

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

DATE: FRIDAY, DECEMBER 11, 2015
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Suzanne Case called the meeting of the Board of Land and Natural Resources to order at 9:01 a.m. The following were in attendance:

MEMBERS

Suzanne D. Case
Thomas Oi
Keone Downing
Christopher Yuen

James Gomes
Ulalia Woodside
Stanley Roehrig

STAFF

Kevin Moore/LAND
Curt Cottrell/SP
Sherry Man/DOFAW
Alton Miyasaka/DAR

Ed Underwood/DOBOR
Jason Redulla/DOCARE
James Cogswell/DOFAW
Allyson Yim/ENG

OTHER

Linda Chow/AG
Daniel Morris/AG
Ross Smith/DOT-AIR
Richard Fried/D-2
Ted Meyers/E-1
Pokai Ryan/E-1
Marti Townsend/B-1
David Schulmeister/D-14
Carmen Hulu Lindsey/D-14
Camile Kalama/D-14
Kaulupono Kaleilehua/D-14
Mike Gomichi/E-2

Bill Wynhoff/AG
Carl Young/DOT-AIR
Tom Menushawitz/M-1
Steve Soares/E-1
Diana Benfield/E-1
Bernard Bays/D-8
William Aila/D-14
Caleb Rowan/D-14
David Franco/D-14
Marjorie Ziegler/D-14
Inga Gibson/F-1
Everett Ota/D-14

ITEM A-1 Approval of June 26, 2015 Minutes

Item Deferred

ITEM A-4 Approval of August 14, 2015 Minutes

Unanimously approved as submitted (Gomes, Roehrig)

ITEM A-5 Approval of August 28, 2015 Minutes

Unanimously approved as submitted (Gomes, Roehrig)

ITEM A-6 Approval of September 11, 2015 Minutes

Member Yuen noticed in Item I-1, Allen Hawn should be Allen Haun and MR. Steward should end with a T.

Unanimously approved as submitted (Gomes, Roehrig)

ITEM M-1 Direct Issuance of a Revocable Permit to Kirby Offshore Marine Hawaii LLC for Storage of Equipment at Pier 21, Honolulu Harbor, Hawai'i.

Unanimously approved as submitted (Gomes, Roehrig)

ITEM M-2 Amendment No. 24 to Concession Lease No. DOT-A-92-0018 for the Purpose of Adding Four (4) Spaces, Restaurant and Lounge Concession, Host International, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-03: 1 (Portion).

ITEM M-3 Issuance of a Revocable Permit for Airline Ticket Counters, Jin Air Co., Ltd., Diamond Head Domestic, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 053 (Portion).

ITEM M-4 Issuance of a Revocable Permit for an Administrative Office, SITA Information Networking Computing USA Inc., 'Ewa Domestic Extension, Honolulu International Airport, Tax Map Key: (1) 1-1-003: Portion.

ITEM M-5 Assumption and Assignment of State Lease No. DOT-A-13-0010, Sharp 29 Corporation to Craft & Stone Concepts, Inc., Ualena Street, Honolulu International Airport, Tax Map Key: (1) 1-1-04:11.

ITEM M-6 Issuance of a Revocable Permit for a Parking Area for Cargo Operations, Federal Express Corporation, Honolulu International Airport, Tax Map Key: (1) 1-1-76: 11.

ITEM M-7 Issuance of a Revocable Permit for Aircraft Parking, Kailua Pilots, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.

ITEM M-8 Issuance of a Revocable Permit for Aircraft Storage, Anthony P. Skinner, Kawaihāpai Airfield, Waiālua, Hawai'i, (1) 6-8-14-16 (Portion).

- ITEM M-9 Issuance of a Revocable Permit for Aircraft Storage, Diamond Head Aviation, LLC, Kalaeloa Airport, Island of O‘ahu, State of Hawai‘i, Tax Map Key: 9-1-13: Portion of 32.**
- ITEM M-11 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, Mokulele Flight Service, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**
- ITEM M-12 Issuance of a Revocable Permit for Air Cargo Operations, Trans Executive Airlines of Hawai‘i, Inc., Kona International Airport to Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**
- ITEM M-13 Issuance of a Revocable Permit for Equipment Parking, Courier Corporation of Hawai‘i, Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**
- ITEM M-14 Issuance of a Revocable Permit for Commercial Helicopter Operations, Mauna Loa Helicopter Tours LLC, Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.**
- ITEM M-15 Issuance of a Revocable Permit for Airport Land for Storage of Rental Car Vehicles, Hawai‘i Rental Cars LLC, 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 himself and items M 1 through 15.

Member Gomes asked who Jin-Air was in regards to item M-3. Smith responded that they were a new budget Korean Airline, new to Hawaii.

Member Gomes wanted more clarification on the Helicopter landing area on Kauai, Jack Harter access in regards to item M-15. Smith clarified that access was a concern for Harter customers but not for the general public. Smith noted that they were amending the leases to remove common areas such as service roads. There is a potential that one of the helicopter operators could prevent fuel trucks from accessing other properties. DOT is taking back those types of common areas, including parking lots that were originally included in the leases.

Member Oi asked if Mauna Loa helicopter tours were aware that there was an access issue three weeks ago and the current board submittal does not address access issues. Smith noted that this is a revocable permit adjacent to helicopter operations so customers do not have to cross the access road.

Member Roehrig expressed concern about DOT coming up with a whole new idea. Member Roehrig asked if DOT was going to put everything in writing so all of the tenants understand all of the policies. Smith noted that access is included in the leases, it’s only the case where pads

are separated from operations that access was a problem. Smith agreed that they could have written operations in 6 months.

Member Yuen had a question in regards to item M-10 and wanted to an explanation on how a direct lease encourages competition. Smith answered that Kaiser Air offering service that is slightly different from what others offer. It is a membership operation made of up homeowners who live on the mainland and fly privately to their houses in Kona. DOT believes that increased use at airport increases competition and makes more effective use of the property.

Member Yuen asked if the same facility were put out to bid it would be limited to some kind of aeronautical use and the same company and others could bid for it. Smith noted that they did not put the property out to bid. Member Yuen had concerns about the answer he received.

Chair Case asked if there is more space than tenants. Smith answered that they would like to have more space, but we don't.

Member Yuen noted that this process is an exception to the law, and DOT could have followed the law an ended up in the same place. Doesn't see how this process encourages competition other than this is a site that could be used now. Smith noted where they do hold auctions for a property and did not get takers. However, once auction was closed, they were approached by several people. Noted that he thinks companies believe they have to pay higher through auction. Member Yuen noted that DOT set fair market value for this direct lease. Smith noted that no other entity expressed an interest in this property, and generally, airport managers are well aware of potential renters and what they are able/willing to pay.

Member Yuen noted that direct leases are simpler than an auction, but that it is an exception to the law, and does not really encourage competition. Smith noted that Dot believes increased use of the airport increases competition.

Member Roehrig asked if Smith knew how big Kaiser is worldwide. Smith is only aware of the local operations.

Member Roehrig added that the statutory intent of competition clause is to allow small operators to compete fairly with bigger operations. Member Roehrig did not see that Kaiser is a little operation and needed to stop always asking for an exception to the rule.

