintain it in a certain condition to allow people to walk through it to be able to enjoy it. Chin pointed out that a vast majority was in RR1 & RR2. Part of the acquisition includes: parking spaces (80) and gives an allowance for the Kahuku golf team to use the golf course free during daylight hours.

Chin said there were 3 existing controversies and this acquisition will settle all of them and will be resolved assuming this transaction goes forward.

Representatives for the Trust for Public Lands and the North Shore Community Land Trust have been instrumental in helping the State get to this point. Also the CEO of Turtle Bay Resorts was present for questions.

Member Gomes asked what a RR3 was. Chin explained that RR3 was not part of this transaction. It is left out as an additional portion that can be worked out. It hasn't been resolved yet. If an agreement can be worked out, then they have until 2017. That was left off because the various entities didn't have the money to work that in.

Member Downing asked how 2017 was picked. Drew Stotesbury- CEO for Turtle Bay explained that this was part of a 3 year stand still. Member Downing asked if he would be willing to make it longer. Stotesbury said they were set on 2017 because that was the agreement that was made.

Member Roehrig shared his memories of this place.

Chair Case thanked Chin, she took a site visit and it was very helpful. Chin pointed out that what the owner of this resort still has the ability to build one more hotel. Part of the agreement is that it's compromised that they can only build 725 units.

Chair Case added that State would not have a management burden for 65 years.

Member Gomes asked if there was any other public access along this coastline, there were only 80 parking stalls. Stotesbury said that people will be able to traverse anywhere along the waterfront. As far as the parking there are 40 more parking stalls in the hotel parking area. If those stalls are not available they would develop parking areas. Member Gomes said he was concerned about the public being able to access the shoreline for gathering rights.

Member Woodside asked to share how the public access is currently managed. Stotesbury said it's self-served; there are 40 designated beach access parking stalls open 24 hours. Member Woodside asked if there were any activities that security manages for public access or public use. Stotesbury said no, people are free to use the ocean front in anyway.

Chinn added that the public has access to 8 miles of pathways. Stotesbury confirmed that they will be open during daylight hours. If people are night fishing, it's different. They camp there now.

Member Downing asked how the public is going to know that they can access the additional 40 stalls. Stotesbury said from his experience there's more parking during the day, if there were problems they would designate additional stalls for beach access parking. If they do build additional stalls for beach access they would have signs directing people to it. They aren't planning on building those stalls at this time.

Member Oi asked what would take precedence in the parking when there are golf tournaments. These stalls should be reserved for the public for public use only when these types of events occur.

Chinn confirmed that what he was hearing from the Board is that public parking if not increased needs to be regulated so the public can use it. The Board confirmed.

Member Roehrig suggested hotel staff use a rule of reason and be flexible and not just chase local people out.

Member Yuen asked if there was a designated public access now at Kawela Bay. Stotesbury said no. Member Yuen said he sees people walking on a trail, but that's not an official access? Stotesbury confirmed, there are only two access points.

Member Yuen asked what the zoning of the area future city park C2. Stotesbury believed everything was zoned resort and future dedication for the city would be zoned for park.

Member Woodside asked Stotesbury to explain what his natural and cultural resource management plans were. Stotesbury said they work with 3rd parties that help them in that area. The 3500 units that they are currently zoned for is probably the number 1 resource issue. Their proposed action was to voluntarily reduce the unit count by 60%. They have downsized and increased their setback. They use solar, are working on a conservation easement, installing hydration stations, and undertook an archeological study with successful results.

There was no public testimony.

Chair Case explained that the next time this item comes to the Board they will be asking for approval.

No staff submittal shall be provided and no Board action shall be taken on this item.

