

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

DATE: FRIDAY, OCTOBER 23, 2015  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Suzanne D. Case called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

**MEMBERS**

Suzanne D. Case  
Thomas Oi  
Ulalia Woodside

Stanley Roehrig  
Christopher Yuen  
Keone Downing

**STAFF**

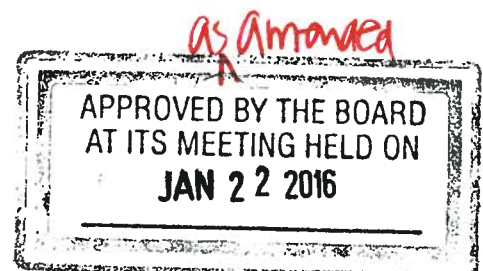
Samuel Lemmo/OCCL  
Daniel Ornellas/LD  
Curt Cottrell/PARKS  
Clarence Yamamoto/DOCARE  
Carty Chang/ENG  
David Sakoda/DAR

Kevin Moore/LD  
Sheri Mann/DOFAW  
Leimana Damate/Aha Moku  
Ed Underwood/DOBOR  
Mike Fujimoto/DAR

**OTHER**

Cindy Young/AG  
Paul Horikawa/K-3  
Sidney Hayakawa/DOT-AIR  
David Bettenkourt/M-20  
Kelly Okumura/DOT-AIR  
Aplonious Stice/D-5  
Doug Pitzer/D-7  
Bill Spencer/K-4  
Keo Marcia/K-1  
Jerry Gibson/D-9  
Rick Gabe/D-9  
Janelle Ritten/D-10  
Jade Hoyen/D-10  
Nichole West/D-10

Kathryn Hall/K-3  
Andy Wilson/K-3  
Ethan Tomokiyo/DOT-AIR  
Ann Shige/DOT-AIR  
Gary Stice/D-5  
Laura Laakua/E-1  
Burt Ishimara/D-7  
Mike Summers/K-1  
Ivan Loui-Kwan/D-9  
Rob Martin/D-9  
Natalie Para/D-10  
Jessica Hinch/D-10  
David Hemick/D-10



**ITEM D-13 Amend Assignment of Lease Evaluation Policy to Allow a Deduction of the Fair Market Value of the Improvements and Trade Fixtures being Transferred to the Assignee from the Consideration Paid by the Assignee to the Lessee-Assignor and to Make Clarification Regarding Treatment of Tangible and Intangible Personal Property.**

**Item Withdrawn**

**ITEM M-2 Issuance of a Direct Lease to Hawaii Fueling Facilities Corporation to Provide Fuel Storage and Delivery of Aviation Fuel via Underground Pipelines at Honolulu International Airport, Tax Map Key: (1) 1-1-003: Portion of 001, 005, 009, 038; (1) 1-1-072:Portion of 022; and (1) 1-2-0025:020 & 021.**

**Item Withdrawn**

**ITEM A-1 Approval of June 12, 2015 Minutes**

Member Woodside noted on page 7 at bottom of page “Kanakanaka Maoli” was mis-spelt and page 10 of paragraph 2, first line, it there should be N instead of M.

**Unanimously approved as amended (Roehrig, Woodside)**

**ITEM K-3 Conservation District Use Application (CDUA) MA-3746 by Ray P. Wimberley, Commissioner, for an above ground waterline along Mākena-Keone‘ō‘io Road located at Honua‘ula, Makawao, Maui, Tax Map Keys (2) 2-1-004: 046, 068, 073, and 113.**

Member Roehrig recused himself from this docket and exited the meeting.

Sam Lemmo, administrator for the Office of Conservation and Coastal Lands- OCCL introduced item K-3. Lemmo showed larger map and pointed out activity submitted by applicant. Exhibits were available in report. The applicants have come before years ago and asked to install an accessory use water line. OCCL told to them to file a CDUA. They returned in 2013 with an application for the water line, it was rejected due to the report being incomplete. The applicant then returned which was accepted for processing, which is before us today. There were meetings with representatives were made and there were concerns. There was an ownership issue. If the MOU is read, the pipeline is going through the NAR area. Second issue in the analysis was the waterline is intended to service parcel 68. Questions arise if the area should be parceled out. OCCL’s recommendation is not to accept this proposal as it stands.