Member Roehrig asked M2, a lease to Host international, if this is something within their contract. Smith said it is but what is prompting the request is the remodel of that concourse. The reconfiguration will cause disruption to vendors on that concourse so they are requesting that they augment what they have by putting in a Starbucks. Host is an exclusive Concessionaire. Smith noted that food and beverage concessions are exclusive concessions and are put out to bid. The legislature needs to enact changes in the law for the leases to be different.

Tom Menushawitz representing Kaiser Air, introduced himself and gave testimony and background on Kaiser Air and facilities at Kona Airport. Kaiser air has been operating out of the commuter terminals. Mokulele was offered the building, but was unable to afford the renovation.

Bringing Kaiser Air in allowed for an upgrade to the building and other commuter tenants could be brought into that facility.

Member Gomes asked if other tenants have looked for space and how many tenants would open up construction or were they mostly for renovation. Menushawitz noted that what they are doing is only a renovation. Mokulele needed more space than available. Kaiser would be the lease and would sub-lease to other aeronautical tenants. However, at this point, based on space, Kaiser Air will likely be the only tenant.

Chair Case announced that D-14 would not be heard until after 11AM and invited people to sit in the board room.

Member Yuen noted if there be a problem that this space were offered for bid at an auction under the same terms. Menushawitz responded that it is more of a timing issue because they have been working on it for a while. The airport certainly discussed this with everyone before getting to this point. Originally, no issue with bidding, but now there is a timing issue if it would go out to bid. While it may be easier and better to operate by direct lease, it doesn't seem to encourage competition.

Member Downing asked what has Kaiser done at this point. Menushawitz responded that they have preliminary drawings. Appraisal and drawings allowed to estimate costs and rent rates. No bottom line on the renovations. Lease is only ten years, would prefer a longer term lease.

Member Downing noted that he agrees Kaiser Air is doing a good thing, but they are not following the correct procedure. Something was skipped to get to the direct lease. Menushawitz added that the rental rate for the property is set by the appraisal. There are no negotiations regard rental rates. Stan noted that public not in favor of cutting corners unless there is a good reason.

Items M-1 through M-9 and M-11 through M-15 were all unanimously approved as submitted.

Unanimously approved as submitted (Gomes, Yuen)

ITEM M-10 Issuance of a Direct Air Charter Terminal Facility Lease, Kaiserair Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 003.

Member Yuen made motion to disapprove item M-10 on the grounds that it has not shown to encourage competition and it does not follow the law. There have been discussions about this in the past. If DOT takes it to the AG and the AG says that HDOT is following the law (in writing to the board), then he will be okay with it. Noted that he believes this may be a better way to operate, but does not believe it follows the law. Member Roehrig seconded the motion.

Member Gomes noted that he agreed with Member Yuen and that this is not the first time this discussion has come up. He would like DOT to address this particular issue prior to bringing it

to the board. Need to show how a direct lease meets the requirements of the law. Chris noted examples where HDOT has justified a direct lease.

Member Gomes asked that HDOT resolve this issue before coming to the board.

Chair Case noted that the basic issue is that these kind of items should go out to bid.

Item Denied

ITEM D-2 Approve Form of Lease for Extended, Amended and Restated General Lease No. S-3961, Hilo-Hawaiian Associates, Inc., Lessee, Waiākea, South Hilo, Hawai‘i, Tax Map Key: 3rd/2-1-003:005. The proposed lease contains non-standard provisions regarding the parties’ development agreement, assignment of lease, breach, improvements, improvement bond and withdrawal.

Kevin Moore from Land Division-LAND introduced himself and item D-2. Moore introduced Richard Fried, a lease owner, discussed the proposal and what they have placed.

Member Roehrig thanked the staff for their hard work on this project. Followed by thanks from Member Oi.

Member Yuen asked on Page 3, second par., does this mean that the state will not get any share in any assignment of the lease after another 2 years. if yes, please explain.

Moore explained that the lease extension act does not say anything about re-setting the clock for purposes of calculating lease assignment premiums. So they think it’s more consistent with the statute to use the original start date of the lease. Chris questioned why the state is not getting 5 percent of the lease. Land said that an alternative would be to use 18 years as the starting date, which would result in a larger participation by the State, but the statute doesn’t support that. Member Yuen asked when the starting point for extension was. Moore explained that the original lease is from 1966-2031. Now they are getting an extension of 37 years from 2031. (2068). Member Yuen was okay with explanation.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM E-1 Approval to Continue Twenty-Three (23) Revocable Permits for Use of State Parks Lands on the Islands of Kaua‘i, O‘ahu, Maui, and Hawai‘i for the following: Kaua‘i: Na Pali Kayak Inc., Kayak Kaua‘i, a Hawai‘i Limited Partnership, Rick Haviland, (Na Pali Coast State Wilderness Park for Commercial Kayak Landings), Clancy Greff and A Na Pali Eco Adventures, Inc, Na Pali Sea Tours, Inc., Lady Ann Cruises Inc., (Na Pali State Wilderness Park Inflatable Boat Landings), Ka Imi Naauao o Hawai‘i Nei, Hawai‘i United Methodist, Kaua‘i Christian Fellowship, (Waimea Canyon

State Park Non-profit Recreation-Residences/Camps), Hawai'i Conference Foundation (Koke'e State Park non-profit camp), Sukhothai Corp. (Waimea Canyon State Park Mobile Food Vendor), O'ahu Curtis K. Hong (Diamond Head State Monument Food and Beverage Vending), Bottling Group, LLC, (Diamond Head State Monument beverage vending), Erlinda Molina Villanueva (Ahupua'a O Kahana State Park, Agricultural use), Young Men's Christian Association of Honolulu, Hawai'i Climbing Coalition, (Ka'ena Point State Park, Outdoor Recreational Activities), Discovering Hidden Hawai'i Tours, Inc., (Nutridge House and Grounds being portion of Pu'u 'Ualaka'a State Wayside for Use as a Venue), Maui: Maui Ice and Soda Works, Ltd. (Wai'anapanapa State Park, Beverage Vending), Island Inspirations, LLP (Makena State Park Food Service Vending), Hawai'i: Republic Parking Northwest, Inc. (Hāpuna Beach SRA, Parking Concession), Adventures in Paradise, Inc., Kona Boys, Inc., Iwa Kalua (Kealakekua Bay State Historical Park, Commercial Kayak Tours).

Curt Cottrell, administrator for Division of State Parks-PARKS conveyed item E-1. Cottrell explained that the Annual renewals for 23 RPs on different items would be P6 Discover Hawaii Tours—RPSBO5022. \$4,730 or 8% of gross, whichever is higher should be in there. These RPs provide operating costs for Parks Service. One portion of portfolio to generate income for operation. Asking Board to approve continuation of RPs. Pulled one item out from Nutridge, currently working with tenant regarding their modification of building on the National Register. Believe they will be able to correct the problem within the 6 months allowed and then they will come in again for approval for the rest of the year.

Chair Case asked if they should note exception for Nutridge Permit, at the start of the submittal. Also noted that she used the facility under the public use clause. Great experience and hopes other community groups also take advantage of that.

Member Downing asked out of these 23 how many have percentage rents.

Steve Soares, PARKS property manager introduced himself and explained that generally, long term dispositions for commercial activity, so RPs are for transitions. 10 are base rent or percentage of gross.

Member Roehrig showed general opposition to the whole process. Member Roehrig preferred the RPs presented separately and on their own merits. Noted that there is testimony against some of these permits. Are there some that have been there for a long time and are too comfortable? For example, a gated community in Kona has an RP and they do not let the public in. Would like to look more closely at this type of permit. Would like to make sure that there are legitimate reasons for each of these.