- Item M-1** Issuance of a Revocable Permit for Automobile Parking, Hawai'i Island Air, Inc. dba Island Air, Commuter Terminal, Honolulu International Airport, Tax Map Key: 1-1-003:208 (Portion).
- Item M-2** Amendment No. 3 to Automobile Parking Facilities Concession Agreement No. DOT-A-10-0004 for additional premises, ABM Onsite Services – West, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-014-024.
- Item M-3** Issuance of a Direct Lease for a Fixed-Base Hangar Facility, Schuman Aviation Company, Ltd. dba Makani Kai Helicopters, Honolulu International Airport, Tax Map Key: (1) 1-1-72:8, (1) 1-1-72:62, (1) 1-1-72:Portion of 82.
- Item M-4** Issuance of a Revocable Permit for Aircraft Storage, Ronald P. Bilek, Honolulu International Airport, Tax Map Key: (1) 1-1-76:Portion of 20.
- Item M-5** Issuance of a Revocable Permit for Aircraft Parking, Henry W. Pelekai, Kalaeloa Airport, Island of O'ahu, Tax Map Key: (1) 9-1-13:Portion of 32.
- Item M-6** Issuance of a Revocable Permit for a Ticket Counter and Baggage Make-up Area, Schuman Aviation Company, Ltd., Hana Airport, Tax Map Key: (2) 1-3-003-022:Portion.
- Item M-8** Issuance of a Revocable Permit for a T-Hangar and an End Room for Aircraft Storage, Maui Aloft, LLC, Kahului Airport, Tax Map Key: (2) 3-8-01:Portion of 19.
- Item M-9** Issuance of a Revocable Permit for Storage Rooms, Delta Airlines, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01:Portion of 19.
- Item M-10** Issuance of a Revocable Permit for Ticket Counters, Air Canada, Kahului Airport, Tax Map Key: (2) 3-8-01:Portion of 19.
- Item M-11** Issuance of a Direct Lease for Cargo Space, New Cargo Building, Trans Executive Airlines of Hawai'i, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12:Portion of 90.
- Item M-12** Issuance of a Revocable Permit for a T-Hangar, Phillip D. Byrnes, Hilo International Airport, Tax Map Key: (3) 2-1-12:Portion of 90.
- Item M-13** Issuance of a Revocable Permit for Storage of Rental Car Vehicles, Avis Budget Car Rental, LLC, Hilo International Airport, Tax Map Key: (3) 2-1-12:103.
- Item M-14** Issuance of a Heliport Lease, Mauna Loa Helicopter Tours LLC, Lihu'e Airport, Tax Map Key: (4) 3-5-01:Portion of 8.

Item M-15 Issuance of a Revocable Permit for a Maintenance Room for Airline Operations, Hawaiian Airlines, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-01:Portion of 8.

Item M-16 Issuance of a Revocable Permit for a T-Hangar, James Read, Līhu‘e Airport, Tax Map Key: (4) 3-5-01:Portion of 8.

Item M-17 Issuance of a Revocable Permit for a T-Hangar, Michael J. Olson dba GTS, Ltd., Līhu‘e Airport, Tax Map Key: (4) 3-5-01:Portion of 8.

Ross Smith with the Department of Transportation Airports Division-DOT-AIR introduced Sidney Hayakawa DOT-Administrative Services Assistant.

Smith asked to amend items M-3 and M-14 by adding a section to the remarks section. For item M-3, they would like to add “the DOT has determined the issuance of this direct lease, encourages completion and is essential to aeronautical and airport related industries at Honolulu International Airport.” For item M-14 the sentence is “The DOT has issued a direct lease and encourages competition and is essential to the aeronautical and airport related industries at Lihue Airport”. There is a requirement that when you issue a direct lease, you encourage competition.

Member Oi asked how many available spaces were currently at Lihue Airport. Smith said there maybe two lots available, they have gotten some requests and have come up with plans that if additional operators come in DOT will accommodate them.

Member Oi asked Smith if DOT put it out to bid. Smith said no, there is a diverse helicopter industry, every interested has contacted DOT and they have advised them to apply.

Chair Case pointed out that item 7 is the item that was deferred from the previous meeting and DOT has come back with information on that item.

Member Gomes had a question on item M-6. Member Gomes asked who Shuman was; Shuman has been coming up on the agenda often. Smith disclosed that Shuman is a private airline operator working out of the general aviation portion of the airport. This company is a private charter.

Member Woodside asked if Shuman services other aircraft that come in. Smith said they can under their lease.

Member Gomes made a motion to approve items M-1 through M-17 with amendments except item M-7. Member Roehrig seconded.

The Board approved items M-1 through M-17 except M-7. Items M-3 and M-14 were approved as amended.

Unanimously approved as amended (Gomes, Roehrig)

Item M-7 RE-SUBMITTAL: Amendment No. 3 to Retail Concession Agreement No. DOT-A-11-0005 to Extend Lease Term under Provisions of Act 46, Sessions Laws of Hawai'i 2012, as Extended by Act 126, Session Laws of Hawai'i 2014, DFS Group, L.P., Kahului Airport, Tax Map Key: (2) 3-8-01:Portion of 19.

Member Roehrig called Ross Smith up and asked him what his proposed agreement was. Member Roehrig told Smith that what he provided to the Board were the 2011 specks, that wasn't what the Board asked for. What the Board asked for was the proposal.

Smith apologized for misunderstanding and not providing the information the Board requested. What was provided was the same sort of information that was provided on all other concession amendments. The specifics of the financial portion were highlighted.

Member Roehrig said he understood that, but this proposal is for open bidding. One right that he had an issue with was that the lessee has the right to sublease. Smith said yes, the lessee would have the right to sublease.

Member Woodside asked Smith to remind the Board what percentage DFS currently holds. Smith said in Kahului there was primarily food and beverage and retail concession space, there are also concessions like Smart Cart. For the retailers there is just DFS and the two sublease.