Member Yuen mentioned that there were 2 big issues that lead to negative recommendation and that whether right of way is in the NAR and whether this application should be delayed until there is a residence Member Yuen asked is the executive order says the road right of way is not a part of the NAR.

Lemmo answered that it is correct.

Member Yuen added that it is described along the road.

Lemmo added that all they see is the linear description of the road. It does not describe width in the EO. Other thing is the MOU which indicates ownership. Neither state nor county. It is in the staff report attached. It further indicates that the county agrees to keep the pavement paved and state to preserve the shoulder and vegetation.

Member Yuen's concerns were if the roads were county roads and that it does seem the road is excluded from the NAR and we also have the statement from DOFAW stating that they do not oppose the water line.

Member Yuen could see why the NARS prefer they preserve vegetation on road side. It seemed to him that this road is under county jurisdiction. Lemmo was thankful for Member Yuen's view on this.

Chair Case asked if the road purposes were not necessarily for utility purposes.

Chair Case clarified that the staff's position is the county jurisdiction is on road, state is on shoulder and so it's a state decision not county decision on what happens to the waterline easement in the conservation district. The other proposal is you cannot assess the overall impact of granting additional waterline in the CD without knowing what the waterline is going to serve.

Kathryn Hall representing Carl Smith Ball introduced herself. She explained that they were are not the land owners nor represented them; they are a party to the underlying civil lawsuit. Hall represented the plaintiff. The court ordered the required parties to install this waterline, a court order. This would be their 2<sup>nd</sup> or 3<sup>rd</sup> attempt to apply for the CDUP. Hall has the county granting the easement. Other concern is that there is no project. The parcel does not to be entitled to apply for a CDUP.

Member Yuen asked what the community park plan for this parcel meant.

Hall said the plan has it designated as a park in the county, there is no guarantee that any purchaser would be able to put a single family residence on this parcel but the commissioners are not required to entitle this parcel. They are just entitled to bring a water line down. At this time there was expressed concern on an EA, one is not required for this application. They are trying to comply with the circuit courts orders with the county granting the easement there is clarity on who gets to do that.

Member Yuen added that the easement document from County of Maui refers to a right of way and then it says waterline will be installed close to the paved portion. He asked if there was a definition of right of way and if there was a notation of how wide. Hall replied that there is no definition and she didn't know if it is in the granted easement. She said she could respond to the question at a later time.

Paul Horikawa, attorney, representing Arlet, Adams, Peaches, Cullen, William, Whitmeister, and Young in a lawsuit that was filed 20 years ago, introduced himself added that it was heavily litigated, there was a court of appeals assigned. They went into a settlement agreement 10 years ago. The property was previously identified as a kuleana and the property Makai of where the Shatzs live, there was a residents that got wiped out by the tsunami. The property is .46 acres. The current assessed value is \$1000 dollars. Since it is a state conservation County Park, unzoned, the state has jurisdiction. The resolution was to come up with a plan to sell the property. The property where it stands now in its state is not worth a lot of money. They were able to get the water meter and the problem was how to extend the water line. It's taken on various turns. At one point there was a motion filed to just get an order to have the water meter installed. The state opposed the motion and they were going to appeal the order. The state's recommendation was to apply for the CDUA permit which was why they were there, is why they were present; to comply and follow advice of the state. One of the thing he wanted discuss was that county of Maui did review the application for special management area permit. The county did conduct the EA of the project. What they did was grant the SMA minor permit that authorizes the construction of waterline. One thing noted is that there was an EA done. The county found there was no significant adverse effect. He mentioned earlier that the property has an assessed value of 1k.

Member Oi asked what the value of the property with the water is. Hirokawa responded that they hired an appraiser and his response was that he could not do the appraisal when there is water.

Andy Wilson, from Hilo testified next. In the 90s his former law partner Stanley Roehrig, did title work on native Hawaiians. The first steps required them to go to the county to get the water meter and the right of way. It is not within the NARS area and he thought the concern raised by the department was that the waterline may be in the state property. They have an easement from the county and an idea of where it is going. There is another waterline existing in the same area. The MOU that was talked about is a maintenance agreement not ownership. He thought it was unfair to suggest that our clients will suffer due to an interpretation of rules.

Member Yuen clarified that AG's objective of amending the order of the waterline and just have a meter at the end of the road 1300 ft. away. Wilson added for clarification, few years ago, Andy and Stan Roehrig filed a motion on what type of entitlements we need to install the waterline. A motion was filed to allow the waterline to be installed. The state objected to it. As a result of the states opposition to the motion and after meeting with members of the state, they withdrew the motion.

