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

DATE: FRIDAY, SEPETMBER 25, 2015
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 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
Stanley Roehrig
Ulalia Woodside
James Gomes
Christopher Yuen
Keone Downing

STAFF

Kevin Moore-LAND
Randolph Lee-SHPD
Lauren Yasaka-OCCL
Ian Hirokawa-LAND
Ed Underwood-DOBOR
Jim-Cogswell-DOFAW
Sam Lemmo-OCCL
Maria Carnevale-PMNM
Alton Miyasaka/DAR
Russel Tsuji-LAND
Scott Fretz-DOFAW

OTHERS

Linda Chow-Deputy AG
Chris Kinimaka-DAGS
Drew Stotesbury-D-18
Lea Hong-D-18
Sen. Gil Riviere-D-18
Patti Miyashiro-DOT-Harbors
Alexander Shore-UH
Marti Townsend-D-17
Anthony Alton-D-14
Clifford Smith-D-14
Diana Burch-J-3
Luke Flynn-UOH
Kyle Baton-D-11
Jannell Van Newton-D-11
Doug Chin/Deputy AG
Vincent KrogKrog-DAGS
Scott Mccormick-D-18
Rep. Feki Pouha-D-18
Calvert Chun-DOT-Harbors
Ross Smith-DOT-AIR
Sterling Wong-D-17
Laurie Bucannan-D-17
Josh Nanona-D-14
Mark Hickson-F-1
Aneka Kim-J-2
Kathy Gogel-D-11
David Hemmick-D-11

ITEM A-1 Approval of May 22, 2015 Minutes

Member Downing asked that his name be added at the top of the minutes for May 22, 2015. as a member

APPROVED BY THE BOARD
AT ITS MEETING HELD ON
JAN 22 2015

Unanimously approved as amended (Gomes, Downing)

ITEM D-18 Approval for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort and Set Aside to the Division of Forestry and Wildlife situate at Kahuku, Ko'olauloa, O'ahu, Tax Map Keys (1) 5-6-003:various; 5-7-001:various; 5-7-006:various; and Approval of Acquisition of Private Lands, with Sixty-Five (65) Year Direct Lease Back and Right of Entry to Turtle Bay Resort, LLC for the Acquired Private Lands, situate at Kahuku, Ko'olauloa, O'ahu, Tax Map Key (1) 5-7-006:portion 001, portion 002 and portion 023 and 5-7-001:portion 020 and portion 022.

Ian Hirokawa representing Land Division-LAND introduced himself and item D-18. D-18 is a long standing, complex project. The AG Doug Chin briefed the board on the Turtle Bay transaction; it was approved by act 121 of SLH 2015. What is contemplated under this acquisition is a conservation easement covering the Kahuku portion of Turtle Bay. That conservation easement is roughly 568 acres. The State will acquire 52.35 acres in fee and hopefully with board approval, lease back to Turtle Bay for a nominal rent of 65 years. The overall goal is to prevent development of the parcels, and ensure public use. The acquisition will be funded by reimbursement general obligation bonds by the state. The debt service will be paid $3.5 million annually. This will probably be seen later this year. An important point is that there will be major public access.

Member Downing asked if this was public access and do the people need to stick to the trails. Hirokawa thought it was for the golf course area, and said it was likely since it is operating. The Kawela Bay side is a more general public access. There is still concern for public safety.

Member Gomes asked if camping would be allowed for the public. Hirokawa replied that it would have to be something that would be subject to; there is no guarantee right in the conservation easement. That is something Turtle Bay will have to address.

Hirokawa stressed that there was public use of the area but LAND wanted to prevent development of the land. Just to update on the requirements, the state has contracted an appraiser to prepare a report. The applicant has provided survey maps. In regards to environmental and title report encumbrance issues; they had been given a draft title status letter from Turtle Bay counsel. They did not want property that was state owned or a conservation unit into those documents and requirements. In regards to the Environmental study in phase 1, they found chemical releases in the wash rack area of golf course area. They also found a data gap in regards to the old Kahuku airfield. In the 1940s a tsunami had laid waste to it. They contracted with our environment consultant regarding these issues. Funds will be withheld in escrow to assist with the remediation.

Hirokawa indicated that the lease document, in the submittal there is incorrect. The lease document was supposed to be in the submittal. It erroneously got replaced with an extra copy of the conservation easement; that should be exhibit E. It will mirror the terms and conditions of the conservation easement. The conservation easement area will be privately owned by Turtle Bay,

the acquired fee side will be the state and the lease and conservation easement will be sort of sympathetic under Turtle Bay management and they will manage the land pursuant the terms of the documents, i.e. limited development.

Member Gomes asked what was considered limited development. Hirokawa explained that there are allowable development such as minor small structures, no more than 3000 sq. ft in the entire easement in the area, mostly what Turtle Bay has wanted is that they did not want to be prohibited from developing the parcels that are not encumbered by the conservation easement.

Doug Chin AG introduced himself and explained that this is a conversation easement, the usual model is that is a private owner and the state puts a private easement on it. It is not meant to be an active part, it is public access but not meant to be used for camp grounds. The access is to the shoreline. There are provisions in there to limit people on trails.

Chair Case thought that it would be helpful for Turtle Bay to also add further comments.

Hirokawa also wanted to mention in the public access. The City and County will have dedicated park land there and as part of a separate acquisition. That will be adjacent to the state owned land.

Drew Stotesbury, CEO for Turtle Bay and Scott McCormack, VP of real-estate introduced themselves. Stotesbury explained that this had been controversy when Turtle Bay first opened. They developed a conservation partner alternative; there was an understanding that gives the community that part of conservation. It took a while for the effect to take in. At the meeting in June, the AG showed aspects that are better than the state's deal. The previous deal was strictly conservation easement. The fee sale was difficult for our ownership group to understand. The original intention was the conservation easement and what they ended up with was a solid compromise. They negotiated with DLNR and the AGs. There were other aspects of the deal that make it better. There is free access to golf to Kahuku HS. A special feature, keiki pond, increased the setback to 50%. Still currently looking at a lot of area. There are 10-12 miles of trails and 100 ft. of area mauka of shoreline. They committed to an additional 40 units of spaces for parking. When they looked at developing the 3 remaining sites, there will be parking associated with those spots. There is no cost to the state.

Scott McCormack thanked the DLNR team and mentioned that there was a lot put into this.

Member Downing thought it was hard to swallow for $480 a year for 65 years leased and that they are stuck to the trails and this area has no golf course. Stotesbury responded that it goes back to how this deal was evolved; initially it was a conservation easement. In conservation easement there is no controversy in rent payment and to accommodate the state's interest. They agreed for that valuable piece of land, to do a fee sale. They agreed that we retain the fundamental aspects of use for reasonable amount of time.

Member Roehrig asked if they have a surf school. Stotesbury replied that there is one based at the hotel and that they operate out of numerous positions and Kawela bay.

Lea Hong, Hawaiian Island State Director for Public Trust for Land and Doug Cole Executive Director For North Shore Community Land Trust, both of were involved in the legislative negotiations. Hong thanked DLNR and AG was involved in working on this matter. Trails provide access to beach where you want to go. Kahuku point is a very wild shoreline, fishermen are out there all the time. There are a lot of things people want to do here. Turtle Bay made it clear that they wanted to complete their objectives. In the end, 65 years from now the state will have option of taking full control of that, and doing something special with the land. Strongly encourage board to approve staff submittal.

Representative Feki Pouha and Senator Gil Riviere introduced themselves and testified.

Senator Riviere added that he had been personally involved in this since 2006. In 2007 a lot of time was spent and resolutions were passed to preserve Turtle Bay. Back in 1986, it was a mistake that the city erred in trying to expand from 500 hotel rooms to 4000. In those days, jobs were an issue. The idea was to build another Waikiki, even a 4 lane highway from Wahiawa to turtle bay. By 1990 the Oahu regional transportation plan no longer envisioned a 4 lane highway, the project stalled for economic reasons. 2005 the project resurfaced, by aggressive investors from the mainland. The highway cannot support massive development; we now realize the need to keep a rural part of our area, for example the value of James Campbell wildlife sanctuary and Kahuku Point. In 2008, Governor Lingle addressed this to state it as a priority and created a task force. Now we have owners willing to move forward. He was strongly in support of this, it comes to a good solution to an unending problem.

Representative Pouha added Act 121 was precipitated by SB284 which died in the house when the committee deferred it. This measure helps on many different fronts, conservation, and economic liability.

Member Woodside made a motion to approve, Member Yuen seconded.