Member Downing didn't understand how a company can come into a mall, sign up for a lease for X amount of time, then go out to bid after that, but if he decides he wants to do improvements, he can then go to DOT and ask for an extension for a lease. Smith said this was the case only for this period of time because the legislature just passed Act 126 and 124 in which they said the concessioner requested and committed to making commitments and upgrading their facilities then they would consider extending the concession leases.

Chair Case asked Smith if this proposal was consistent with the law that was passed, to encourage improvements in the airport. Fuchugami read the law, and said yes this was consistent with the law.

Member Yuen asked if the only thing they were bidding on was the minimum guarantee. Smith confirmed.

Member Oi asked Smith to provide more supporting information in the future.

Member Roehrig suggested the Board not vote on this, he wasn't assured of this because this gives no opportunity for local businessmen. He said he wanted to make a motion to alter this process so local companies have an opportunity.

Demonte Conner testified as on behalf of the kanaka maoli of Hawaii. Conner appreciated member Roehrig for standing up for Hawaiian lands and Hawaiian culture. He asked that the Board make on behalf of the kanaka maoli.

Jim Stone testified in support on behalf of the Airport Concessioners Committee and respectfully asked to grant and approval.

Member Woodside asked if these concession agreements include Hawaiian agreements or Hawaiian sense of place. Stone said the agreements request but don't require Hawaiian products. Member Woodside said she didn't mean products.

Member Woodside asked Smith about Hawaiian artwork and a Hawaiian sense of feel in airports. Smith said that a suggestion can be made to DFS, but it's too late to make them add it in at this point.

Member Roehrig made a motion to extend this matter to 10 years pursuant to the request and CIP money being offered subject to the following 1) the AG's office issues an opinion in regarding the regularity of the Board putting these conditions under these circumstances and do do it promptly in writing. 2) the contracts shall include a clause requiring that the boutique for the Maui international airport include a requirement that they have a Hawaiian motif reflecting the host culture of the state of Hawaii. 3) DOT in the finalization of the agreement consult with the Tourism Board Chair, the Chair for the Department and Planning and Development and the Department of Taxation regarding the feasibility of including in this contract a provision giving reasonable preference to vendors' products in the state of Hawaii as the relate to the Hawaiian Culture and the Host culture. Member Downing seconded.

Member Yuen asked if these conditions would only be made if the attorney general approves these. Member Roehrig confirmed, this would only come back to the Board if the AGs office says the Board can't make any reasonable decisions on the approval of this motion.

Member Yuen asked Member Roehrig to explain "motif". Member Roehrig said he was referring to the sense of space, the architecture reflect something about the state of Hawaii and our host culture. Member Yuen then asked Member Roehrig what he meant by reasonable preference. Member Roehrig said locals be given a reasonable opportunity to have their products included. Member Yuen commented that normally the retailer has discretion as to the products they can sell.

Member Yuen make 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.

Stone commented that adding these conditions may be changing the scope of the law.

11:49AM EXECUTIVE SECESSION
11:59 AM RECONVENE

Member Yuen with the consent of the maker of the motion, he amended the motion to approve item M-7 as requested by DOT with the following amendment that the concessionaire make good faith efforts to the satisfaction of DOT to include a Hawaiian motif in the new construction

to occur at the terminal and to include locally produced products for sale in the concession to the extent permitted by law, and to follow all other applicable laws. Member Gomes seconded.

Unanimously approved as amended (Yuen, Gomes)

Item D-5 Issuance of Right-of-Entry Permit for Access and Maintenance Purposes to the County of Hawai'i, Department of Public Works, Onto Unencumbered State Lands at Maka'ula-'O'oma-1st, North Kona, Hawai'i, Tax Map Key: (3) 7-3-010: Portions of 033, 042, 044, 045.

Kevin Moore Assistant Administrator for the Land Division- LAND explained that this right of entry would allow County buses to run on this new access road. Moore had an amendment to the recommendation section and asked the Board to omit I. B and redesignate as I. C.

The Board deleted recommendation I.B and redesignated recommendation I.C accordingly.

Unanimously approved as submitted (Roehrig, Gomes)

Item K-3 2015 Annual Report by the Office of Mauna Kea Management on the Status of the Implementation of the Mauna Kea Comprehensive Management Plan, Mauna Kea Science Reserve, Kaoha Mauka, Hamakua District, Hawaii, Tax Map Key (3) 4-4-015:009 (non-action item).

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

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands-OCCL disclosed that there was no staff report attached to this item, this is a report which provides updates from UH-Hilo. This is a non-action item.