Hirokawa followed up that the land owner next door gave up the piece of property to the clients; he has been cooperative, giving easement, access to property and waterline off of his property. That is all they were asking.

Chair Case asked if you know if former existing waterline is granted in 1998. Was the state a party to that or was it unilateral county. Hirokawa answered that he did not know. He is hopeful that it would be recognized that if there is an existing one there that it may be in the property would not be enough to overcome.

Chair Case added that just because you put the waterline there does not mean that finds the right of way. If you find the right of way the waterline should have been put in the county right of way it may not have.

Member Oi asked that if the document is taken as is, the waterline supposed to have been in the county right of way. This new document that says 2 ft. it is supposed to be in the right of way, would that affect us as a state. Wilson responded that once they have the right of way it is not in the NARS property.

Chair Case asked if the water meter in now, where is it located and if it was in use. Wilson answered that they did and they have been paying monthly fees, it is not in use.

Hirokawa added that it is a quarter mile in the Makai direction of the NAR and tied to the county water line.

Chair Case asked if the road is excluded from the NAR and was is it in the conservation district. Lemmo responded that it is in the conservation district.

Hirokawa added that the state AG was objecting to be not the waterline or installation of it, but the idea of being exempt of the CDUA. That is where her objection lies. The easement area defines the right of way area. It encompasses the 2400 sq. ft. of the area.

Chair Case added that it can't address the state's decision of authorized uses in the conservation district. Hirokawa acknowledged and the states position was that we had to comply with the CDUA. Hirokawa did not think they object to the county grant of easement.

Member Woodside mentioned that in the submittal it talks about DOFAW having no objection.

Member Oi added if they would need a permit. Lemmo stated that they would and added that in this case the road was not excluded from conservation district.

Chair Case asked if both for the water land use go through the conservation to serve the lot correct. Lemmo answered that it was needed.

Lemmo added that the issue of the ownership can interpret a couple of ways. Firstly you can go tell them to get an easement from the state. Or you can look at it as they are not asking for an easement and everyone is assuming they have an easement. His job is to flag stuff for the board because he cannot pass something along without perfection. Which left the issue of the use and how that relates/does not to parcel 68.

Member Woodside made motion to go into executive session 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 Yuen seconded.

The Board unanimously voted to go into executive session.

10:17AM EXECUTIVE SESSION  
10:42AM RECONVENE

Member Yuen made motion to approve the CDUP, which meant deny staff recommendation, 2 technical points that the board finds the application meets all criteria. This would be subject to standard conditions that are normal. There was a submittal for recommendation for denial but there are standard conditions.

Member Woodside seconded the motion.

Chair Case clarified to emphasize the question of road ownership is not before the board, it is background information but this is a CDUA. Chair Case said she was respectfully going to disagree with member Yuen and support the staff recommendation. She was sympathetic to the applicant's long litigation. The Board's job is to evaluate the public impact and she thought this is in a very sensitive area. She did not want to get ahead of themselves by going ahead and putting a pipe line. For that reason, she will be opposing the pipeline.

Aye: Member Yuen, Oi, Woodside, Roehrig, Downing

No: Chair Case

5:1 vote.

**Approval denied (Yuen, Woodside)**

- ITEM M-1 Issuance of a Revocable Permit for Office Space, Automobile Parking and Staging Area, Nordic PCL Construction, Inc., Diamond Head Concourse, Honolulu International Airport, Tax Map Key: (1) 1-1-003:001 (Portion).**
- ITEM M-3 Issuance of a Revocable Permit for Storage Space for Janitorial Supplies, Tunista Services, LLC, Diamond Head Extension, Honolulu International Airport, Tax Map Key: (1) 1-1-003:042 (Portion).**
- ITEM M-4 Issuance of a Revocable Permit for Airline Ticket Counters and Airline Offices, Virgin America Inc., Ewa & Diamond Head Domestic Extensions, Honolulu International Airport, Tax Map Key: (1)1-1-003: 053 (Por.), 057 (Por.) & 058 (Por.).**
- ITEM M-5 Issuance of a Revocable Permit for Airline Ticket Counters, Westjet, Diamond Head Domestic Building, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 053 (Portion).**
- ITEM M-6 Agreement and Amendment to Agreement Consenting to Subordination of Lessor's Rights in Personal Property for Financing Purposes in State Lease No. DOT-A-13-0017, issued to So Ono Food Products, LLC, to Alaska**