Cottrell added that typically RPs allow PARKS to figure out how this relationship will work. Some will be transitioned to long-term leases, which is less effort, and will be done through bid.

Member Yuen added that he supported the use of RPs as a mechanism for a test run.

Member Woodside supported but suggested that the submittal also be broken up by use type and why the use type makes sense.

Soares added that he will make better effort to include the evolution of the permits in the submittal. Noted that parking concession contract has allowed for a significant increase in revenue for State Parks. Only one parking contract is still a Revocable Permit, but the process has helped Parks ensure that they constructed leases that work for them.

Member Gomes asked for clarification about the way the Kealakekua kayaking permits are lets and when you say prior to board approval for certain things if it was amended or approved as is. Cottrell mentioned that it was a combination of all.

Ted Meyers added that he was doing the permit to land process on Nualolo Kai on Napali since 1981. Clancy Graff went through OCCL.

Member Yuen asked what the unauthorized landings at Nualolo are. Myers responded they weren't but are at other places.

Member Gomes added if they want to see anyway that staff would help with improvements to what you are doing now, or with enforcement? Permit holder is supposed to report illegal activity as a condition of their permits. Meyers added that the system works really well. 3 companies allowed to go in, they work together. Also help the Kokua group that helps to maintain the sites there. Encouraged board members to visit.

Member Gomes continued to mention that there was some discussion about types of uses, including filming permits. In general, there are no problems at Nualolo. Member Oi noted that kayaks land at Kalalau do not need a landing permit.

Pohai Ryan. Non-Profit for NHHA Executive Director introduced himself in support for Discover Hawaii Tours and expressed support for DLNR (as a former legislator) regarding the Nutridge Lease. Also noted that Discover Hawaii Tours is working hard to include Hawaiian culture in their programs.

Unanimously approved as amended (Yuen, Gomes)

ITEM J-1 Discussion with the Department of the Attorney General regarding the status and possible settlement of GKM, Inc. v. State of Hawaii, et. al., Civ. No. 15-1-054K that relates to Harbor Lease H-82-4 dated April 8, 1983, as amended, for Tax Map Key 7-4-08, Parcel 42.

The Board will go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities and to engage in attorney-client communications. (No Staff Submittal)

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

Unanimously moved to go into Executive Seccession (Yuen, Gomes)

10:38AM Executive Session

11:15AM Reconvene

ITEM D-8 Approve Essential Terms and Conditions of Development Agreement, and Proposed Plans and Specifications for Improvements for General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee; Authorize Extension, Amendment and Restatement of General Lease No. S-4212, Ruby & Sons Hospitality, LLC, Lessee, for an Aggregate Term of 55 Years, Kama'ole, South Kihei, Maui, Tax Map Key: (2) 3-9-004:029.

Kevin Moore from LAND introduced himself and detailed item D-8. The act lessee is trying to get this lease extension processed under sunsets at the end of this month, we currently do not have complete information. The appraisal report was submitted as part of testimony, but omitted one building. Full assessment is \$2,431,611, and the Lessee will make significant improvements for a 37-year extension. Staff recommendation is to approve.

Member Gomes brought up to clarify the timeframe for improvements being 36 months from execution of development agreement.

Member Yuen asked about a clause that the photovoltaic panels should state that they stay with the property or should they should not be counted as improvements, which are permanent.

Member Gomes asked if the photovoltaic panels are still viable after 37 years and that will we be responsible for removing them.

Member Roehrig brought up the idea that solar panel technology is updated every 6 months and that in 37 years they may be cheaper and more efficient.

Member Yuen expressed that it would not be a big deal for the state to remove them if they are not running.

Bernard Bays, attorney for lessee introduced himself and expanded on Item D-8, Bays mentioned that the lease should include a provision from stripping fixtures from property.

Member Yuen mentioned that he would like a clause that they cannot take panels, although the state can consent that they can be released.

Bays mentioned that the PV system would be treated as a fixture and would stay with the property.

Moore added for clarification that it would be a 37-year extension for a total of 55 years.

Unanimously approved as submitted (Gomes, Oi)

ITEM B-2 Request Board Approval to Enter into a Grant-In-Aid (GIA) Contract for Furnishing of one 30' patrol vessel for the State of Hawai'i Between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE) and Navatek Boat Builders.

Written testimony was submitted by Martha Townsend.

Jason Redulla, Acting Administrator for DOCAR introduced himself and explained item B-2.

Member Oi asked if this go out to bid and if there were other companies able to provide.

Redulla answered that this was done through a GIA process; Navatek applied through the legislature and was funded through the legislature and release through the governor.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-10 Amendment of General Lease No. 5630 for Pier Purposes by Changing the Rent to Gratis; University of Hawai'i, Lessee; Waimānalo, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-1-014:014.

Member Yuen disclosed that his wife works for HCC and would continue to participate in discussion.

Kevin Moore-LAND introduced himself and item D-10. There was a change in rent from the amount stated (66,000 semi-annually) to gratis. UH has more expenses than revenue on this lease. The leases to government entities are supposed to be gratis. This will streamline accounting for Land Division.

Unanimously approved as submitted (Oi, Roehrig)

ITEM D-12 Authorize the Issuance of Right-of-Entry for Surveying and Engineering Study Purposes Regarding Proposed Schofield Generating Station; Hawaiian

Electric Company, Inc. Applicant; Wahiawa, and Waikele, ‘Ewa, O‘ahu, Tax Map Key (1) 7-6-001:portion of 006 and (1) 9-4-012:portion of 011.

Kevin Moore, LAND, presented item D-12 with a request to let HECO onto property for surveying purposes of a future transmission line corridor.

Unanimously approved as submitted (Gomes, Oi)

ITEM B-1 Request Board Approval to Enter Contract for furnishing of twenty Semi-Automatic Rifles and ten 12 gauge Shotguns for the State of Hawai‘i Between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE), and Security Equipment Corp.

Written testimony was submitted by Ms. Barbara Barry.

Jason Redulla, acting administrator for DOCARE, introduced himself and item B-1.

Member Oi asked if the one year contract meant that they have one year to provide them with the items. Redulla responded that they would. As a follow up, Member Oi asked if there is a breakdown of the different items. Redulla responded that they would get it.

Member Oi continued on asking if the officers currently supply their own weapons. Redulla responded that there are 2 types allowed, Government issued and personal weapons that can be used in a supplemental capacity.

Member Woodside asked how many of these weapons are new and how many are used. Redulla answered that all would be new and to add, modern day firearms are needed to address modern situations.

Member Woodside asked if these weapons fall within the same category as supplemental weapons that officers can purchase on their own. Redulla mentioned that they were and that they were types of weapons that were common in law. Member Woodside asked if this was necessarily increasing the type of firepower that DOCARE officers were currently using. Redulla answered that this just allows more officers access to these type of weapons.

Member Gomes asked how many conservation resource enforcement officers were there on Oahu and what the inventory of weapons was.

Redulla responded that there were 35 on Oahu, 20 guns on island, therefore, short 15 guns. Member Gomes mentioned that even though with the request there still would be a lapse in coverage to officers statewide.

Redulla responded that this request will make DOCARE a whole. DOCARE would have enough weapons for all officers, the weapons will be accessible to the officer, and should be safely secured in their corresponding patrol vehicles.