Stephanie Nagata with the Office of Mauna Kea Management-OKM thanked the Board for the opportunity to provide an update as far as where there are in implementing the comprehensive management plan that was approved by the this Board back in 2009. They categorized the management actions into 5 priority areas: research, monitoring, research management programs, education training outreach and printed materials in public forms. With regard to 1) Research They have initiated a new study on erosion. Ongoing research continues in regards to climate change. They are evaluating road improvements and working on a procurement process for studying commercial tour activities. 2) Monitoring. This is a long term ongoing process that is needed to assess the status of resources over the years. There is an archeological management plan that has been approved by the Historic Preservation. They have developed and approved an invasive species development and control plan. 3) Research management programs. From the data from research they are able to development of research management plans. 4) Education Training and Outreach, OKM recognizes the need to train staff about the resource and significance of the mountain.

Member Gomes asked Nagata what the population of the wekiu bug was and if it was only found in higher populations. Nagata said the wekiu bugs are only found in the summit area of Mauna Kea and the population is difficult to determine, there is a wekiu bug committee.

Chair Case asked Nagata if in the future they could include a chart to show the progress over the years. Chair Case asked Nagata what the budget was for these types of projects. Nagata said their budget was at about 2 million for the natural and cultural resource management.

Member Woodside asked if this was it for the annual report for OKM. Nagata explained that this report was a requirement when the Board approved the comprehensive management plan to provide a status report on the implementation of the management plan.

Member Woodside asked if these items had an implementation plan with a timeline that shows if these projects are on target or not. Nagata explained that these were identified as immediate, mid and long term. The ones that have been signed for immediate implementation have been implemented or are ongoing or are in process.

Member Woodside wanted to be sure she understood; in the annual report, there are references to the other sub plans, and asked if the sub plans were completed. Nagata said yes, all four. Member Woodside asked about the policies. In the summary of the report, there were policies of around cultural activities that had been developed, but in the detailed part it said that they still had to be drafted. She asked Nagata what the status was on that. Nagata explained that some of the policies have land use features and some have activities. The activity portion would be addressed in the administrative rules that are going out for public review. It will be going out for the public in a few weeks any comments will be incorporated into draft rules, they will consult with OHA then they will go out for draft rules.

Member Gomes asked Nagata if her staff has come in to any confrontation with the protestors. Nagata said no, there has not been any direct confrontation.

Member Woodside asked if the designation of the Traditional Cultural Properties (TCP) was still in effect. Nagata said there were recognized TCPs in the area, they are recognized in the State district, so the next step would be the federal.

Chair Case asked if there were any trends in terms of invasive species. Nagata said that other than the wekiu bug there were ants that were discovered. OMKM has been monitoring and there has been no migrating so far.

Member Woodside asked Nagata what the timing was on the decommissioning sub plan. Nagata said the decommissioning plan provides the process of how an observatory would be decommissioned; it also includes a funding plan.

Member Woodside asked if they had a breakdown of their budget and how that money is spent. Nagata didn't have it but she would provide it. One portion comes from revenue and the other comes from the University.

Sterling Wong representing the Office of Hawaiian Affairs-OHA highlighted his testimony and recommended that the report contain more information.

Demonte Conner spoke against TMT and suggested the Board hold UH and OKM responsible. Conner asked that this report be stricken from the record.

Shelly Muneoka addressed Member Gomes' concern about the weiku bug and gave some history. Muneoka questioned the decommissioning plan and its accountability to all the telescopes that existed prior to that. Muneoka expressed her concerns about the report. She doesn't think OKM should be managing Mauna Kea.

Member Gomes asked about the hydraulic oil. Muneoka said the hydraulic oil is from their equipment and every piece of equipment up there is leaking. They have pads on the ground but in some areas the oil leaks right on the ground.

Andrea Ilima DeCosta testified that a lot of what ends up on the land ends up in the water. She said yes, the equipment is leaking and can tell the Board where those spots are. There is all kinds of trash up there. DeCosta explained that the "Aloha Spirit" has been incorporated into law and read the law. She asked the Board to abandon their plans to support TMT and exercise the Aloha Spirit.

Candice Fujikane said the management plan and the annual report are both inadequate. The report does not address the desecration of the mauna.

Member Woodside asked if the Board would get an update on how the best management practices have been going or if the reports are going to continue to say they are included.

Nagata said that management action states that if you go forward with TMT then they have a best management practice. She didn't think the annual report talked about the management practices, but it does require a monitor. They have to make sure the construction crew follows the best management practice in their plan.

Member Yuen didn't understand, if there is a problem, shouldn't that be part of the report. Nagata said if there is a problem, then it's reported. The construction monitor and archeological monitor have the authority to stop work. Member Yuen said if there was a significant incident, then it would be part of the report to the Board. Nagata said that they report to OCCL, but if the Board wants then they can include it in reports to the Board. Member Yuen said yes, the Board would like to see those types of events.