Unanimously approved as submitted (Woodside, Yuen)

ITEM D-4 Approval of License of Private Property of Bank of Hawaii as Trustee of the Kukuiolono Park Trust Estate, as Licensor, to State of Hawaii, by its Board of Land and Natural Resources, on Behalf of the Department of Accounting and General Services, Information and Communication Services Division, as Licensee, for a Transmission Tower and Radio and Microwave Communications Facility for Public Safety and Public Service, at Kalaheo Homesteads, 2nd Series, Koloa, Kauai, Tax Map Key (4)2-3-005:por.002.

Russel Tsuji Administrator for Land Division-LAND conveyed item D-4. The Department of Accounting and General Services-DAGS staff was present to answer any further questions.

Member Roehrig asked if there is any housing in close proximity to the tower and if it was a residential area.

Chris Kinimaka from DAGS, Public works division introduced herself and Vincent Krog, from ICS division. Kinimaka responded that there was no residential area nearby, it is on the southern tip of Kukiolono golf course. The direction that the signal would be shooting is west and north in the western side of Kauai. The location is 800ft above sea level. This is a redundant communication link from Mt. Kaala to Kauai. If this site goes silent, all of the communications will seize until we find an alternative site. Staff has gone out to look at the site. The system is fully operational, we did do a cost comparative analysis. It is more cost effective to rent this site instead of rebuilding a new site.

Chair Case asked if all communication would be lost with the Westside if this goes through. Kinimaka confirmed.

Member Roehrig asked how close the residential areas are and noted that they seem to be on the bottom and around the golf course. Krog responded that the golf course has a cellphone site and county of Kauai site, currently they were on the opposite site and at a rough guess is about 500 ft away from residential

Member Roehrig was concerned on the effects of the microwave on the people that live here. At Hilo Lagoon sector there is a large facility and it was brought up that microwaves could affect the melatonin to senior citizens and small children. Roehrig asked if they consider an EA to have confidence that this will not have adverse effect on people.

Krog added clarification that the microwave dishes are a pencil beam and they are not a danger to the community. Krog continued on explaining that these microwave dishes themselves put out roughly one watt, compared to the microwave that are in homes put out 1500 to 1800 watts. In addition, the bigger dishes give more gain for a smaller amount of signal. A typical system that uses sticks (LMR) utilize higher power. In either case, the goal is to shoot out over the horizon which is spread out. All power levels are administered by the FCC in the license and the beam is tight.

Member Yuen was concerned that the annual rent is steep for a 13000 sq. ft. site. Kinimaka mentioned that they appealed to BOH to give us special rates that is why they did the cost analysis on a pristine site to see if there was value.

Member Yuen asked if this location is uniquely well suited for this project. Kinimaka said that it provided key service for communications. They looked at the potential to open it up for commercial use. Historically in previous sites, since we are a public safety entity, private land owners do allow for lower rent leases.

Chair Case wanted to clarify that Bank of Hawaii application is a trustee, so they have a fiduciary duty to their trust to charge for market rent. Kinimaka responded that they did.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM M-1 Amendment to Prior Land Board Action Dated November 30, 2012, Agenda Item M-3, Regarding Acquisition of Private Lands and Set Aside to

Department of Transportation, Harbors Division, for Maritime Purposes, Kapolei, Oahu, Hawai'i, Tax Map Key: (1) 9-1-14:026 (Portion).

ITEM M-2 Issuance of Revocable Permit to Hawai'i Stevedores, Inc., Pier 2, Honolulu Harbor, Ka'ākaukukui, Honolulu, O'ahu, Tax Map key: (1) 2-1-15 (Portion).

Calvert Chun and Patti Miyashiro from DOT harbors introduced themselves and item M-1 and M-2.

Chair Case asked what the normal process for determining rental was. Miyashiro responded that they are using what our tariff is set at by Hawaii Administrative Rules

Unanimously approved as submitted (Roehrig, Gomes)

ITEM M-3 Issuance of a Massage Chair Concession to Smarte Carte, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-03:001 (Portion), Kahului Airport, Tax Map Key: (2) 3-8-01:19 (Portion), Hilo International Airport, Tax Map Key: (3) 2-1-12:009 (Portion). Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43:001 (Portion), and Līhu'e Airport, Tax Map Key: (4) 3-5-01: 008 (Portion).

ITEM M-4 Issuance of a Revocable Permit for a Ramp Office Space, Swissport USA, Inc., 'Ewa Concourse, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 066 (Portion).

ITEM M-5 Issuance of a Revocable Permit for an Office Space, TM Designers, Inc., 'Ewa Concourse, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 066 (Portion).

ITEM M-6 Issuance of a Revocable Permit for Aircraft Storage, GR3EN, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-76:020 (Portion).

ITEM M-7 Issuance of a Revocable Permit for Aircraft Storage, The Affordable Casket Outlet, L.L.C., Honolulu International Airport, Tax Map Key: (1) 1-1-76:022 (Portion).

ITEM M-8 Issuance of a Revocable Permit for Aircraft Parking, Pacific Air Charters, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-76: 023 (Portion).

ITEM M-9 Issuance of a Revocable Permit for Aircraft Parking, Waiāhole Dreams LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-76:023 (Portion).

ITEM M-10 Issuance of a Revocable Permit for a Tower to Transmit Signals for Cable Television, Emergency Alert Information and WIFI Internet Servicing the Hāna Community, Oceanic Time Warner Cable LLC, Hāna Airport, Tax Map Key: (2) 1-3-03-037.

ITEM M-11 Amendment No. 7 to Concession Agreement No. DOT-A-07-0001 In-Bond (Duty Free) Concession, DFS Group, L.P., Kahului Airport, Tax Map Key: (2) 3-8-01:019 (Portion).

ITEM M-12 Issuance of a Revocable Permit for Ticket Counter Space in Main Lobby, L & L Management, Inc. dba Big Island Air Tours, Kapalua Airport, Tax Map Key: (2) 4-9-02: 055 (Portion).

ITEM M-13 Issuance of a Revocable Permit for a Helicopter Tour Reservations Counter and Office, K & S Helicopters, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: 090 (Portion).

Ross Smith DOT-airports division introduced himself and item M-3 through M-13

Unanimously approved as submitted (Gomes, Roehrig)

ITEM D-12 Authorize the Issuance of a Direct Lease to University of Hawai'i for Educational Purposes; Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Boat Launching Facility Purposes; Sand Island, Honolulu, O'ahu, Tax Map Key: (1) 1-5-041:portions of 006, 130 and 334.

Russel Tsuji-LAND presented item D-12

Member Yuen disclosed that his wife is a professor at Hilo community College.

Member Downing asked who currently runs the boat ramp. Tsuji responded that DOBOR did.

Member Roehrig asked who was currently using the boat ramp. Ed Underwood, administrator of DOBOR responded that the members of the general public.

Member Roehrig asked if canoe clubs were using it there. Underwood responded not the actual land but adjacent to it.

Alexander Shore, University of Hawaii School of Ocean and Earth science technology, testified on D-12. Shore was appreciative of the work that has gone in this and have worked on the EA and done everything to work with the lease long term.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM J-1 Denial of Request for Consent to Assignment of Boating Lease No. BO-13120 dated December 6, 2013 between the State of Hawai'i, Lessor, and Honey Bee USA, Inc., Lessee; Denial of Request for Consent to Mortgage; Termination of Boating Lease No. BO-13120; and Cancellation of the Board of Land and Natural Resources' Approval of Non-Exclusive Term Easement to Honey

Bee USA, Inc., Honolulu, Oahu, Hawai'i, Tax Map Keys (1) 2-3-037:012 (por) and 020; (1) 2-6-010:003 (por), 005 and 016.

Board may 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.

Ed Underwood Administrator for Boating-DOBOR explained that item J-1 was a follow up to a July 10th meeting item. At that meeting DOBOR asked to terminate the lease issued to Honey Bee USA ["Honey Bee"] due to failure to pay rent as well and a performance bond that was due. The Board decided to defer action to give Honey Bee more time. Honey Bee had said that the funding should be in place by the end of August. The first funding was supposed to be in escrow, $12 million on August 1st, then [additional] August 14th and by the end of the month. But the funding did not come in and is still not in place. Underwood said the developer can give details. DOBOR reviewed documents on the proposed 50% equity partner, Icon, and was willing to answer questions on that.