Member Gomes followed up asking about the break-ins into a vehicle when the officer is not there.

Redulla responded that DOCARE would develop policies to instruct officers on what to do with their weapons, for example, they cannot leave their weapon in vehicle overnight and if the officer is on duty, the weapon in the vehicle would be locked.

Member Gomes followed up asking if there would be guidelines for the officers if shots were fired and what protections are in place for them and if there be measures to protect the state with liability.

Member Woodside asked if DOCARE could share examples of where and when this type of firearm had been imperative for our DOCARE officers.

Redulla responded that the officer would first try to understand the totality of information to decide on what kind of situation they would be facing. Following that they have to determine the type of force, including weapons that would be needed. Being based off of a judgment call, the officer is thoroughly trained in firearms since they often work solo. Often times, Poachers have higher caliber hunting rifles. DOCARE is usually only armed with a service pistol, being outgunned. The better equipment increases officer safety.

Member Woodside asked what percentage of staff is currently carrying supplemental firearms of this type.

Redulla responded that a very few, although he does not know the exact amount.

Member Woodside followed up stating that this is a very big change in the way operate.

Redulla responded that the weapons will be readily available for all or most of our officers.

There is ongoing discussion about the public use of these type of weapons and their availability in Hawaii.

Member Gomes thanked Redulla.

Marti Thownsend introduced herself and testified on item B-1. Thownsend had concerns about the proposal before the board and wanted more public participation. Townsend did not believe that arming the department further without additional prudence and caution and noted that arming law enforcement makes things less safe.

Townsend proposed to see more funds to go into hiring more officers and training. For example, Kaena point several years ago highlighted how dangerous situations can be when a DOCARE officer faces the public in a volatile situation, also mentioned was that the Mauna Kea situation was not handled well.

Member Yuen clarified about the policy changes going on and how DOCARE officers have a handgun but no rifle or handgun and asked about the process as to how a conclusion was drawn that DOCARE needed these weapons.

Redulla pointed to the auditor's report in which DOCARE was criticized for not having these type of weapons when faced with superior firepower. DOCARE has been trying to increase

firepower as a way to address auditor's concerns, but currently the amount is not enough for all officers to have the entire time.

Member Yuen asked what the lockable mechanism was.

Redulla responded that there was various mounting mechanisms such as heavy duty metal locks so that they can't easily be removed. Also noted is that there is a lock that covers over the action (trigger) so that the gun cannot be fired in the locked position.

Member Oi asked how many Officers are on duty in Kauai and that Westside of Kauai is a hotspot; would these weapons help the officers decrease poaching

Redulla responded at least 4 on Kauai and that DOCARE as law enforcement officers with a natural resource focus are not immune to active shooting situations.

Member Gomes added that Officers are not allowed to shoot a mammal just because they come across in the field.

Member Yuen was more concerned about the type and training of officers than the type of gun that they have.

Member Oi mentioned that it would be better to have more officers, rather than more guns and to try to fill all of the vacancies.

Member Woodside brought up the issue of increased militarization and did not believe that 3 DOCARE officers with side arms can effectively handle a situation with one person with a semi-automatic weapon. Member Woodside believes that more staffing is not the best answer but that living in a new norm, DOCARE has to continue to have the training that makes them reflective of our community so that our community can be different and not fall to the new norm.

Member Gomes mentioned that the DOCARE has to get fully staffed.

Unanimously approved as submitted (Roehrig, Yuen)

ITEM B-3 Request Approval of Student Manual, Instructional Videos, and Online Course Updates to the Hunter Education Program Curriculum.

Item Withdrawn

ITEM C-1 Request for Authorization for the Chairperson to Solicit Bids, Execute, Amend, and Extend a Contract(s) to Furnish and Install Solar Photovoltaic Systems for Department of Land and Natural Resources, Division of Forestry and Wildlife – Hawai'i District

And

**Request Approval of Declaration of Exemption to Chapter 343, HRS,
Environmental Compliance Requirements for this Procurement.**

Sheri Mann with the Division of Forestry and Wildlife-DOFAW presented item C-1.

Unanimously approved as submitted (Roehrig, Yuen)

ITEM C-2 Request for Approval to authorize the Chairperson to Negotiate and Enter into a 6 Month Service Agreement with the Regents of the University of California Davis to Provide Analysis of Genomic Data, and to Provide an Expert Determination of the Level of Hybridization of Hawaiian Ducks on the Island of O‘ahu.

And

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

Jim Cogswell-DOFAW Wildlife Manager conveyed item C-2.

Member Gomes asked if Cogswell thought 6 months was enough time or if they were going to come back to the Board. Cogswell said that samples were taken and there were no delays.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM F-3 Discussion with the Department of the Attorney General regarding the status and possible settlement of Matthew N. Wynn and Frank Crivello v. Suzanne Case, Civ. No. 14-00356 DKW RLP that relates to commercial fishing licenses issued by the Division of Aquatic Resources.

The Board will go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities and to engage in attorney-client communications. (No Staff Submittal)

No staff submittal/ non decision making

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

Unanimously moved to go into Executive Session (Yuen, Gomes)

12:24PM Executive Session
01:21PM Reconvene

ITEM D-14 Annual Renewal of Revocable Permits on the Islands of Hawai‘i, Maui, Moloka‘i, Kaua‘i and O‘ahu. See Exhibit 2 for list of Revocable Permits.

ITEM D-14 Revocable Permit 7263, 7264, 7265, 7266

Written testimony was submitted by William J. Aila, Jr., Marjorie Ziegler, Martha Townsend, Lela Kalama and Linda Yvonne Leilani Mills.

Chair Case asked if any of the public was present for anything other than D-14 RP’s 7263, 7264, 7654, and 7266. Following that Chair Case asked that LAND address the items for which there would potentially be a contested case first and then separately address the other RP’s.

Kevin Moore, LAND, introduced himself and item D-14, RP’s 7263, 7264, 7654, and 7266. Moore noted that the items for which there is a contested case are generally for land and water for permits in Hana and Nahiku. Originally issued in 2000, they have been issued annually since then. Staff recommendation is to continue the RP because there is no change in use. There is also no change in rent.

Member Roehrig showed concern on the entire list in needing to do these revocable permits differently and wanted to like them to be addressed separately and justification for each one be included in the staff submittal. State leases need to go out to bid unless they are 501c-3 or other specifically excluded situations.

Member Gomes asked if they had a pending court case on these particular leases that need to be resolved.

Moore responded that LAND has been in communication with the board counsel regarding the staff request today.

William Aila, Deputy Director of Department of Hawaiian Homelands-DHHL introduced himself and testified on all RPs but most in particularly the water RPs. DHHL objects to the submittal because the lack of information in submittal precludes DHHL from informing their beneficiaries on the impacts of these RPs. DHHL has special privileges and duties regarding water rights. Routine renewal of RPs raises procedural issues. Very few of these RPs appear to be short term issues. However, DHHL understands the complexity of these issues. Parts of this decision are in litigation and in contested cases. Mahalo for the ability to comment on this complex issues.

Chair Case asked if DHHL receives water under any of these permits.

Aila responded that they did but was not sure on exactly which permits. Aila also added that some of their beneficiaries receive county water.

Chair Case asked if those were for domestic uses.
Aila responded that some of them were.