**Growth Capital Bidco, Inc., as Lender, Ualena Street, Honolulu International Airport, Tax Map Key: (1) 1-1-014, 103, 113, 114.**

- ITEM M-7** Amendment to Prior Board Action of August 28, 2015, Item M-6, Issuance of a Revocable Permit, Aviation Academy Hawaii, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-72:13 (Portion of). This amendment decreases the square footage of the area under the revocable permit, and monthly rental and holdover tenancy fees (or amounts).
- ITEM M-8** Amendment to Prior Board Action of June 12, 2015, Item M-3, Issuance of a Direct Lease for a Fixed Based Hangar Facility, Schuman Aviation Company, Ltd. dba Makani Kai Helicopters, Honolulu International Airport, Tax Map Key: (1) 1-1-72:8, (1) 1-1-72:62, (1) 1-1-72 Portion of 82. This amendment changes the annual rental and removes the provision for reopening the annual ground lease rental.
- ITEM M-9** Issuance of a Revocable Permit for Aircraft Parking, Hawaii From Above, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.
- ITEM M-10** Issuance of a Revocable Permit for Aircraft Storage, Bruce E. Clements, Kawaihapai Airfield, Waialua, Hawaii, Tax Map Key: (1) 6-08-14-17 (Portion).
- ITEM M-11** Issuance of a Direct Lease to Atmos, Inc., to Develop, Construct, Operate, Use and Maintain a Private Hanger Facility for the Storage of Personal Aircraft at Kalaeloa Airport, Island Oahu, State of Hawaii, Tax Map Key: (1) 9-1-13: Portion of 32.
- ITEM M-12** Issuance of a Revocable Permit for a Food and Sundry Concession to George Paoa Jr. dba Paoa Productions, Kapalua Airport, Tax Map Key: (2) 4-3-01: 08 Portion of 73.
- ITEM M-16** Issuance of a Revocable Permit for Air Cargo and Airline Servicing Operations, Aloha Contract Services, LLC, Kona International Airport at Keahole, Tax Map Key: (3) 7-3-43:Portion of 03.
- ITEM M-17** Issuance of a Revocable Permit for Air Cargo Operations and Equipment Parking, Aeko Kula, Inc., Kona International Airport at Keahole, Tax Map Key: (3) 7-3-43: Portion of 03.
- Unanimously approved as submitted (Yuen, Roehrig)**
- ITEM M-20** Issuance of a Revocable Permit for Aircraft Parking, Mauna Loa Helicopter Tours LLC dba Mauna Loa Helicopters, Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Sidney Hayakawa representing the Department of Transportation Airports-Division- DOT-Airports division introduced items M1, M3-M20

Member Yuen said there are 8 in Hilo, Kahului, Lihue, Kona, and Molokai; he asked how number 8 came up. Hayakawa responded that these are existing premises that are occupied by rental car companies on an RP.

Member Yuen asked if someone has 8 spaces, would one have any ability for more. Hayakawa responded that they don't anticipate more due to space being limited.

Member Yuen asked what non-exclusive means. Hayakawa answered that it is nonexclusive to the rental car company itself. So whoever bids, they will have to occupy the current space.

Member Roehrig added that his only concern is that we want all the car companies to survive the economy is not as strong. There has to be some flexibility, if it is feasible, there should be over flow. He asked how long this exclusive bid is good for. Hayakawa said that it is good for 5 years.

Chair Case added that the questions are consistently on these. She asked if they could come back next time to report it would greatly help. These are state lands, we are approving bodies, but it is under their jurisdiction.

Member Yuen requested that the Board defer the rent a car ones today and have it brought back next meeting. Hayakawa explained that if the Board defers they would have to bring in a separate submittal. They would have to make an extension for each one. It would be only for one year.

Tomokiyo added that they would need to come back to the Board to renew it for another year.

Tomokiyo explained that if a permit was executed on February 2014, it is good until 1 year. DOT-AIR needs to come in for permission to renewing a permit.

Member Roehrig expressed concern this violates civil service laws.

Member Downing asked if they have ever been paid percentage for the cars. Hayakawa stated that it is an insurance thing for us too because we are not able to predict how much cars they rent a month.