Keith Kiuchi for Honey Bee introduced Deron Akiona. Kiuchi responded that funding was still in place with Icon Commercial Lending, but Icon is delayed in its extremely complex funding process. Icon has $500 million in bank guarantees to be monetized through a Hong Kong bank with the assistance of European banks. Originally to be done August 14th, it was moved back to August 31st, but now is moved back to the first week of October. Icon is at the mercy of the Hong Kong bank, which is at the mercy of the world [financial] market. It is not a question of if they'll fund but when they'll fund. The $35 million has never been an issue with Icon. It anticipates funding by the 1st or 2nd week of October. After a one week lag, the funds in Hong Kong will be wired to a Bank of America account.

Deron Akiona on behalf Honey Bee said that when we met in July, he made a statement that "if Honey Bee doesn't fund by the August deadline, then let's close it up." Akiona said two things happened to Icon. When there was a shakeup in the China market in early August Icon notified Honey Bee they wouldn't make the deadline, and Honey Bee notified staff. Honey Bee has been in communication with Icon every week. The last correspondence relayed to staff was that according to Icon, they would be "monetarized" in the first or second week of October and the money was there and we can move forward at that point.

Akiona said private-public partnerships are complicated. Although Honey Bee owes six months in back rent and is in default, he pointed out that DLNR has benefited $1.2 million in rent to the State just for the rights to develop these two parcels. Akiona said that the State made almost $600,000 more than they would have received in rent from the pre-existing leases. As developer, Honey Bee spent $4.7 million on the property.

Akiona further stated that when the RFP was put out, DLNR did not have clear title to the property – DOT, DLNR, and private individuals claimed title. He said that the developer, not the State, had to clear title. The developer had to obtain subdivision approval. It took a lot of time

and capital. Akiona also said there is an easement to the Ala Moana bridge still claimed by DOT.

Akiona also questioned what would take the place of the development and how long it would take if the lease is cancelled. He said Honey Bee will "pull out infrastructure" and what would be left would be a parking lot and an inoperable fuel dock subject to remediation. He also said the sewer permit is also difficult to get due to cost and priority with the City. Akiona pointed out there has been an overflow of 500 million gallons of sewage on the same system. The Hilton is spending millions to upgrade the sewage system for their tower development. Akiona believed it unrealistic for a commercial development (other than Honey Bee) to reach the same point in the next two or three years. He said it would be a Dept. of Health violation to operate the boat dock.

Akiona requested that the board vote for December 31st, 2015, to be the termination date, but if Honey Bee obtains funding, will ask for reconsideration. Otherwise will only have a parking lot and a homeless problem on the site. Everything is now dependent on Icon. Had the option two weeks ago to go to a bankruptcy situation but decided not to. Has 32 leases already signed – many from the former International Marketplace. General contractor signed a contract for $23 million to build the project. Handful of consultants did work and were partly paid.

Keith Kiuchi said this is no longer a Japanese developer. Except for Mr. Shimakura and one associate having a small interest, most of the investors are local - including a woman who put in $725,000 for an interest in Honey Bee. Icon is optimistic, finalized a construction loan agreement, easement agreement redlined last week. Only document left is escrow instructions. Sent letter that have approved documents, this a.m. forwarded letter to staff. Mortgage sent to AG as redline this morning. Both we and Icon believe Icon will fund.

Can't get a local lender since won't do more than $5 million on commercial property. Difficult to get equity partner due to 50% policy and percentage rent. Spoke with 4 interested parties over last two months but all backed off. Icon has a unique way of funding, will provide all of the project funding in return for an equity interest. Icon's financial statement does not reflect who they are. Icon Lending is based in Utah and is monetizing $500 million in bank guarantees in a Hong Kong Bank for $175 million in projects funded in U.S. so their balance sheet changes. Icon Lending is based in Utah.

Akiona said that there is a disagreement with staff's interpretation that if Honey Bee defaults, Icon gets 100% of the project. Akiona stated that if Honey Bee defaults, Icon owns 50% of the project so they are not pushing for a default. If there's a default, the new ownership is subject to board approval, not just a conversion that takes place. The new ownership under a default, if Icon or anyone else are subject to Board approval to become the new owners. Not a judicial review.

Akiona said Icon differs in that the 50% issue re: share in profits by the State is minimized 5% for every year in the lease. Most developers we spoke with look to take their money back in 5-10 years and refinancing. Icon is not concerned about the 50% because we plan to stay at least 20 years in the project. Not concerned with the lease saying the State takes 50% share in the project.

Kiuchi said they vetted Icon by several sources. He spoke to someone at the project funded by Icon at Dixie State College who has their debt in process. He also spoke with someone in Morgan Stanley who used to work at Merrill Lynch which is owned by Bank of America – he said 5 1/4 % rate on the loan is very good. Had other offers including a bridge loan but the numbers didn't work.

In response to a question from Member Woodside, Kiuchi said both the Utah project and another project – a golf course mixed use development in Missouri – were all being funded by BGs out of Hong Kong. Icon changed their financing scheme after the Costa Rica project in which Icon acted as a broker. Icon reinvented themselves due to the world financial meltdown in 2008. In 2013-2014, Randall Farr who used to work for Celtic Bank, re-opened Icon with bank guarantees as the financial scheme. $175 million is going to several projects in U.S., the $35 million for Honey Bee is their largest project. There is no intermediary between Honey Bee and Icon.

Icon gets updates every Tuesday morning, Hong Kong time. Kiuchi said that Randall Farr apologized that he was unable to provide the Board an update. Farr is not in a position to move the bank faster. Physically the money is sitting in the Hong Kong bank, but Kiuchi cannot say more due to confidentiality.

Member Gomes discussed whether all the delinquencies would be cleared up by Dec. 31st. Kiuchi said they would except they would need to put up the security deposit in cash in lieu of the bond since it would cost him double to get a bond. They are willing to put up the cash including interest.

[No public testimony]

Keith Chun (Land Division) and Ed Underwood summarized that after what they just heard, staff's recommendation is to terminate. At 7:00 a.m. this morning they were emailed a loan agreement, promissory note, and mortgage and Chun's reaction was this has happened over and over again, always coming at the last minute. The loan agreement wasn't signed. Although the promissory note is executed, the loan agreement is the commitment to the financing and if committed would have been signed – even with a funding date in the future or provisions to amend the funding date.

Chun explained that this was the third time before the Board. In March, the Board extended and deferred the termination. One of the conditions was that Honey Bee provide a funding commitment within several days. Staff received the funding commitment as a letter within a day - but that was a different lender that never materialized. When they came back in July, there was a funding agreement, but now they are being told the same thing: Honey Bee is saying there is another funding loan agreement that is unexecuted with purported financing in October. The submittal states that staff has received at least five other written funding proposals, but none has come to fruition.

Member Gomes asked if the Board terminated, what plans are there to move forward, how soon would it take, should they give to December 31st, and what options are there. Chun said that

stepping back, the initial notion was whether to terminate purely because they are in default. At the last meeting, the Board gave until the end of August on that presumption, which has come and gone. Chun said the initial selection was based on a Japanese developer that had a proven track record for projects, albeit in Japan. Chun said he didn't know if today, if they would have been selected under the RFP as having the expertise and financial resources to pull this off. Even if the funding does come in, Chun said he wasn't sure if the project could operate or would be successful.

Member Roehrig pointed out that even with the broken promises, the developer has put a lot of money on the line and wanted to know if Chun had any reasonable alternative ready to go between now and the end of the year. Chun said they would need to terminate and start all over by RFP. Staff would have evaluate it again, especially since legislation has since passed which broadly changed the permitted uses making it, and another site might be added. The Board has the authority to approve it. It would be intricate and much bigger than before.

Member Roehrig asked how long. Chun said over a year. Member Downing said the reason they can't go out to find somebody was because Honey Bee has it. If they open it up, then they can go ahead and create proposals.

Member Roehrig said that if this goes till December 31, there will be a better idea of what the new RFP will look like and if they come December 31 and have to bite the bullet, will have an opportunity to make a sensible decision on alternatives. He pointed out it was a complex financial transaction.

Chun did not think the only options are to let them build it or have another RFP. He reiterated that he did not know that if Honey Bee currently submitted their qualifications that they would be deemed qualified since the prior decision was based the prior 100% owner having experience and financial resources. Since ownership changed, the project has been in trouble. Nothing is known about Icon. They were formed in 2006. They allegedly funded projects but wouldn't tell staff about them, and staff is not allowed to discuss them due to their confidentiality provision. Chun questioned that the State should have a lessee in which little is known about them and whether they can build or operate a successful project. He noted we would be taking a risk to an asset like this where the project could be half-built and cannot be leased out. Chun also said he felt it disconcerting whether a prudent lender would lend $35 million without full site control - the easement over which a wedding chapel is to be built still needs a third party consent from the Hawaii Prince Hotel.