Chair Case asked if it of public trust use.
Aila responded that it was but that there are many public trusts that uses balance. Also, DHHL is not involved in the EMI litigation.

Chair Case asked what the beneficiaries of the taro farmers are.
Aila responded that they have different classes of beneficiaries. Those with 50% blood quantum with existing leases, those with 50% blood quantum and on the wait list, and those with 50% blood quantum and entitled to be on wait list. So yes, there are probably taro farmers among our beneficiaries.

Chair Case asked if their beneficiaries are able to get water in other ways.
Aila responded that they could pull water out of the stream, but they would have to go through the water commission.

Member Gomes noted that the water goes to county and then is distributed throughout different parts of Maui, including the south side.

Member Yuen asked how many beneficiaries are being served by this water source.
Aila responded 2 subdivisions, about 200 and noted that we may have other beneficiaries outside of those subdivisions that may be impacted.

Member Yuen followed up by mentioning that they don't have DHHL lands in valleys of water being drawn from.
Aila mentioned that they have lands in Kaenae and Hana.

Member Yuen asked if that was from the 1990 Transfer.
Aila responded that it was.

Member Roehrig asked if the county of Maui was here.

Chair Case wanted to hear from Alexander and Baldwin on the system and then from Maui County on the distribution system.

David Schulmeister, counsel for Alexander and Baldwin, introduced himself and testified on Item D-14. Schulmeister explained that this is a complex situation and we were not aware of the fact that these permits come up annually. A & B does not apply for them annually and this all started in 2001 with the application for the long-term lease because A&B wanted more certainty. So the contested case hearing pending before the board was requested in 2001. Both the long-term lease and RPs are in that contested case. A contested case hearing in 2005, and findings of fact etc., was issued in 2005. The State has public trust duty to duly consider public interests including usable and beneficial public interests. We believe the RP has holdover status because the long-term lease auction was held up in contested case. The question is, should the diversions continue while the contested case and challenges proceed, as well as processes that have to go on an EIS to in-stream standards.

Schulmeister went over the various releases of water and progress on the in-stream flow

standards. It is not true that over the past 14 years nothing has happened. We no longer divert many of the streams on that system.

In addition, Schulmeister thought that the RP was in a hold-over status, and has been since 2007. These items were never appealed after the contested case, so we believe they are still in a hold-over status, with conditions that if someone came forward to show hardship over the lack of water, they could come before the board. Issues should not be re-litigated, although it might be re-litigated in the Carmichael case. However, the Carmichael case is limited to whether an EA should be done. In 2008, the Water Commission came out with initial in-stream flow standards for the 1st 8 streams we never appealed them. The 2010 second decision was appealed and leads to where we are now.

Member Roehrig asked if they had gotten legal notice of the board action. Schulmeister responded that they did not receive anything in advanced. The desire was on the part of certain parties to get to the point where the courts will rule that the diversions have no basis in law.

Schulmeister brought up his concern on if the diversions are not legal, then isn't the right to provide that water to the county put in jeopardy.

Member Roehrig asked how the board should take action.

Schulmeister requested to grant the request for contested case, consolidate it with the other contested case, and make sure that the issue of hold-over status is addressed and ask NHLC what they want.

Member Roehrig asked if the board should order the EIS for the long-term lease.

Schulmeister responded that it was already been ordered in the 2007 decision. The issue is the establishment of the in-stream flow standards related the EIS. Everyone agrees it has to be done, it's just when.

Chair Case asked what legal proceedings is A&B involved in now.

Schulmeister explained:

- a) in stream flow standards contested case proceeding. Dr. Miike should issue findings, conclusion and order any day now.
- b) Original contested case on long-term lease application and the then RP hold-over status.
- c) Agency appeal before judge Nishimura. Appeal to reconvene contested case that was in abeyance until in-stream flow standards were established.
- d) Carmichael case on EA.
- e) New request for contested case hearing (this one should be rolled into existing contested case hearing).

Chair Case asked how long have these diversions been going on.

Schulmeister explained Over 100 years. Some of the early phases, closer to central Maui, were done in the late 1800s.

Chair Case asked who gets the water.

Schulmeister responded that most is used by Hawaiian Commercial and Sugar. County of Maui is second biggest user and then there are some small users. Both AG and non-AG uses.

Member Gomes asked if there a time when 27 streams were supposed to be restored, but then there was an agreement to restore 17.

Schulmeister responded that back in 2008 Water commission acted on 8 of the contested cases for the 27 streams, so 19 were left with no appeal. The remaining 19 streams had no on-stream users, so the issue was more general, regarding a healthy ecosystem. The Water Commission acted on those in 2010. Approximately 14 were appealed. Request for a contested case to water commission was denied which then was appealed. Then Miike recommended that all streams should be looked at in aggregate for all 27 streams.

Chair Case asked how much water needs to be left in the stream is the bottom line question and is in process.

Schulmeister responded that A&B is hoping that a thorough baseline analysis is done to establish the baseline flow.

Chair Case followed up mentioning in terms of the public trust, the in stream flow standards will set a level that will protect downstream and environmental uses, and will determine how much water can be drawn off for other uses that are also part of the public trust. In the meantime this water has been diverted for 100 years and goes to all kinds of uses including residential drinking water and AG uses. Since 2001 amounts taken are significantly less.

Member Gomes added that those 8 streams still have no diversions and have enough water. So in-regard to taro farmers who say that their taro Loi are drying up because of water diversions, there are no diversion on those streams?

Schulmeister responded that there are no diversions on Waikomo stream and a diversion on Honopou only when there is overflow. Miike's decision will document what will be available for the diversion and the EIS will look at the impact of taking water over and above the in-stream flow standard. The consensus from 2007 is to set the in-stream flow standard first but you can start on some streams earlier if they aren't a subject of the contested case. The cultural impacts could be started earlier, especially if those studies will take longer. In fact, Kepa Maly has done a cultural impact statement (commissioned by EMI).

Chair Case asked Maui County to come forward.

Caleb Rowan representing Maui County water supply testified that the County gets 80% of their water from EMI, serving the population in upcountry Maui, which is 25,000 people, Kula hospital, Kamehameha and other schools, 2 areas of Hawaiian Homelands.

Member Roehrig asked what the board should do.

Rowan responded that they need A&B to have a legal right to take water in order for us to be able to use that water. Currently, we are involved in the litigation and we think that there is a satisfactory solution. We think there is a strong public interest in continuing the diversion that the county of Maui is using.

Chair Case asked what would be the economic impact if the water diversion would stop.

Rowan responded that there is a health and safety concern if it is stopped. Either Maui County would have to take over the system, which is cost prohibitive, or increase use of surface water. Neither are great ideas. I don't have cost numbers off the top of my head.

Chair Case asked who controls the movement of the water.

Rowan answered that EMI does the initial diversion, but then they give it to us to use, and we have our own diversions. These are mostly from the Wailua ditch (owned by EMI) and we divert off the ditch. We have had agreements with them for nearly 60 years. They have been able to accommodate growth and drought periods.

Member Roehrig asked what the practical impact was if diversions were cut off now

Rowan responded that 80% of upcountry Maui would have no water and there would be health, safety issues, and fire suppression issues.

Member Gomes added that ranchers would not have water for their cattle and majority of ranching operations use county water.