Member Gomes said he was concerned about the oil on the ground and the waste. Nagata explained that TMT did transport some equipment to the summit, some of the rings to the seals of their equipment has shrunk, which caused drips. They are required to put down pads to catch the drips. Since TMT cannot get to their site The Mauna Kea support team who does maintenance on the road goes up to check on them twice a week. If there are spills on the facility they do fall on a concrete floor and they have to follow the federal and state requirements for cleaning up.

Member Downing commented that the equipment should have been drained if they knew the equipment was going to be sitting. He said to him this report lacked detail, nothing tells what happened what went on last year, this year or what will happen. There was no financial report, which should've all been included.

Member Oi felt the same; more information should've been included.

No Board action shall be taken on this item.

1:34PM RECESS
2:02PM RECONVENE

Item I-2 Declare Project Exempt from Requirements of Chapter 343, HRS and Title 11, Chapter 200, Hawai'i Administrative Rules.

Chapter 42 F, HRS, Grant-In-Aid Capital Improvement Project on behalf of the Hawaiian Mission Children's Society dba Hawai'i Mission Houses Historic Sites and Archives.

Randolph Lee representing the State Historic Preservation Division-SHPD conveyed item I-2.

The Board had no questions.

Unanimously approved as submitted (Roehrig, Gomes)

Item I-1 RE-SUBMITTAL: Re-Submittal: Request for Approval to Enter a Grant-in-Aid Capital Improvement Project Contract with the Hawaiian Mission Children's Society dba Hawaiian Mission Houses Historic Site and Archives (HMH) to renovate and restore portions of the 1841 Annex, 1821 Mission House and restrooms, and Authorize the Chairperson to Negotiate and Execute the Contract.

Randolph Lee-SHPD presented item I-1.

Tom Woods Executive Director of Hawaiian Mission Houses Historic Site and Archives-HMH detailed that the project was the restoration of the 1841 Annex bills. Woods gave an overview of what work needed to be done.

Unanimously approved as submitted (Gomes, Oi)

Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Mark A. Wetzler, National Oceanic and Atmospheric

Administration (NOAA) Ship OKEANOS EXPLORER, for Access to State Waters to Conduct Shipboard Support Activities.

Maria Carnevale co-manager for the Papahānaumokuākea Marine National Monument-PMNM reviewed item F-5.

Member Downing asked if there was any way to write that this information can be used on the State website when the activity is completed. There is no way for the public or children to get education as to what are going on in the North West Hawaiian Islands.

Carnevale said the easiest way to do this would be to amend staff recommendation and add that a summary report be permitted prior to issuance of the next permit. Member Downing suggested a report be submitted after the project is completed. He would love for children to be able to go to a website where they can go and click and see what everyone is doing at PMNM and why they are doing it. He said it would also be good for the Board to be able to go to a site like this.

Carnevale said that there are currently publications on the website, but not a summary or the content of the activity.

Member Roehrig suggested someone send these out to elementary schools.

Member Oi asked how big this ship was.

Commander Matt Wingate said the ship was 224ft everything on the ship is contained on the ship. There will be telepresence so everything that is being done can be seen.

Member Oi was concerned about the coral reef being destroyed with such a huge ship. Wingate said the ship would be in deep water and will not be near the coral.

Member Roehrig made a motion to approve subject to the condition that DAR use good faith efforts to prepare a summary in some form so the youth and community are able to learn about the history of the Hawaiian Islands as they proceeded North West after all these years. Member Gomes seconded.

Unanimously approved as amended (Roehrig, Gomes)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Carl Meyer, Hawai'i Institute of Marine Biology, University of Hawai'i, for Access to State Waters to Conduct Top Predator Feeding Habits and Movement Research Activities.

Maria Carnevale-PMNM presented item F-4 and offered the same recommendation as item F-5. There was a reprehensive present for questions.

Member Oi said about a month ago, the Board approved killing 20 sharks to save seals, but shouldn't a study have been done before. Dr. Carl Meyer explained that a study was done to track shark species around those areas.

Member Roehrig suggested the amendment be for all future permits so that it doesn't need to be made every time.

Unanimously approved as amended (Roehrig, Gomes)

Item D-3 Sale of Remnant (Flume ROW) to Ryan M. Catron, aka: Ryan M. Nases and Joel Madden Nathansen, Kaiwiki, South Hilo, Hawai'i, Tax Map Key: (3) 2-9-004: Portion of Abandoned Flume Right-of-Way.

Kevin Moore-LAND presented item D-3, this project file has been open for some time. These are neighbors who wanted to acquire this right-of-way. The initial applicants Fitzgeralds withdrew and the current applicants are ready to proceed, so staff recommendation is to go through with the sale of this remnant.

Chair Case asked what would happen if there was a huge public works project. Moore said there would be a condemnation.