Chair Case had concerns since nobody wants to terminate and end an investment of time and resources, but they are obviously struggling. If we want to start over we can't do it until we address this. She said they are risks such as bankruptcy, even if defer this now.

Chun said we can't stop anyone from filing for bankruptcy, but the fear of bankruptcy doesn't overcome an asset in the hands of someone we are not comfortable with.

Member Yuen asked Akiona about his proposal; if the Board terminated effected December 31, 2015, he would still try to get the financing, then ask the Chair to bring the termination back for

reconsideration. Akiona said yes. Member Yuen asked if Akiona was trying to borrow $35 million on the strength of a lease that has been terminated. Akiona said Icon was told about the default but they would monetize their assets and get the money towards the end of October. Member Yuen asked why since earlier they had said the first week of October. Akiona said he's dealt with Icon and understood it takes longer.

Member Yuen asked whether Icon would fund if the lease is terminated. Akiona said it would put the money in escrow. If the Board doesn't reconsider it won't invest, its risk is zero. Akiona said staff has no plan. Kiuchi said this project is on their website and is Icon's centerpiece.

Member Yuen asked whether Icon has made a legal commitment. Kiuchi said they have – a funding agreement and a joint venture agreement. Kiuchi said they've already given Icon notice that Icon is in default, including damages, on the August 14th deadline.

Akiona said Icon already agreed they would fund with the December 31 deadline. The change in the law regarding exempting DLNR harbors from county zoning was lobbied by Honey Bee. The legislation increased the value of the land.

Member Downing asked Akiona if the lease was terminated immediately whether Icon would fund. Akiona said there would be nothing to fund if there is no lease. Member Downing told Akiona that he took him on his word last month that if no more then pau, but now is asking for three more months and is saying staff doesn't have anyone else. Member Downing didn't understand how staff could look for someone else to take their place if Honey Bee has the hold on everything.

Akiona replied that after making his statement something happened to Icon's funding two weeks after in China that delayed it. The Chinese market went down fast. Akiona said if staff believes they can get a sewer permit for this property in the next 3 years, give Honey Bee 30-60 days and have staff go to DPP and ask if they can get a commercial sewer permit for that site at Ala Moana. Without a commercial sewer permit in place, the site is useless.

Kiuchi said Honey Bee paid $75 thousand dollars for the permit or would be seventh on the list. Kiuchi said he considered adding another floor but found he couldn't because of the sewer. The DeRussy substation is over capacity and won't be upgraded until 2019 or 2020. Kiuchi said it is a huge issue. Kiuchi says they are "shovel-ready" including Hawaiian Dredging, but they can't start construction until January 15th.

Member Downing asked if December 31 is their deadline. Akiona said nothing gets done in the State between Thanksgiving and New Year's and nothing would happen to the property for at least a year if terminated. Akiona said they would still owe $400,000 in back rent if funded. Member Downing asked if they would come to staff on December 31st or are they just terminated. Kiuchi and Akiona agreed they would be terminated and would not be coming back.

Member Yuen questioned about the unsigned agreement with Icon received this morning as opposed to the signed agreement for up to $35 million dollars is enforceable, and evidence of completed Icon projects. Chun explained there is the Dixie project. Member Yuen asked if the

Board has to consent to Icon taking the 50% position. Chun said it is an assignment of the lease. Chun said he knows of Icon's information on their website, but that they haven't and won't provide any other information on any other project.

There was no public testimony.

Chair Case requested that this item be broken down into two sections: termination of the lease and cancellation of approval of the easement, items 3 & 4. If those are approved the other two items are not relevant.

Member Roehrig made a motion to terminate the lease as of December 31, 2015. Member Woodside seconded.

Member Roehrig commented that this was a close call, but the year is almost at end. If we move to terminate the lease effective December 31, there is an opportunity to put a deal together. As a new type of project, there is no institutional memory on what works. As a new elusive concept, he felt this is commercially reasonable to vote to give them until December 31.

Member Woodside said that a termination date not today gives them some time. She was concerned that we don't know which bank in Hong Kong is being used. Kiuchi responded that he tried.

Member Roehrig added that for him this is the end.

Member Yuen stated that he was done the last time. What he heard from Honey Bee didn't give him a great deal of hope. The lender is very mysterious and promising to lend money they don't have. This was brought to the Board six months ago and there was an end of July date that was decided upon at the last meeting. He was inclined to think that this is point where the Board needs to terminate, and where we were going at the end of the last meeting.

Chair Case agreed with Member Yuen. She said she would have more confidence if there were substantial advancements such as partial cures/clear documentation from the lender and signed documents. Chair Case said she was uncomfortable with continuing.

Member Gomes commented that he too agreed with the Chair and Member Yuen. He said it was a hard call but he was uncomfortable with Icon.

Kiuchi asked that if the Board felt an earlier deadline would be feasible then set the deadline earlier. He states that he wants to light a fire under Icon regarding the loan documents. Kiuchi said the loan documents were sent by Icon this morning and are unsigned because they were "subject to any changes by DLNR" but those are the final loan documents and if they want them signed, they would sign them. If concerned about the time frame, then shorten the time frame.

Akiona said he would like to see Icon perform. He said that even if Icon comes through with $35 million the Board still has the option not to approve them as the owner. If the Board thinks they

are shaky or unstable with $35 million in the bank, then the Board still has the right to vote them down as the owner, which would cancel the lease.

Chun said from a business perspective the request to terminate wasn't easy to make but that it is the prudent thing to do. In this case, to impose a condition to terminate as of December but subject to other conditions, it might be something to discuss in executive secession.

Chair Case said she didn't understand what it means to terminate something in the future and then request reconsideration. She said, once you agree to terminate in the future, how can the Board rescind the termination without going through a whole new RFP process. AG-Chow explained that it could probably be done because the termination would not be effective until that deadline, so if the termination is rescinded before that deadline then the lease would not have been terminated. If the termination is rescinded, they would still need to come back to deal with the 50% assignment issue. If the Board decides to give them more time, that would need to come back.

Chun, Akiona, and Kiuchi discussed that the difference in deciding the assignment issue in December would be whether the $35 million is funded and $175 million coming in for projects. Member Gomes asked if there would be a track record after it is funded at the end of October. Member Woodside asked there would be transparency in financials after the funding occurs. Kiuchi said he'd already asked Icon that question and that the issue related to off-shore monetization.

Member Roehrig said he was willing to amend his motion, but wondered what other dates the Board might consider. He suggested the second Friday in December since there is only one meeting in December or, in the alternative, December 1st. Member Downing said he would prefer November. Member Gomes said the meeting is the second week of November.

Member Gomes expressed how tired he was of this, but was willing to give them until the first meeting in November; because the money is coming from overseas, Member Gomes suggested November 13, reluctantly. Member Oi said he agrees with the 13th.

Member Yuen restated the motion regarding recommendations #1-8. The recommendations #1 & #2 become moot (deny request for consent to assignment and deny consent to mortgage) as he supposed both were being denied. Recommendation #3 to authorize termination of the boating lease BO-13120, stays. #4 is to cancel the approval of non-exclusive easement, adding an effective date of November 15, 2015. Recommendation #5 would authorize retention of all sums – that would stay.

In response to Member Downing's query on whether this should be cancelled at the November meeting, Chair Case explained the Board was voting to cancel now, automatically, effective that date, and Honey Bee would need to come back before the meeting for an opportunity to rescind the termination. Member Yuen said it would be up to the Chair to put it on the agenda if the money has come in. Chair Case said process-wise, it would have to be the week before. Kiuchi added staff submittals need to be prepared two weeks before – October 30th.

Member Yuen said that per our attorney general's advice, the termination date has to be after the meeting date, and once the lease is terminated, it is terminated, and there is nothing to be done. Member Yuen said in recommendation #6 regarding terminating the lease and all rights of lessee, the September 25th date suggested by staff would be changed to November 15, 2015. Recommendations #7 and #8 both would remain the same. Member Gomes seconded.

Chair Case sought confirmation that the effective date would be regarding recommendations #4 and #6. Kiuchi said it would be #3, #4, and #6. Member Yuen stated that #3 has no date. Member Yuen stated that recommendation #4 would add the same date as the termination of the lease. Recommendation #6 would be amended from staff's recommendation of September 25, 2015 to November 15, 2015.

Underwood asked if all $35 million needed to be in escrow. Chair Case said that it means that the lease is terminated effective November 14, 2015, and if there is a change in circumstance calling for a request to rescind the termination, it needs to be brought back, meaning the money is coming in and there is clear forward movement.