Trustee Carmen Hulu Lindsey, OHA Maui Trustee, introduced herself in opposition to reissuance for permits 7263-7266. Lindsey cited customary rights of downstream uses and mentioned that the people of Maui want water returned to the streams to Hawaiians and Farmers.

Everett Ota introduced him, testified and was available to answer questions. Ota was in opposition to the wholesale issuance of more than 300 permits, and the water permits in particular. 4 permits facilitate large scale division of water. Concerns with overall wholesale renewal of permits. DLNR needs to have a better process of review whether or not the terms of the permits are being met. Ota urged the denial of this request.

Member Gomes asked how the water would be transported or continue to be provided up county. Ota replied that he did not have the knowledge to answer the question but continued on pointing the deficiencies in the permit review process. OHA is not involved in the East Maui water litigation.

Member Oi asked if OHA would be willing to take over all of the Permits on Maui due to OHA stating that DLNR is not doing this correctly, OHA must have a better way to do it.

Ota responded that they were not in charge of ceded lands, nor were they to set up to manage permits.

Chair Case added for clarification that they were focusing on the process to review rents and the annual renewal of the revocable permits.

David Frankel and Camile Kalama from Native Hawaiian Legal Corporation introduced themselves in opposition to the Revocable Permits. Frankel continued on that there are over 300 permits and no analysis. This has been done every year with no adequate analysis. Exhibit 2 did not go in the mail, so people who received the notice by mail did not get adequate analysis under sunshine law. Documents on file with the CWRM say there are 100's of streams with diversions. Included testimony of 3 clients who talk about impacts that they suffer today as a result of the

water diversions. Frankel continued by explaining legal reasons why the permits cannot be passed. Firstly article 12 section 7, the Kapaakai analysis.

Chair Case asked if that analysis is being done in the other proceedings. Not in Carmichael as it should be in a contested case hearings. In addition, it is a consideration in the CWRM contested case.

Member Gomes recused himself because his employer uses the diverted water and he personally uses the diverted water.

Frankel mentioned his second point on how DLNR does not know how much water is being diverted from each stream, as there are no meters in any of the streams.

Chair Case mentioned that there were no meters in any stream or not in most streams. Frankel added that the data collected is not close enough to what is needed for educated discussions.

Frankel mentioned his third point on how in a public trust doctrine, there is a duty and authority to maintain the purity of the water.

Chair Case asked if Frankel means that all the water must be left in the streams. Frankel responded that unless A&B can prove no harm if they take water out of the stream. EMI is of commercial use, therefore, a low priority. The Native Hawaiian Legal counsel is not arguing to stop the county use of diversions. DLNR has the right to use the EMI ditch to transport water for the county.

Chair Case asked where DLNR would maintain it. Frankel responded that Maui County takes a tiny fraction of the diverted water. Frankel continued requesting that either you do not pass the RPs or must hold a contested case so that they cannot make a decision.

Chair Case mentioned that is new interpretation of a contested case. Frankel disagreed.

Chair Case's concern was that if a contested case is requested and no decision is made, on December 31, the water runs dry, then it becomes a new interpretation of a contested case. Frankel disagreed and mentioned on December 31st, EMI cannot take water, but DLNR can continue to take water for the county. EMI can continue to divert water through the EMI systems.

Kalama mentioned that about 2/3 of the water comes from state land and 1/3 from their own EMI lands, thus, the permit would stop about 2/3 of water flow. Frankel added that the decisions that we are requesting for allows us to sit down and negotiate with A&B.

Kalama added that 5 streams were restored in 2008 but there were problems. Around 2009 a stream monitor was destroyed making it difficult for farmers who don't control the water. There

are multiple diversions on the streams. EMI says that they release all flows on low flow days, but the in-stream flow standard (IFS) was not met on several days. Unclear whether the lack of water is from drought or from diversions. There are no current real time gauges on the streams which means that NHLC clients can't address their water problems in a timely manner.

Chair Case mentioned that there needs to be a stream gauge that shows how much water is entering a stream above a diversion point and asked how much water is in the stream after the diversion? This is an expense, but it would allow us to better manage the water flow.

Frankel mentioned that neither the board nor CWRM have ordered water gauges, nor EMI and A&B could have paid for them. Frankel continued stating that the item could not be passed because this would be in violation of 343 and that Water diversions are not minimal and almost by definition required by an EIS. Frankel noted that as a part of negotiations A&B wanted to be reimbursed for the EIS, if they did it, and had not gotten a long-term lease on the four permits. Member Yuen was confused from Frankel's analysis and added if A&B puts their money into an EIS, and that they don't get a lease, Member Yuen did not see why they shouldn't get their money back.

Frankel suggested that the state to do the EIS and that they can sue for Quantum Meruit.

Member Yuen added that there is an enormous amount of money that will have to be spent on the EIS and did not know why whoever gets the bid shouldn't have to bear with the costs. Kalama brought up that the assumption that the bid will be for the same project, and that may not be true.

Member Yuen added that the bid will be for the ability to divert and to his understanding is that the winning bidder will reimburse the cost of the EIS.

Frankel brought up that there could easily be an EO diversions to county over the EMI easement and did not believe that county water is a problem, which is not the current issue before the board.

Chair Case asked Schulmeister to go over his belief that the revocable permit is in abeyance until the IFS are set and a holdover clause is on page 2 of the doc that was given to the board. In addition, power and authority to hold-over the RFP is based in constitution and in the public trust doctrine, which were not appealed.

Member Roehrig's concerns were that the board had a trust responsibility to not harm county users by taking their water away, through the action that the Native Hawaii Legal Corp. are asking to take. Member Roehrig asked Frankel that the board needs to compensate them and asked for a response. The land board as a whole is to provide due process to those people who we would be taking water away from.

Frankel responded by mentioning that NHLC is not proposing to take water away from the county and that they were not discussing about revoking a permit. They have a right to a contested case.

Schulmeister mentioned that the people affected by this decision would have a due process right.

Member Yuen mentioned that the board has made a number of determinations about how much water should remain in the streams. To add, there has been some judgment about how much water should be remaining. Member Yuen asked if the board prejudices this issue by saying that the amount of water should stay in the stream.

Frankel responded that they would because currently there is no information on which to base the facts.

Member Roehrig mentioned that the following is discussed using a prejudgment argument and that the board is trying to get information in a clear and transparent way, as required by law. Member Roehrig informed Frankel that he should be aware when he accuses the board of prejudging and that the board is trying to figure out what is in the public interest.

Kaulu from Maui testified on the behalf of Mahealani Wendt, opposing the 4 water permits and argued that the BLNR is colluding with EMI and A&B.

Marjorie Ziegler introduced herself and read written testimony in opposition to the 4 water permits. The Conservation Council of Hawaii is speaking on behalf of native stream animals. Ziegler's concern was the amount of water being diverted and wanted a list of streams and how much water is diverted from each stream and the impacts of the diversion on the environment and native fauna. Ziegler mentioned that the best use of East Maui Stream water is protecting the native fauna and flora because they are unique in the world.

Marti Townsend from Sierra Club, testified in opposition to the 4 revocable permits. Townsend addressed the profit motive behind the diversion of public trust water and that continuing to permit revocable permits in this way goes against good public policy. Sierra Club opposes all of the submittals.

Member Roehrig pointed out that there was a robust discussion on this issue.

Ziegler read the testimony of Linda Yvonne Leilani Mills in opposition, but in support of farmers and practitioners.