David Bettenkourt, General counsel for safari aviation, added in opposition to M-20 and at the time cannot examine the document, we don't know the provisions or lack of provisions. There is a 30 year fight over access charges and access rights in LIH airport. This is the beginning of another version of phase of dispute. It will continue in the next few months. Safari operated with fixes wing and helicopter and forced to abandon that type of business model because the state prohibited tour operations from the general aviation ramp. The lease form produced added a prohibition of conduction helicopter tour operations. They pay \$2500 per month to rent the heli-pad. They oppose this because there is economic discrimination. Their complaint is with the



Kauai branch of DOT-AIR, they have never adopted anything other than completely random and arbitrary rules or procedures to access to airport property.

Hayakawa commented that in the submission, it is an issuance of a RP for Airport parking, not commercial property. This is only a tie down. If any helicopter company starts to do commercial activity from a tie down, the RP does now allow that, and we will enforce that and terminate the RP.

Member Woodside asked how the helicopter does goes from being tied down and going into used for commercial activity. Hayakawa added that the FAA has notified us that we need to purchase sufficient land area to designate a heliport for safety reason. For safety reasons.

Bettenkourt added that they had an airport meeting 2 weeks ago. The airport has authorized another operator “jack harter” to operate from the same general aviation ramp, not a tie down, but a leased area which was on a RP and to operate. They have requested for years.

Chair Case agreed that the restrictions are not written in the submittal.

Bettenkourt said they had it tied down on the transient pad, which they were not paying anything, they would fly to the CAT (Commuter airport terminal) and load their passengers and fly out of there and not out of the heliport. This operator has already operated out of the general aviation ramp.

Hirokawa explained that this is a submittal for 900 sq ft. it is for a title and not for commercial activity.

Member Oi asked if it would it be possible to put in the RP that no commercial activity will take place on this facility.

Tomokiyo said no, commercial activity may be allowed per Hawaii administrated rules but it has to be approved by the director.

Bettenkourt explained that the next meeting the lease for Jack Harter RP will come up. He manages to get excluded from not signing the lease. Now he has a FAA right from operating from another place on the airport general aviation ramp. The Airport manager is letting him do that rather than off of the heliport.

Member Woodside asked if there an enforcement issue in Kauai.

Hirokawa said they have never witnessed one.

Chair Case asked if Mauna Loa also had a lease with the heliport and pay the comparable rent. Tomokiyo explained that on October 2017 this year, the lease is enforced.

Member Yuen made a motion to approve M20.

Bettenkourt requested a contest case hearing because it is altering airport rules unilaterally for one operator.

Member Woodside seconded the motion.

Member Roehrig understood that there were printed restrictions and asked to look at them before they vote. He asked Bettenkourt what which condition you are concerned about.

Bettenkourt said there was a list it as purpose for helicopter tour operations, but it was crossed out so they can't get a copy of it so they don't know what usage.

Member Roehrig asked Tomokiyo if there was written condition for airplane parking.

Tomokiyo the permit is not been issued yet, that is why we are before the board today. It is specific enough.

Bettenkourt suggested language that would read "no tour shall be conducted from the general aviation ramp" That requires what has been said that would be conducted from the heli port alone.

Tomokiyo recommended Bettenkour write a letter to DOT to express his concern.

Chair Case asked Member Yuen if he wanted to add cliairification.

Member Yuen said no, he was satisfied with day to day active management and satisfied with the policies that the permit states only for parking.

Member Roehrig disclosed that he and Bettenkcourt had previous history with one another.

**Unanimously approved as submitted (Yuen, Woodside)**

**ITEM D-5    Review and Approval of After-the-Fact Right-of-Entry Permit to Gary D. Stice to Access Government Lands for Music Concert Parking Purposes, Haneoo, Hana, Maui, Tax Map Key: (2) 1-4-007:009 por.**

Kevin Moore from Land Division-LAND conveyed item D-5 explaining that the applicant did not agree with staff's recommended charge of \$6000.

Member Oi asked if the 10cents a sq. ft. was a standard charge. Moore acknowledged it was. Moore added that there is a board policy from June 14, 2013 to give applicants incentive to turn in applications early. This one just came in a couple days before and the surcharge policy is \$1000.