Chair Case restated the motion. She said the motion is to follow staff's recommendation except with respect to items #3, #5 and #6, with the effective date of those items being amended to November 15, 2015.

Approved as amended except for Chair Case who was opposed. (Yuen, Gomes)

12:00 PM RECESS
12:49 PM RECONVENE

ITEM C-2 Annual Renewal of Right of Entry Permit for Kawainui Marsh State Wildlife Sanctuary: #OA15-459-06.

Withdrawn

ITEM J-5 Request Approval to Adopt Amendments to Hawai'i Administrative Rules (HAR), Title 13, Section 256-152, Kahalu'u Bay, in Order to Update Location Designations, Limit Commercial Surf Instruction, and Revise Swim and Surf Zone Restrictions Within Kahalu'u Bay.

Withdrawn

ITEM D-7 Grant of Perpetual, Non-Exclusive Easement to the County of Hawaii for Waterline Purposes, Lalamilo, Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-7-003: por. 020 with Issuance of an Immediate Right-of-Entry for Construction and Management Purposes.

Russell Tsuji LAND introduced Ken Van Bergen, Director of Parks, Island of Hawaii gave some history of the request.

Unanimously approved as submitted (Roehrig, Yuen)

ITEM D-8 Issuance of Land Patenttt in Confirmation of Land Commission Award No. 7690 to KULOU, situate at Kahului 2, North Kona, Hawai'i Tax Map Key: (3) 7-5-16: 15, 16, 94 and 95, portions of.

Tsuji-LAND had his abstractor present if there were questions.

Ouaoa Throne representing Carlsmith Ball on behalf of the applicant was present for questions.

Member Roehrig suggested staff provide a title report or some other public evidence that the applicant has fee simple title. He didn't think the land board should be issuing land patent grants after the original awardee has passed. Member Roehrig was very sensitive to this.

Tsuji said there was a preliminary report. Roehrig took a look at it.

Mahoe Collins, the abstractor with LAND explained that land patents are issued to confirm an absolute fee simple title in the award and the awardee. There are a number of land owners who didn't get one issued. This is evidence that the patent and the title have been issued.

Member Roehrig still had issues with giving the patent.

Collins clarified that the Board would not be saying they have fee simple title. The Board's action today didn't give them clear title. Today, they are only there to get the patent issued.

Member Yuen explained that all they are doing is saying Kulou had good standing, so they should be issued the patent. The Board does not want to adjudicate to anyone.

Unanimously approved as submitted (Roehrig Yuen)

ITEM D-6 Issuance of Land Patentt in Confirmation of Land Commission Award No. 7715, 'Apana 7 to LOTA KAMEHAMEHA, situate at Kamano, District of Kohala, Island of Hawai'i, Tax Map Key: (3) 5-7-002:010 (portion of).

Tsuji-LAND hand nothing to add. Collins was available for questions.

Unanimously approved as submitted (Roehrig, Yuen)

ITEM D-15 Authorize the Chairperson to execute Supplemental Agreement No. 2 to an existing lease for real property with the United States Army for an additional 25 years within Schofield Barracks Military Reservation for Public School Purposes, Wahiawa, O'ahu, Tax Map Key: (1) 7-7-001:007.

Tsuji-LAND introduced Heidi Meeker with the Department of Education-DOE, who was available for questions.

Chair Case asked who was running the school. Meeker explained that DOE was running the school but most of the students were from Schofield.

Unanimously approved as submitted (Roehrig, Yuen)

ITEM D-17 Request to Delegate Authority to the Chairperson to 1) Issue Findings of No Significant Impact for Environmental Assessments Submitted for State Land Dispositions and Projects on State Lands, and 2) Declare Exempt those Actions on State Lands that Are Included in the Department-wide Exemption List, Statewide.

Tsuji-LAND conveyed item D-17. This was similar to an OCCL item that was brought to the Board and was approved.

Member Yuen asked for clarification on in the past decades how FONSI's have been issued without coming to the board. Tsuji responded that limited instances when we have an EA and recommending a FONSI, we process it and publish at OEQC. In addition, it has never been practice to bring it before the board.

Member Yuen added for clarification if the board we are formalizing the practice of not bringing it to the board and with exempt actions, which you will still bring to the board when the action itself comes to the board, which is on board approval, i.e. lease, easement, any other board action which is accompanied by exempt declaration. Tsuji responded that there are instances and that they don't necessarily bring some, such as non-commercial activity. Member Yuen followed up noting that those are fairly descriptive uses that don't come before the board but they do later on.

Chair Case asked what the process was for assuring that there is no finding of significant impact. Tsuji answered that it is in connection with an EA then an issuance of a FONSI for the chair to sign off on and it also allows publication in OEQC and opportunity for comment.

Linda Chow Deputy Attorney General added that when the actual request comes before the board, the board should be seeing the EA and they need to see the info in the EA and potential impacts before they make a decision.

Tsuji added that a lease, the process for completed EA and FONSI finding has to be done before the board considering a lease.

Member Woodside wanted clarification on if it is a straightforward FONSI it would happen at the departmental level but is there some EA that would come before the board.

Chow explained that according to the submittal all EIS come to the board and this is only for EA and FONSI's.

Chair Case added that the FONSI is issued because the EA indicates no significant impact and there is a publication. So that would not come before the board. What does is the EIS, which could have an impact.

Member Woodside added that a challenge for EA/FONSI process is you file the dates and public notice but the criteria where it is issued and what evaluation happens.

Member Woodside was concerned about lack of clarity and understanding of the evaluation process and asked in regards to delegating authorized action to the chair under exempt actions, and if the board would be authorizing that exemption. Tsuji responded that if we are going to come to the board we will come to the board for exemption, not everything comes before the board. Chair has been delegated certain authorities for example, right of entries in certain cases but then there should be certain exemptions to address the 343 issue, in addition the lease will come before the board, and you will have that opportunity to view it. They are not intending to change that practice.

Member Woodside asked to clarify the language of this submittal and asked if it says that delegation to the chair to declare exempt, or just for those items that are already delegated to the chair to authorize. Tsuji responded that it is in the text of the submittal but not in the recommendation.

Member Roehrig brought up the exemption class #1, 47 and 48 relate to another docket that the board had today to D-14, these 2 subdivisions on lots previously subdivided, that could apply to Mokuleia ranch. Member Roehrig's concern is on 47 and 48 and did not know if they belong here as authorized by the chair or whether they should come for board determination. Tsuji clarified that they were dealing with chapter 343, the latest exhibit is an exemption list that the department worked on with OEQC throughout last couple of years and agreed that these actions are exempt from 343. LAND actually had prior exemption as all, every division had their own and LAND decided to have one big department list. These matters does not mean the lease comes before the board. If there is a board issued lease it would have to come before the board.

Member Yuen added that if this were to pass the process will still be the same; where the action comes before the board and as a part of the recommendation, declared exempt. The board then can in an appropriate situation say, even though if this is under the exempt list, the board could make the recommendation that it should not.

Sterling Wong from Office of Hawaiian Affairs-OHA, policy affairs, testified in opposition to item D-17. Wong's main concern was that it compromises the decision making process. It limits public input and transparency in determinations that could lead to litigation. Exemptions should be limited to 343, this is the first time we have learned that exemptions and FONSI's were not coming to the board and we have concerns on some of the exemptions, the submittal is very confusing, it shows broad authority to the chair to make determinations without the board. Our assumption was that none were coming to the board any more. In 2013, staff circulated a draft submittal for Pohakuloa, they had proposed a categorical exemption that was really concerning to us. Later in 2013 staff proposed an exemption to master lease extension to UH on Mauna Kea. That submittal still made it to the board. The broad language is problematic, they would like to see it narrowed and have further discussion.

Member Yuen brought up the discussion on the 2 examples that were brought up, they would be handled the same as they are now and it might have a categorical exemption for the board to approval which has to come before the board.

Wong mentioned to Chair Case that the delegation of authority does not necessarily say that those things will come to the board, Wong showed concern that the next administration would not see it the same way.

Chair Case asked if what they suggest is that the board have clarify the language and the items already delegated to staff can be delegated to the FONSI's.

Chair Case added that the items come enumerated, LAND on certain items come before if they are larger cases. Item D-14 for example has an exemption attached to it which staff recommends it but is not a delegated determination. LAND has a discussion with the Attorney General to clarify this language its recommendation that there is no significant impact. Tsuji added that on the delegation of the FONSI, there may be instances when it gets published, the subsequent disposition would come before the board with an indication that a FONSI was published from OEQC.