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

Unanimously moved to go into Executive Seccession.

04:21PM Executive Session

04:50PM Reconvene

Member Yuen said that the board makes no decision on the staff submittal to continue the 4 water permits. The board affirms the holdover status of the 4 Revocable Permits. The Board's intent is to maintain the status quo while the litigation continues which this decision is not meant to influence any further decisions. Member Yuen also added that the contested case request is

acknowledged and expects it to be consolidated with the current consolidated case which will be taken up at a subsequent board meeting.

Member Roehrig seconded the motion.

Unanimously approved as submitted (Yuen, Roehrig)

ITEM D-14 Annual Renewal of Revocable Permits on the Islands of Hawai‘i, Maui, Moloka‘i, Kaua‘i and O‘ahu. See Exhibit 2 for list of Revocable Permits.

Marti Townsend testified that there was not enough information to make a decision on any of these permits and wanted to bring up if anyone was interested in these permits.

Member Gomes recused himself from this board because of a relationship with Ulupalakua.

Marjorie Ziegler testified stating that there needs to be more information on how the rents are determined and asked if some of these permits should be moved to a long-term lease.

Member Oi brought up to Kevin Moore that the properties that used to be inspected to be sure that they are in compliance before they are sent in for annual renewal.

Moore believed that this is not done in every district for every permit.

Member Oi followed up stating that it would be good to do and also in a short statement saying that they were in compliance to be included in the submittal, explaining why an RP can be more cost effective than in a long-term lease.

Member Roehrig wanted all big island parcels checked and either put out to bid, stopped, or provide a good reason to continue the RP's. In added for those that have water, if the water is going to the lessee or going to other places.

Chair Case elaborated that the general gist is to provide more transparency for each piece of land, similar to what is being asked of HDOT and parks.

Moore responded that there may be some parcels that we don't want to change to fair market value.

Chair Case agreed and added that as long as you put the submittal is a reason for not charging fair market value.

Member Yuen mentioned that the board expresses these same issues every year and that the idea is that a long-term tenancy should be a lease and that most of the time there is a reason for the RP.

Moore responded that the area was planned to be a commercial subdivision but the money for that went away.

Member Yuen mentioned that if this is not going to be put on a long-term lease then you will end up with a big hole.

Moore mentioned that he was not sure about the location but that they were keeping some in RP status because they are next to other state lands where the lease is about to come up.

Member Yuen made it clear that in the future he would like to suggest that there be a two sentence reason as to why these are not being leased and would suggest an amendment that the Country Club on Banyan Drive come back in July 2016 for review, reason being that the lease is based on ground lease value. Member Yuen continued on adding that he wanted to see a report on the second RP, the McCandless Ranch, which is environmentally sensitive and wedge shaped. Member Yuen wanted to see concurrence by DOFAW on this RP.

Member Roehrig wanted to also see the Kukio resort pastureland brought back since they lock people out of the public.

Member Downing mentioned if they could break these up by island instead of bring all 300 of them to the board at a time.

Member Yuen made motion to take out Ulupakua ranch and request to bring back 3 specific RP's mid-year. Member Yuen also noted of instead of bringing all 300+ at the end of the year to bring them back in increments of 4 meetings, one for each island group. Member Yuen added that they should be accompanied by a brief statement why they should not be on longer term lease but RP and that if the rent is not market rent there should be statement on basis to justify its fair rent.

Unanimously approved as amended (Yuen, Roehrig)

The Board segregated this item into three parts and acted on each separately.

- a) The first part related to Revocable Permit Nos. (RP) 7263, 7264, 7265 to Alexander & Baldwin, Inc., and RP 7266 to East Maui Irrigation Co. Ltd. The Board took no action to continue these permits, but affirmed their holdover status pending the determination of the in-stream flow standards for the streams covered by the permits. The Board clarified that the permits are not a long-term disposition of water. The Board acknowledged receiving a request for a contested case hearing, and stated that it was inclined to consolidate the request with a prior contested case request on the same matter, but that formal action on the request for contested case would be reserved for a later Board meeting.**
- b) For all the remaining revocable permits (with the exception of RP 7581 to Ulupalakua Ranch, Inc.), the Board approved the request as amended. The**

Board directed staff to return to the Board in June 2016 with a report on three specific permits: RP 7867 to the Association of Apartment Owners of Country Club Hawaii, Inc., RP 5127 to McCandless Land & Cattle Co., and RP 7193 to WB Kukio Resorts, LLC. Specifically, the Board expressed its desire to revisit the rent charged under RP 7867, and assess whether RPs 5127 and 7193 should be continued past June 2016.

- c) **RP 7581 to Ulupalakua Ranch, Inc. was continued pursuant to staff's recommendation.**

- d) **Issuance of Direct Lease to Hawaii Community Development Authority for Property Management Purposes; Consent to Subleases, Fisher Hawaii Inc. and Hawaiian Dredging Construction Company, Inc., Sublessees; Kakaako, Honolulu, Oahu, Tax Map Key: (1) 2-1-051:041.**

Approved as submitted.

5:00 PM Member Roehrig left meeting.

ITEM F-1 Request for Final Approval to Adopt a New Chapter Under Hawai'i Administrative Rules as Title 13 Chapter 86.1, "Sea Cucumber Management," to Regulate the Harvest of Sea Cucumbers from State Waters.

Alton Miyasaka from the Division of Aquatic Resources- DAR presented item F-1 as a follow up on emergency rules that were established and changes increase in daily bag limits.

Inga Gibson, introduced herself and testified on item F-1. Gibson appreciated the moratorium but felt that decisions are being made not on science or date. There are too many considerations given to the Aquarium industry with no opposition to closing commercial take or for accommodating personal use. Gibson elaborated that the sea cucumber take range from 2002-2024 but is increased at a higher take level which is 3600 as proposed for aquarium trade. Gibson did not understand why this is management if the allowed take is higher than the current take. Gibson mentioned that science and data are still lacking and the industry take is most being exempted from regulations. Lastly, Gibson asked the board as to why continue to allow aquarium trade and not to allow exemption for aquarium trade until there is more science to inform of the board's decision.

Marjorie Ziegler representing Conservation council for Hawaii, introduced herself and testified. Ziegler did not understand why the allowable take is higher than current take and that the proposal does not have enough scientific evidence to support the conclusions. Ziegler questioned DAR if there is a limit to the number of permits that could be issued and also questioned how they could regulate if you cannot limit the number of permits that could be given out.

Chair Case asked if there was any way to monitor the industry over the long term. Miyasaka responded that the 3600 limit is based on the last 8 years of data. The aquarium fish industry is required to report annually so that the number is based on that set of data, if rounded to 3600 or so, that is about 300 animals collected per month.

Chair Case followed up asking if there is a way for DAR to monitor the health of the beach system at various levels of sea cucumber take.

Miyasaka responded that they do monitor water quality regularly and that they would start including sea cucumber data.

Member Gomes mentioned that this is recent and don't know what the reproduction rate is for a base line.

Miyasaka added that they have 40 years of data from the aquarium fishery, they looked at the most recent 8 years and thought it would be more conservative to look at the years including the economic downturn and when the demand for sea cucumbers would be lower than previously.

Chair case added that you could only collect loli for aquariums on Oahu and that no commercial take is allowed.

Miyasaka responded that we wanted to cap it where it is so that it did not expand.