Member Downing said the Fitzgeralds withdrew because they didn't want to pay the appraisal fees. He asked Moore if this would have to go through arbitration for this remnant. Moore said it's possible. LAND will procure an appraisal to determine the value and present it to the applicant.

Ryan Nases the applicant asked the Board to waive the requirement to have it consolidated into his property. He has access issues and is working with the Fitzgeralds to clean up his access issues. He has to do consolidation re subdivision once he's done dealing with Fitzgeralds. He would leave it unconsolidated and the State can have it back anytime.

Member Yuen didn't understand why he didn't want to consolidate it. Nases asked that it not be because he didn't want a 2 year process to turn into a 4 or 5 year process. There are opposing views over who has an easement over whose property. Nases doesn't have an easement from DLNR so he can't get to his property.

Moore said this maybe a legal issue.

Member Oi commented that the first thing would be subdividing the right-of-way.

Member Yuen made a motion to approve with the slight change to #3 of recommendation to say authorize the consolidation of the subject remnant to the abutting private property/ properties. Member Woodside seconded.

The Board amended recommendation 3 to read as follows: “Authorize the consolidation of the subject remnant with the abutting private property or properties.”

Unanimously approved as amended (Yuen, Woodside)

Item K-2 Conservation District Enforcement Case (OA 15-17) Regarding Alleged Unauthorized Land Uses Located in the Conservation District, by Herbert Kihoi Jr., Located at 1551 Moani Street, Kamaikai Valley, O’ahu, Tax Map Key: (1) 1-4-001:047.

Written testimony was submitted by Herbert & Selina Kihoi.

Sam Lemmo-OCCL briefed the Board on item K-2. The issues involved include unauthorized work on the house, unauthorized construction of retaining walls and unauthorized grading. To date, two (2) notices of violation (NOV) have been issued to the landowner. OCCL would like the Board to look at three (3) possible violations totaling \$16,750 in fines.

Member Yuen asked if the grading was for a fence line or a trail. Lemmo explained that Mr. Kihoi was worried about trespassers so he was trying to install a fence which involved the grading and grubbing work being brought before the Board.

Selina Kihoi introduced her husband Herbert Kihoi. She said they were surprised when they got the letter from the State as they have lived here for over 30 years and have never had any problems or problems with the law. She explained that they were just trying to improve their property to keep intruders out. They didn’t know they needed a permit to install the fence.

Mr. Kihoi explained that he hired a contractor and that representatives from the State spoke to the contractor, not to him. Therefore, he was unaware that there was an issue. Mr. Kihoi gave some history of the property and explained that he was just trying to make the property safe for his family.

Member Woodside told the Kihois that this is something that can be done, but they need to work with OCCL so they can show them the right way to do it.

Chair Case asked who lives in the house now. Mrs. Kihoi said her daughter lives downstairs while one of the daughter’s friends lives upstairs. They stay there weekends. Chair asked when they got the initial NOV letter. Mr. Kihoi stated that on May 10, 2015 they received the second letter but never received the first letter.

Member Oi asked Lemmo if they would be allowed to keep the work done on the house. Lemmo said they would have to get a permit for the work they did on the driveway and the house and remediate the work done on the trail.

The Board had various questions and concerns regarding existing structures, potential after-the-fact authorizations, and the fine assessed.

Member Downing 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 Roehrig seconded.

3:36PM EXECUTIVE SECESSION

4:00PM RECONVENE

Member Yuen made the following motion: He wanted to drop the fine on the retaining wall because the wall may have been grandfathered. For the work on the driveway and the house, Member Yuen thought the fine should be \$1,000. The grubbing, in relation with the fence line, is more serious, so he proposed a \$4,000 fine plus \$750 in administrative costs. He also proposed to drop the condition of needing to hire a geotechnical engineer. The requirement that the Kihois come in for departmental permits should remain. They are given 120 days to apply, but gives staff authorization to extend the 120 days if the applicant is making reasonable steps to get the permits.

Chair Case asked if there was a payment schedule. Member Yuen said any payment schedule that was good with the department was fine. Member Roehrig seconded the motion.

Member Gomes asked if condition #16 was to remain as is. Member Yuen stated that condition #16 should be amended to reflect the sentiment that should the landowner fail to comply, the matter shall be brought back before the Board for further action.

Chair Case told the Kihois that they had the right to a contested case. There was no request for a contested case. Mr. Kihoi asked for a payment plan for the total fine of \$5,750.

Unanimously approved as amended (Yuen, Roehrig)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Shauna Kehaunani Springer, Nā Maka o Papahānaumokuākea and Conservation International - Hawai'i, for Access to State Waters to use Traditional Ecological Knowledge to Examine Intertidal Ecosystems Activities.