Member Yuen added that there is a public process for the FONSI's; there is a notice, hearing, and the public can make comments. For number 2 which is the exemption, if it did not come to the board, there would be no way the public would know.

Chair Case mentioned that the board does have a report that we file with OEQC.

Member Woodside added that when the board did one with OCCL, we ask that they continue to publish that.

Tsuji said that LAND submitted that report to OEQC on a quarterly basis.

Wong responded to Chair Case that he did not have the advantage of knowing all the category exemptions and FONSI's. Wong's concern was that the categorical exemptions, even published, are asking the public to catch up with decisions already made. For a lot of permits and leases of remnant sales, that is land leaving the state inventory which are undoable things.

Tsuji added that the approval of those items to even consummate must come before the board and then it will come to the board in an open meeting, currently this is dealing only with 343.

Chair Case responded that reason for the delegation is to delegate things that are anticipated to not need broader discussion.

Wong's issue was that the decisions are already made before they come to the board, for example, the Hana parcel sale that removed a public stream from the state inventory with no EIS done.

Member Yuen added that the board's plan is to amend it.

Marti Townsend, director with Sierra Club Hawaii, had issues with Item D-17. Townsend's main concern were these delegations are forever and they don't get to revisit them when there is a new administration. Hawaii values public disclosure and engagement; OEQC does not have the capacity to fulfill the obligations that they are being handed. Townsend expressed that this should be deferred and the language should be flushed out.

Member Yuen said it could be declared exempt under the wording of which he planned to amend this motion, item such as D-14 the proposal to exempt it, would still come to the board, as it comes before the board, the board can declare it exempt or do further environmental study. Member Yuen added that the public can come and speak on the item which D-14 and all other land dispositions would be handled. Where the line is drawn is what is delegated to the chair to give out land disposition without coming to the board which is a very narrow margin, not a lease, easement, abandonment of state land, remnant sale.

Chair Case explained that the board is not exempting right of entries now, for every division there are certain things that are staff level determinations and certain decisions that are at chair level and certain that are at the board.

Townsend concern for the 2 issues are if the environmental review for stuff that does not come before the board and for the environmental reviews that do but make the exemption list? Chow reminded the board that Member Yuen can make amendment to make them come to the board, anything that involves board action the 343 will come before the board as well.

Laurie Bucannan from Molokai testified on item D-17. Bucannan responded that one thing she knew was that it is never a great idea to delegate authority to one person for exemptions.

Bucannan continued and expressed that it is not to bog down the process but everyday people are not aware of what is going on. If the FONSI is issued that means you already triggered 343. Bucannan agreed with OHA and Sierra Club's testimony.

Member Yuen made a motion to approve no.1 and amend recommendation no. 2 to read in its entirety as follows:

> ***"2. Delegate authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list, for land dispositions and actions that have been delegated to the Chairperson."***

Unanimously approved as amended (Yuen, Woodside)

ITEM D-14 Amend Prior Board Action of September 8, 2006, Item D-14 Regarding Issuance of Perpetual Non-Exclusive Easement for Access and Utility Purposes to Dillingham Ranch Aina LLC; Mokulē'ia, Waiālua, O'ahu, TMK (1) 6-8-003:041 And

The purpose of the amendment is to limit the approved easement to utility purposes only, and add another perpetual easement for access and utility

purposes.

Russell Tsujii-LAND, introduced item D-14.

Member Roehrig had questions for the applicant.

Clifford Smith, senior VP for Kennedy Wilson in L.A. and the asset manager of Dillingham Ranch since Kennedy Wilson purchased it in 2006. Smith stated that this process began in a subdivision process back then and in 2008 we received a tentative map approval from the Department of Planning and Permitting, being an 80 lot subdivision.

Smith requested a separate action, going to a bigger scale on the property but back in 2006 and 2008, receiving from BLNR the easement rights along the road up through the ranch.

Smith's requested action today is to request to move the previous approved location down lower where the previous easement was located and allow for an underground waterline for a permitted well in the land locked parcel so we can irrigate those parts. Smith mentioned that they got DOFAW to approve where we are going.

Member Yuen wanted to clarify that DLNR peacock flats road cuts off and you have property on both sides and that an easement is wanted to go from one side, cross the road and get to the 500 acres on the other side. Smith acknowledged.

Determining what is best for the board, Member Roehrig first asked that he wanted to see the subdivision development plans with the City and County of Honolulu, because it is more than 15 acre subdivision, you said it was 400+ that triggered as to why you did not bring this to the state land use commission and rather city and county. Member Roehrig wanted to see the development map and see how these roads you are asking for easements and how they relate to your proposed subdivision development where they are related. If so it has implications for ch.343.

Smith had no problem delivering the map and expressed that up to this point we were in the understanding that the director of planning in DPP was able to approve a subdivision action without coming to the commission.

Member Roehrig was concerned and had to see Smith's subdivision development plans to see what they have applied for and whether you have approvals for your plan, the board wants to make the right decision whether this easement has the significant effect on subdivision.

Chair Case clarified that this road used to be strictly Dillingham ranch property and conveyed out the road in order to provide access to the Mokuleia forest reserve and peacock flat area.

Member Gomes mentioned to Smith that he has an easement and that they are going to cross over the water line to service the upper section. To follow up, Member Gomes asked when they service it in the upper level, are they going to implement a pump system?

Smith responded that the way cattle range, they will come to the water and we will have a series of water troughs in rotation type pasture areas for the cattle.

The Board continued to ask Smith questions about the EIS, zoning, jurisdiction and subdivision.

Member Woodside felt comfortable with the uses allowed by the zoning.
Smith added that the subdivision will never happen without an EIS and that this is a different request, it is not fair to the landowner to pry and open an evaluation of the subdivision. Our request is very limited to access a land locked parcel.

Member Gomes mentioned that the board has a motion and a second and that we could vote on it and create any amendments to the motion.

Member Woodside brought up that the motion was stated in the negative previously and asked if he does not go for the subdivision can we get the motion read back.

Member Roehrig brought up that his motion was that they grant him the easement and they don't require an EIS unless the applicant makes a proposal for 94-unit subdivision adjacent to the road as provided on the subdivision map that we looked at online.

Chair Case heard issues from the DAG about the motion.

Member Roehrig asked how they would make the motion.

Chow mentioned that you can't make it subject to 343 EIS after the fact.

Member Roehrig mentioned that we are saying that it is subject to the EIS if they propose the subdivision
Chow added that then you are saying that they are not related. If the EIS is required, it is required before the decision.

Member Roehrig explained that we require the EIS and if they don't make the application for the subdivision in the next 12 months then we drop the requirement for EIS.

Chow brought up that the board has to deal with the motion that is on the floor.

Member Downing rescinded his second.

Member Roehrig withdrew his motion.

Member Downing made a motion to grant easement that was agreed in 2006 and if the 2nd easement is going to come in, it has to come in at a time an EIS is done.

Chow mentioned that you do not need to grant it because it was already granted and that the authorization is still there but they did not complete the process to issue the easement because they could not come to terms.

Chair Case asked if Member Downing would like to withdraw the motion.

Member Downing withdrew his motion.

Member Yuen made a motion to approve as exempt and grant easement as requested provided it is limited and must be amended if it allows for subdivision for more than 2 lots in the 500 acres.

Member Woodside seconded the motion.

Chair Case added a friendly amendment, as proposed you would be extinguishing what he already has, he already has an easement that does not have the restriction.
Member Yuen acknowledged the amendment.

Member Woodside brought up the idea about 3 lots because he is considering the subdivision Mauka to Makai and to consider the endangered species/reserve site. That way in order to have paddocks and preserve below.

Smith mentioned that it is not necessary.

Chow recommended that "the easement would not serve more than 2 lots"

Chair Case added that it is for the submittal as proposed limiting the property benefit to a subdivision no more than 2 lots for both of these.

Member Yuen added that this is a reasonable request that we could grant if it were not for the adjacent property.

All in favor, Case, Gomes, Yuen, Woodside

Opposed, Roehrig and Downing.

4:2 Vote.

Motion passed.

> **Approved as amended.** The Board amended the Recommendation section by adding a recommendation 3.J. to read as follows:
>
> ***"3. J. The two (2) easements approved above shall be limited in benefitting only two (2) lots."***

Approved as amended (Yuen, Woodside)

3:46PM RECESS
3:54PM RECONVENE

ITEM D-13 Grant of Perpetual, Non-Exclusive Easement and Issuance of Immediate Right-of-Entry Permit to Hawaiian Electric Company, Inc. for Guy Wire and Anchor Purposes, Kapālama, Honolulu, O'ahu, Tax Map Key: (1) 1-6-009:portion of 001.