Unanimously approved as submitted (Yuen, Downing)

ITEM E-2 Issuance of Right-of-Entry Permit to Galmiche Entertainment LLC. For Aerial Fireworks Display on December 31, 2015 at Sand Island State Recreation, Sand Island, Honolulu, O'ahu, Tax Map Key: (1) 1-5-041:006 (Portion).

Curt Cottrell, administrator for Parks introduced item E-2.

Member Downing asked what the plans for clean-up were. Cottrell responded that they will get it as a part of the right of entry on top of getting a security deposit.

Mike Gomiche from Gomiche entertainment and Mike Miller with Ahuna special effects, introduced themselves and were available for questions.

Member Downing asked how many mortars there were at this show. Gomiche said there was about 2,000 shots in combination of mortars with repeater taps, 1,200 of them being mortars and the rest being considered shots.

Member Downing asked were all the rubbish landed. Gomiche answered that they will have patrol boats to see if anything goes in the water, in addition they work with coastguard, harbors, and the fire department. The Dewbris mostly goes on land and the actual tube stays in the pipe that launches the firework.

Cottrell noted that the park is closed to camping and that no people will be at Sand Island, people will view the fireworks from Aloha Tower.

Member Downing made motion to approve as to add a clean-up condition in the revocable permit.

Unanimously approved as amended (Downing, Yuen)

ITEM F-2 Request for Approval to Enter into a Federally Funded Sole Source Contract (Not to Exceed \$199,492.00), Between the Board of Land and Natural Resources and Cascadia Research Collective, to Provide Services to Support State Efforts to Minimize And Mitigate Incidental Take of False Killer Whales and Other Endangered Cetaceans in Hawai‘i; Declaration of Exemption for Contract Actions Under HRS Chapter 343 And HAR Chapter 11-200.

Alton Miyasaka had no changes to item F-2 and there was no public testimony.

Unanimously approved as submitted (Yuen, Gomes)

ITEM E-3 Request for Approval of a Proposed Settlement with the United States Environmental Protection Agency for Safe Drinking Water Act Violations, Large Capacity Cesspools at Wai‘ānapanapa State Park, Hāna, Maui (TMK: 2-1-3-005:009); and

Request for Delegation of Authority to the Chairperson to Approve and Execute the Final Settlement.

Curt Cottrell-PARKS presented Item E-3. Cottrell informed the Board that there was a typo on page 3, 6 lines down and that the date should be 2014, rather than 2015. Parks have been taking down large capacity cesspools over time at Waianapanapa revised definition of large capacity cesspools. Parks decided not to contest the fine but to clean up the cesspools and to negotiate a lower fine. Legislature will need to approve the settlement.

Unanimously approved as submitted (Gomes, Yuen)

ITEM L-1 Appointment of Charlie White to Serve as a Director of the Mauna Kea Soil and Water Conservation District.

Alyson Yim representing Engineering-ENG had no changes and no public testimony.

Unanimously approved as submitted (Yuen, Downing)

ITEM D-1 After-the-Fact Request to Close State Unencumbered Beach Lands within the Ground Hazard Area for University of Hawai‘i – Hawai‘i Space Flight Lab Missile Launch, Waimea, Kekaha, Kaua‘i, Tax Map Keys: portions Seaward of (4) 1-2-002:040, (4) 1-2-002:036 and (4) 1-2-002:001.

- ITEM D-3** Issuance of Right-of-Entry Permit to Hawai'i County Fire Department on Unencumbered State Lands, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-012:024.
- ITEM D-4** Consent to the Assignment of General Lease Nos. S-4303 & S-4379, David S. De Luz Sr., also known as David De Luz, as Assignor, and General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Revocable Trust dated October 23, 1991, as amended, as Assignor, to Big Island Toyota, Inc., as Assignee; GL S-4303 & S-4379 situated at Waiākea Industrial Lots, Lot B, Block 48, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-058:015; GL S-5848 situated at Waiākea House Lots, Lots 15 and 16, Block 39, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-037:063.
- ITEM D-5** Approve a 10-Year Term Extension of General Lease No. S-3604, Roger Antonio, dba Antonio's Repair Shop, Lessee, Pursuant to Act 207, Session Laws of Hawai'i 2011; Lot 46, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:002.
- ITEM D-6** Approve a 10-Year Term Extension of General Lease No. S-3601, BCI Coca-Cola Bottling Company of Los Angeles, Lessee, Pursuant to Act 207, Session Laws of Hawai'i 2011; Lot 33, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-049:007.
- ITEM D-9** Rescind Prior Board Action of July 8, 2005, Item D-17, Withdrawal from General Lease No. S-4488, University of Hawai'i, Lessee; Set Aside to Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management and Construction Right-of-Entry; Kalihi, Honolulu, O'ahu, TMK (1) 1-2-025: portion of 017.
- The purpose of the request is to rescind the approval to withdraw from General Lease No. S-4488.
- ITEM D-11** Request to Amend Prior Board Action of February 14, 2014, (Item D-16), Cancellation of Governor's Executive Order No. 172 and 784 and Reset Aside to Department of Human Services for Hawai'i Youth Correction Facility, Kailua, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-2-006:002 and (1) 4-2-009:006.
- The purpose of the amendment is to include Governor's Executive Order No. 357 and 1692 into the cancellation and reset aside.
- ITEM D-13** Amend Prior Board Approval of August 14, 2015, Item D-12, to Authorize Negotiation and Execution of Memorandum of Agreement among the Board of Land and Natural Resources, the Department of Defense and the

Department of Accounting and General Services for Civil Defense Warning Sirens on Land Under the Direct Management of the Department of Land and Natural Resources, at Various Locations, Statewide.

The amendment is to clarify that upon the execution of the MOA among the DLNR, DOD and DAGS, the Land Division will submit a license agreement and report on the compliance with Hawai'i Revised Statutes Chapter 343 for each proposed siren site.

ITEM D-15 Issuance of Direct Lease to Hawai'i Community Development Authority for Property Management Purposes; Consent to Subleases, Fisher Hawai'i Inc. and Hawai'ian Dredging Construction Company, Inc., Sublessees; Kaka'ako, Honolulu, O'ahu, Tax Map Key: (1) 2-1-051:041.

Member Yuen disclosed that his wife works for HCC and would continue to participate in discussion. There were no changes or questions for items D-1, D_3, D_4, D-54, D-6, D_9, D-11, D-13 or D-15.

Unanimously approved as submitted (Gomes, Yuen)

ITEM D-7 Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Set Up, Firing, and all other Pre-display and Post-display activities for the 2015 Mauna Kea Beach Hotel New Year's Eve Aerial Fireworks Display on December 31, 2015, until January 1, 2016, on unencumbered State lands, 'Ouli, South Kohala, Hawai'i, Tax Map Key: (3) 6-2-002: seaward of parcel 004.

Member Downing added that he wanted the people move onto land, as to shooting onto water and within the safety zone, we can find a way to keep their debris on land. Also the submittal does not talk about wind direction. Member Downing also wanted to include a clean-up in the right of entry.

Unanimously approved as amended (Downing, Yuen)

Member Gomes made motion to Adjourn

Member Downing seconded the motion.

There being no further business, Chair Suzanne D. Case adjourned the meeting at 6:01p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Ku‘ulei Moses
Land Board Secretary

Approved for submittal:

Suzanne D. Case
Chairperson
Department of Land and Natural Resources

DRAFT