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Christopher Bird, Texas A&M University – Corpus Christi, and Dr. Robert Toonen, Hawai'i Institute of Marine Biology, University of Hawai'i, for Access to State Waters to Conduct Intertidal Biodiversity Survey Activities.

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Mr. Nainoa Thompson, Polynesian Voyaging Society, for Access to State Waters to Conduct Training Sails for Apprentice Navigators Using Non-Instrumental Navigation Activities.

Maria Carnevale-PMNM reviewed items F-1, F-2 and F-3. She apologized the table on F-1 was hard to read in the submittal so she distributed a clearer map.

Member Woodside thanked Carnevale and all the applicants embodying the intent of the monument.

Shauna Keahunani Springer thanked the Board for allowing them the opportunity to continue the research.

Chair Case disclosed that one of the applicants was from her former employer, but she didn't feel that was a conflict.

Unanimously approved as amended (Woodside, Gomes)

Item D-1 Amend Prior Board Action of September 27, 2013, item D-3, Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawai'i 2011, General Lease No. S-3624, 69 Railroad, LLC, Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-12:26; and

Amend Prior Board Action September 27, 2013, item D-5, Consent to Lease Term Extension Pursuant to Act 207, Session Laws of Hawai'i 2011, General Lease No. S-3603, Jieyu Shepard, Lessee; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3603; Lot 41, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:015 & 016; and

Amend Prior Board Action March 14, 2014, item D-6, Consent to 10-Year Term Extension of General Lease No. S-3583; Yamada Consolidated, Inc., Lessee, Pursuant to Act 207, Session Laws of Hawai'i 2011, Waiākea, South Hilo, Hawai'i, Tax Map Key: 3rd/2-2-037:052, 092 & 093; and

Amend Prior Board Action March 14, 2014, item D-7, Request for Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawai'i 2011, General Lease No. S-3599 Central Supply, Inc., Lessee; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3599; Lot 22 Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-50:90; and

Amend Prior Board Action April 25, 2014, item D-4, Approve a 10-year Extension of Lease Term Pursuant to Act 207, Session Laws of Hawai'i 2011, General Lease No. S-3619, Mattos Electric, LLC, Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:013; and

Amend Prior Board Action May 9, 2014, item D-2, Approval of Term Extension of General Lease No. S-5187; Aloha Petroleum, Ltd., Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-009:042; and

Amend Prior Board Action May 23, 2014, item D-4, Request for Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawai'i 2011,

General Lease No. S-3606, The Food Basket Inc., Waiākea, South Hilo, Hawai‘i Tax Map Key: (3) 2-2-50:96; and

Amend Prior Board Action August 22, 2014, item D-15, Consent to 10-Year Term Extension of General Lease No. S-3716, Hawaiian Fresh Products, Inc., Lessee, Pursuant to Act 207, Session Laws of Hawai‘i 2011; Amendment of Terms and Conditions Regarding Allowed Use, Kanoelehua Industrial Lots, Lot 1-A, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-2-050:015; and

Amend Prior Board Action September 26, 2014, item D-5, Consent to Lease Term Extension Pursuant to Act 207, Session Laws of Hawai‘i 2011, General Lease No. S-3598, Mauna Kea Infrared, LLC, Lessee; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3598; Lot 17, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-2-050:085. and

The purpose of these amendments is to delete the statement regarding appraised rent to be determinative and not subject to arbitration.

Kevin Moore-LAND gave history of this item. There were a bunch of arbitrations where the lessees disagreed with rents that were determined by the department’s independent appraisers. This went on for 2 or 3 years. There were 9 previous submittals that said the appraised rent was not arbitrable, that language is being eliminated. 4 are done and they have accepted the rent and the other 5 are pending.

Member Roehrig suggested that the ones that already paid be given the opportunity to go to the mediation arbitration process. Moore said a letter can be sent to all those people to have a redetermination of their rent.

Member Roehrig made a motion to approve adding a recommendation that a letter be sent to those lessees who accepted the rent determined for their lease extensions under staff’s prior interpretation of HRS Chapter 171 before the issuance of the opinion of the Department of the Attorney General, staff is directed to send those lessees a letter explaining that they are entitled to follow the process for mediation or arbitration if they so choose, and that their leases may be subject to a rent adjustment in the event the mediated or arbitrated rent differs from the rent the lessee previously accepted. Member Yuen seconded.

The Board added a recommendation 3 to read as follows: “For those lessees who accepted the rent determined for their lease extensions under staff’s prior interpretation of HRS Chapter 171 before the issuance of the opinion of the Department of the Attorney General, staff is directed to send those lessees a letter explaining that they are entitled to follow the process for mediation or arbitration if they so choose, and that their leases may be subject to a rent adjustment in the event the mediated or arbitrated rent differs from the rent the lessee previously accepted.”