Kevin Moore from Land Division introduced item D-13; there were no questions.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM F-1 Request for Approval of Special Activity Permit 2016-12 for Dr. Mark Hixon, University of Hawai'i, Department of Biology to Deploy, Install, and Collect Samples from Artificial Coral Modules placed in Waikīkī and the Hānauma Bay Marine Life Conservation District (MLCD), Oahu, Subject to an Approved Memorandum of Agreement Between the Department of Land and Natural Resources and the University of Hawai'i at Manoa, Office of Research Services.

Alton Miyasaka, Division of Aquatic Resources-DAR introduced himself and item F-1.

Mark Hixon, professor introduced himself and expanded on Item F-1. Hixon's expertise is in coral reef fishes. A year ago, Hawaii suffered the greatest coral bleaching event caused by unusually warm waters. We were lucky that time as most of the coral recovered. But the warm water will persist, and currently we are in a coral bleaching watch until fall. The projection is that warmer waters will steadily increase during the decade. When the coral dies, one possibility is that a coral larvae will settle and grow on the coral skeleton. Another possibility is seaweed might grow on it and prevent corals from regrowing.

Hixon mentioned that he has personally seen entire coral reefs die from coral bleaching, very heart breaking. What prevents seaweeds from taking over is the presence of herbivores, parrot fish, sea urchins. An issue here on Oahu is that intensive fishing has reduced the number of herbivorous fishes. Our proposed project seeks to use artificial structures/fish houses to attract them to small areas and enhance the abundance of herbivores and help corals persist as they die from forthcoming bleaching.

Hixon brought up that he has done previous research in the US Virgin Islands and Bahamas constructing 70 structures. Colonization takes place and these structures grow naturally. When herbivores settle and grow, you get coral growth where there was none before. They plan to build 6 modules in deep sand flats in Hanauma bay, away from swimmers and 6 modules off of Waikiki in the deep sand flats. The main reason these sites were selected is the experiment needs to control for fishing intensity and these areas are closed to fishing. They wish to deploy these on existing sand and not on existing coral reefs.

Member Downing asked how heavy each of these modules is.
Hixon answered that they weigh 1 metric ton each, with 48 standard concrete blocks banded together with stainless steel banding, we construct them underwater.

Member Downing asked what the ocean topography was like in the Bahamas where he had done his experiments because the US has a continental shelf; the wave action is different there compared to Hawaii.

Hixon said that they have deployed these in different sites in the Caribbean. In sand flats in Bahamas Banks, 10-20 ft. deep water, there is nothing like that here in Hawaii. Those that had been hit by hurricanes are still standing today. Virgin Islands is also similar in area to Hawaii, not completely identical but similar.

Member Downing also added that if coral can grow on this new cement blocks, is there a way to grow coral on the bleached coral that we already have?

Hixon answered that both take place and one reason we want to do this in isolated sand flats is to see what will happen, we will monitor them regularly. Hixon elaborated that it would be easy to document the difference between fish and larvae and that this is a 2 prong research approach for coral resiliency. Currently, researchers at UH and elsewhere are identifying the strains that can resist bleaching to potentially transplant them into bleach damaged areas. Hixon mentioned that there needs to be an acceptable environment for the corals to regrow, ie. Keeping the seaweeds away.

Member Yuen asked in regards to the coral that is dead/bleached does not recover, is the skeleton good substrate for corals to rebuild on?

Hixon answered that it is good (for coral regrowth) as long as no seaweed is on it. Once they grow, the seaweeds will inhibit the settlement of coral larvae. If the coral dies and does not recolonized, boring organisms, such as worms, will drill into it and it crumbles over time.

Unanimously approved as submitted (Roehrig, Woodside)

ITEM J-3 Request for a Reduction in Rent Regarding a Right-of-Entry Permit Issued to Ironman World Championships for the Purpose of Conducting a Triathlon at the Kailua-Kona Pier, Hawai'i. Tax Map Key: 7-5-006:039.

Ed Underwood, DOBOR administrator, introduced Item J-3.

Diana Burch introduced herself and added to Item J-3, Last year it was not until August that there was a new right of entry process, the fee did come to a surprise since we had a good relationship with the state. The year before when small boat operators needed access to the pier they came to us. Giving back to the community we put in 36,000 dollars' worth of repairs to the pier.

Burch continued that they also see the great benefit that iron man brings to the state. It was not until the end of the year that we heard about the rise in fee to 60k.

Member Gomes asked if they would be ok for next year.

Burch mentioned that they would like to have more communication on the breakdown of the fees. With the partnership with the state, our hope was that the partnership that the state would cover the use of the pier.

A concern Burch had was consistency in how this fee is being applied, that would be helpful to know too with the lack of clarity.

Member Roehrig asked how long has they been charged.

Underwood said the same time as the iron man event, they have been charged the same fee. Reason the iron man is expensive is the Kailua pier is closed for 4 days, all commercial activity is stopped. If they shorten down the space they need, we can bring the rent down that way.

Member Gomes asked why was the applicant notified so late.

Underwood responded that the applicant knew from last year and that they stated talks with us throughout the year. Currently DOBOR does not have a property manager any more, but we are doing this as we go. We have prepared the same board submittal, after reviewing it, there was a reduction of rent in 50% written in and I asked for justification on the reduction of rent. The rule that was sited could not be used to justify that, so I contacted my Hawaii district manager and staff and asked them to contact iron man on why they were requesting for a 50% discount in rent. They need a reason to ask for it. They gave a breakdown of what they do in the local community, they do a lot.

Member Yuen asked about the policy we have here if we have a provision for a waiver or reduction for a non-profit organization.

Underwood mentioned that he did not believe DOBOR wrote that in the submittal in December when we were issuing right of entries.

Member Yuen asked if the state give up revenue on the limitations of the pier when iron man is there.

Underwood explained that the pier is affected for 4 days and we do give up revenue. When the event goes on the boats cannot pick up passengers.

Member Yuen asked what fees for that activity are.

Underwood answered that the commercial rates we charge is 200 month or 3% of gross receipts. Underwood was under the impression that the cruise ship was not there.

Member Yuen's concern was the inconsistency of the cost per sq. ft. to month or day and asked where does DOBOR get this 25 cent sq. ft. from and is there anything better than the honey bee lease that you could think of as a benchmark.

Chair Case mentioned that there is a graduated discount on bulk purchases.

Member Yuen brought up that it was a ton of money for the pier and mentioned that Member Gomes was on the right track that they don't use the full pier for 2 of the 4 days but that is my thought and wanted to be fair to people.

Member Gomes asked how you would set a precedence moving forward.
Member Downing added that maybe the board should look it at how shopping malls rent, how the small space pays more and bigger pays less.

Chair Case added to also more accurately calculate actual use.

Member Yuen asked if there are comparable events that use the pier, large spaces.
Underwood answered that iron man is the largest, they take over the whole pier.

Member Gomes mentioned that we don't have other entity that does not give back to the community that iron man does.

Underwood responded that it is a substantial amount.

Member Gomes mentioned that a common ground must be found and that could be a way to address it similar to Member Downing's idea.

Member Downing mentioned about giving it back to the community and asked Burch what is the net profit for the Kona event.

Burch responded that if you look at the event itself, the event does not make money, the sponsorship, branding, the fact that worldwide, we are able to share the name.

Member Woodside mentioned that the event operates in the red and asked how iron man quantifies the Kona event.

Burch responded that she could not quantify it and am lucky to work for a brand that inspires me. But what she knew was, no matter where they go, people talk about Hawaii and dream to do the iron man world champ. It is the roots of the race, to me that is the most important thing, reflecting about what we are here in Hawaii.

Member Woodside asked if giving back to the community is substantive of the impact on the brand.

Burch responded that the give back is appreciation to the community for what they do, with any event we cannot do it without volunteers that is what we can do to say thank you. Last time an Economic Impact Statement was done, the race never had the same amount of popularity, state wide it infused 25.9 million to the state. HTA is doing a study on it as well. It is not just for donating to local community groups or non-profits.

Member Downing asked what your budget was.
Burch responded that it is over a million in expenses

Member Downing asked what NBC contributes to the budget.
Burch answered that they pay to be on NBC, it is a partnership with them, and they provide production. They pay for that time slot.

Unanimously approved as submitted (Yuen, Gomes)

4:57PM Member Gomes departed.

ITEM K-1 The Office of Conservation and Coastal Lands will brief the Board of Land and Natural Resources on its Overall Functions with respect to Coastal Lands.