Unanimously approved as amended (Roehrig, Yuen)

Item D-2 Resubmittal: Consent to Lease Term Extension Pursuant to Act 207, Session Laws of Hawai‘i 2011, General Lease No. S-3622, Hiroshi Matsubara and Naoe Matsubara, Lessee; Amendment of Terms and Conditions Regarding Assignment and Sublease Provisions for General Lease No. S-3622; Lot 29, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-2-050:095.

Kevin Moore-LAND had no changes to item D-2.

Member Yuen asked to defer this once before because he wanted to discuss an issue that in these lease extensions the department has been taking the position that the lessee has to pay for the initial appraisal, Member Yuen thinks the emotion behind it is that the lessee doesn't get to choose their appraiser so they don't like having to pay for it.

Member Yuen asked that the AG give an opinion if it is correct that the lessee pay for the appraisal or the State. Member Roehrig and Member Oi agreed.

Chair Case also wanted to find out if the cost for the appraisal could be split.

Member Yuen made a motion to approve item D-2, amend the clause that says the lessee should pay for the appraisal to be subject to determination by the office of the attorney general and the Board requests that the office of the attorney general advise the Board as to what the law says as to who should bear the costs of this initial appraisal on these extensions. If it turns out that the law says that it's at the discretion of the Board, then the Board needs to have a discussion on how we are going to do this. Member Gomes seconded.

Member Roehrig commented that the lessees would be inclined to pay half if the appraiser was selected was from where ever they were from. Chair Case disagreed because it's not about where the appraiser is from. She feels the appraisal process is worth revisiting to see what the regulations are and be sure the pool of appraisers is being followed.

Moore explained that there is a list of about 12 approved appraisers and the departments goes through a solicitation ever year.

The Board added a recommendation 3 to read as follows: “The applicant requirement set forth in the submittal that the lessee shall pay for the cost of the appraisal for the rent in the lease extension period shall be subject to review and determination by the Department of the Attorney General. Staff is directed to request an opinion from the Department of the Attorney General as to: (i) who should bear the cost of the initial appraisal report, (ii) whether there is an option to split the cost between the State and the lessee, and/or (iii) whether the Board has discretion to determine who bears the cost. Staff is directed to return to the Board with a report on the findings reached by the Department of the Attorney General. The applicant requirement that the lessee pay for the appraisal shall be held in abeyance until the staff report on the advice of the Department of the Attorney General.”

Unanimously approved as amended (Yuen, Roehrig)

Item D-6 Sale of Lease at Public Auction for Pasture Purposes, Kapāpala, Kā‘ū, Hawai‘i, Tax Map Key: (3) 9-8-001:002.

Item D-7 Grant of Perpetual, Non-Exclusive Easement for Water Meter Purposes and the Issuance of Management Right-of-Entry to the City and County of Honolulu, Kalihi, Honolulu, O‘ahu, Tax Map Key (1) 1-3-008:portion of 004.

Item D-8 Grant of Perpetual, Non-Exclusive Easement for Water Meter Purposes; and Issuance of a Management Right-of-Entry to the City and County of Honolulu, Board of Water Supply, Kewalo-Kai, Honolulu, O‘ahu, Tax Map Key (1) 2-3-009:001(portion).

Kevin Moore-LAND had no changes to items D-6, D-7 or D-8.

Member Woodside asked if it was needed to go to an appraiser for a pasture lease in regards to item D-6. Moore explained that the upset rent needed to be established; AG Chow added that an appraiser was needed for any new lease.

Member Downing asked what Hawaii Outdoors Inc. did with a pasture lease. Member Yuen thought they just wanted this for site control for the adjacent State land. They didn't do anything.

Member Woodside asked what that last lease rent was. Moore said around 8 or 10 thousand a year.

Unanimously approved as submitted (Roehrig, Gomes)

Item F-6 Settlement Agreement with Sea Sport Cruises, Inc. for Coral Damage Resulting from the September 10, 2013 *Ocean Odyssey* Vessel Grounding near Ma‘alaea Harbor, Maui.

Alton Miyasaka representing the Division of Aquatic Resources-DAR, had no changes to item F-6.

Member Woodside asked if the same evaluation was used to set this fine as the one in 2007. Miyakasa said the method was the same; better quality has a higher value. The value is based on the species, how rare it is and the area it's in.

Member Woodside also asked if there was a cost factor to adjust for inflation in the damage estimates. Miyasaka responded that no, we do not adjust for inflation as the fine amounts are usually estimates and adjusted during the discussions based on ecosystem values. The inflation rates have been so low recently that it doesn't factor in our estimates.

Unanimously approved as submitted (Gomes, Oi)


There being no further business, Chairperson Suzanne D. Case adjourned the meeting at 4:47p.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 B. Case
Chairperson
Department of Land and Natural Resources