No decisions will be made/ No staff submittal .

Deferred

ITEM J-2 Issuance of a Ten-Year Lease to the E Ala Voyaging Academy, Waiānae Small Boat Harbor, O'ahu, Hawai'i, Tax Map Key: (1) 8-5-002:044 for the Purpose of Storing and Maintaining the Voyaging Canoe E Ala as well as Engaging in Educational Activities that Include Polynesian Navigation and Hawaiian Culture Practices.

Member Downing asked if it is built to fit the boat or big enough to fit other canoes.
Underwood answered that it was titled as boat storage facility but we built it pretty large so that other canoes can fit there.

Anela Kim, thanked the land board and dobor for the facility being built.

Unanimously approved as submitted (Woodside, Downing)

ITEM I-1 Request Approval to Authorize the Chairperson to Execute and Sign a Sub-Grant Agreement Between the Board of Land and Natural Resources and Kanehunamoku Voyaging Academy, and to Delegate Authority to the Chairperson to Execute and Sign All Future Sub-Grant Agreements Under the National Maritime Heritage Grant Program.

Unanimously approved as submitted (Woodside, Downing)

5:05PM Member Gomes departed.

ITEM D-1 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.

Member Yuen disclosed that his wife works for University of Hawai'i.

Unanimously approved as submitted (Yuen, Woodside)

ITEM D-11 Issuance of Right-of-Entry Permit to Hawai'i Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display on October 3, 2015 at the beach fronting Kahala Hotel, Wai'alae, Honolulu, O'ahu, Tax Map Key: (1) 3-5-023:seaward of 041.

Kathy Gogel, President of Animal rights Hawaii, introduced herself and testified in opposition to D-11.

Member Woodside asked if they were familiar with where the dolphin pens are located. It seems the area is not in the same area as the pens.
Gogel answered that they have pictures but it does not do justice.

Janell Van Newton marine biology major at HPU, introduced herself in opposition to item D-11.

Kyle Baton, empty the tanks Hawaii, marine biology major and HPU introduced himself in opposition to D-11 mentioned that captive marine life at Dolphin quest has their freedom stolen from them.

Newton brings up that after firework displays, there are high levels of toxins present, fireworks create a burst of ozone that irritates the lungs. The wind direction directs all the toxins into a reef area. Fireworks can exceed 145 decibels of noise damage. I found this concerning as noise pollution is disturbing to our marine population.

David Hemmick, from HPU introduced himself and testified in opposition on Item D-11.

Member Yuen asked if the Kahala do fireworks before.
Kevin Moore answered that he can only address what is in the submittal, which indicates that they had done events done before and they give the neighboring condominiums notice.

Member Downing added that the water pulled into the lagoon comes from the first firing site, because that is where the intake valve is. Depending on how long the residue sits in the water, they will be filled back up with that water.

Member Yuen added that this is being tied to something going on at the hotel that day, there is a promotion on the day. Member Yuen had concerns on the captive dolphins and very loud noises is something to worry about.

Chair Case mentioned that it is worth answering and they have been operating this way for decades, they should care for the safety for the dolphins.

Chair Case continued mentioning that they would make an analysis on the effect of firework noise to the marine animals.

Member Yuen brought up that if the board approves this, prior to this event happening, that they provide a report on the captive dolphins, if they have done this before. We would delegate this to you on adequate assurance that this is not harmful to the captive dolphins.
Member Yuen felt comfortable with giving the Chair the responsibility to say yes or no.

Chair Case mentioned that in the long term, we should understand the impacts on the reef.
Chair Case asked Member Yuen how he would suggest to word it.

Member Yuen made motion to approve subject to the chair receiving sufficient information to determine that this is not harmful to the safety of the captive dolphins.

Member Downing had a hard time understanding how an event like this can come to us 8 days before the event and brought up that they should know at least 3-6 months out that this is what they are going to do.

Chair Case mentioned that there is data to show what kind of show is produced at a distance of this explosion and data at what level they cause harm.

Member Woodside brought up a suggestion from our AG that we provide a testimony that we received and ask the resort to give us a response.

Member Yuen mentioned to Moore on Member Downing's issue that he knew sometimes it is not the applicant's fault.

Approved as amended. The right-of-entry permit was approved subject to Applicant requesting a written response from the operator of the dolphin attraction at the Kahala Hotel to the testimony submitted to the Board at the meeting raising concerns about the welfare of the dolphins, as well as an analysis by the Division of Aquatic Resources that the fireworks display will not be harmful to the dolphins.

Unanimously approved as amended (Yuen, Woodside)

ITEM C-4 Denial of Petitions for Contested Case Hearing Relating to the Adoption of Emergency Rule § 13-123-21.2 Hawai'i Administrative Rules on July 10, 2015 Filed by:

1) **Michael Kumukauoha Lee; and**
2) **Andrea DeCosta**

Deferred

ITEM C-3 Informational Briefing on Hawai'i's State Wildlife Action Plan 10 – Year Update.

Scott Fretz, DOFAW introduced himself, Jim Cogswell and gave presentation of State Wildlife action plan.

Member Gomes added that one issue ago 10 years ago was that a draft was put out with no plants included in the report. Hawaii did state that plants are essential to the habitat and key to conservation.

Lori Bucannon, introduced herself and testified on the swamp and pointed out that HT Harvey did a great job. Reading the forest action plan they did a good job on it. This plan was 800+ pages but only one on culture, a little disappointed on culture and significance. I wanted it a little broader on specifics and wildlife in general.

No decisions will be made.

ITEM J-4 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai'i Administrative Rules Job No. B94CK71B - Port Allen Small Boat Harbor, Improvement to Piers A and B, Kaua'i.

Unanimously approved as submitted (Yuen, Woodside)

ITEM C-1 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu for the Use of Five Parcels Managed by the Division of Forestry and Wildlife as Part of the Pouhala Marsh Wildlife Sanctuary.

Unanimously approved as submitted (Yuen, Woodside)

ITEM D-2 Grant of Term, Non-Exclusive Easement to Mitsugi Yokotake and Clara N.L. Yokotake for Access and Utility Purposes, por. of Waimea Valley, Waimea, Kaua'i, Tax Map Key: (4) 1-5-002:045. And

Issuance of Immediate Right-of-Entry Permit to Mitsugi Yokotake and Clara N.L. Yokotake for Access to Property.

ITEM D-3 Approval for Acquisition of Perpetual Easements and Authorization of the Chairperson to Negotiate and Execute Rights-of-Entry on Private Lands for the Menehune Road Rockfall Mitigation Project, Waimea Valley, Waimea, Kaua'i, Tax Map Keys: (4) 1-6-010:001, 002 & 003 (portions).

Member Downing added if he were taking property from the private land owner to create this fence for a rock fall. Does the land owner have responsibility on the rock fall.
Moore mentioned that the actual cliff face is unencumbered land. Logically most of the rock comes from there. We have to go to private land to get the pins to anchor them down. The hope is the nets will slow down erosion.

ITEM D-5 Sale of Lease at Public Auction for Business and/or Commercial Purposes, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-032:064.

ITEM D-9 Issuance of Land Patent in Confirmation of Land Commission Award No. 3960 to NAPAHOA, situate at Paleileihaa, Waihee, District of Wailuku, Maui, portions of which are included in the areas of Tax Map Keys:(2) 3-2 8:65,66,23,36,37,38,39, and 40.

ITEM D-10 Issuance of Right-of-Entry Permit to John Willard of the Maui Surf 'Ohana as part of the Hawaiian Surf Association for a Two Day Surf Event (Honolua Legends of the Bay) at Lipoa Point, Honolua, Lāhainā, Maui, Tax Map Key: (2) 4-1-001: Portion of 010.

There were no changes and no questions for items D-2, D-3, D-5, D-9 or D-10.

Unanimously approved as submitted (Woodside, Downing)

ITEM D-16 Approval in Principle for the Issuance of Direct Lease to City and County of Honolulu, for the Use by the Board of Water Supply, for Water Tank Purposes; Issuance of Immediate Management Right-of-Entry Permit for Due Diligence Purposes, Honouliuli, 'Ewa, O'ahu, Tax Map Key: (1) 9-1-018:portion of 008.

Approved as amended. The Board amended the staff submittal by deleting all references to "Approval in Principle", deleting recommendations 1-4 and renumbering the remaining recommendations as 1 and 2.

Unanimously approved as amended (Downing, Yuen)

There being no further business, Chairperson Suzanne D. Case adjourned the meeting at 6:02p.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