Member Oi wanted clarification if the after-the-fact permit that Land is charging them \$1000 Moore believed the surcharge can be as high as \$2000.

Member Roehrig asked what the music concert is about. Moore explained that it is a reggae concert following a relay race.

Daniel Ornellas- District land office in Maui added onto D-5 and explained that it is a big influx of people in Hana, about 500+ people the concert is to happen the evening of the race day. The Maui Police Department showed concern that the event organizers never had permits for this large-scale relay event.

Member Roehrig asked if the Hana relay race is in relation to the concert. Ornellas explained that the concert promoters are not connected with the relay, it is separate.

Chair Case asked if they use state land for parking last year and was a permit issue for last year. Ornellas stated they did but staff was not aware of the event last year.

Member Roehrig asked if there is someone here representing the concert.

Ornellas explained that the promoters of the event threw the MPD a parking plan, intended to utilize the land. Ornellas went to the event, and left at 730 pm. He had counted about 50 cars. The event was supposed to begin at 6 and run until 10pm. Enforcement did attend but did not submit a number of vehicles. There were cars everywhere.

Member Oi asked if this is basically only for state land. Ornellas explained it did and expressed appreciation to the land owner and do what is right.

Member Woodside wanted clarification the concert promoters were Gabriel Rebiliala, James Pooh, and maybe Eric Nelson. They organized the event, sold tickets, made revenue, and made it on state property.

Gary Stice and Apilonious Stice introduced themselves as the landowners they were here to appeal to the board the right of entry permit. They understood the fine but were present to ask the board to waive or reduce the fine. They have owned the property for over 20 years. It is true the concert was held on their property, the parking area is right next to their property.

Stice thanked Ornellas for being fair about the difficult situation. Stice learned the requirement for the permit right before COB on Friday, and the event was Saturday. Stice tried hard to produce this permit to make this event legal. The way it happened was they came in contact with him around 3pm and was notified to get the permit. Ornellas indicated that there would be the cost but he did not know how much. When they were ready it jumped from 9000 sq. ft. to 50000 sq. ft. He didn't know if it was his land or the adjacent land. Stice signed it under duress. They are just suggesting that the 50,000 sq. ft. is way more than needed. If they were to count per vehicle, it would be about \$100 per vehicle to park for a few hours. The other point is the sponsor for this event actually cleared that land 5 years ago, brought out all the junk. By the group that you will hear from shortly. The events that they supported down there are for the good of the community. This was not just an event to make profit. In the past they have raised money with several NGOs.

Stice read a letter from a resident in Hana.

Stice added that they also wanted to appeal the \$1000 penalty that was put on there because they were not aware of this ruling and have tried to resolve the matter before the event. Typically there is a warning given first, then a penalty should be given. The amount is unreasonable. Member Oi asked if they let them hold the event on the property. Stice responded that they did and paid the electricity. Stice added that Hana is very economically depressed, selling goods roadside, necessarily a third world economy. These people want to sustain themselves. These people have been there for generations and sustain themselves.

Member Oi asked how big your parcel of land is. Stice responded 1.3 acres that is why I was confused of the 50,000 sq. ft., I don't understand how that decision was made.

Chair Case asked what the approximate number of cars there was. Stice estimated around 70.

Member Downing asked about the money raised and if these promoters donated all the money to the community. Stice answered that no they got paid, but if you hold a fundraiser, are you not allowed to pay for entertainment, setup, and security. In the end there were \$900 left to go to "sustain Hana"

Member Downing asked where the \$900 is and when this concert was put on did you know the details. Stice did not know it was on my property.

Member Downing added that if he was the property owner, and cared about giving money back, he would try to my best to keep everyone on my property, but to say they can go use state property, he did not know if that got in the discussion with you or the promoters. Stice inputted that we assumed this property in question, we never thought about the requirements of a permit for using it. The land was cleared and maintained by Russel and people sponsoring the event.

Member Woodside added that based on the drawing the Stices were not aware of the drawings. It makes sense that the size of their property and the lot next, there is an understanding to the amount. That part of the discussion did not happen.

Member Woodside added that there were no conversations with the 2 of you prior to that in terms of cost. Ornellas mentioned that verbally was \$500 and got bigger once they got the map.

Chair Case added that something in the nature of fee for late processing was appropriate because people the processes seriously, there was an effort of LD to reach out to get info. It does not seem anyone was paying attention to that. Stice mentioned that they were.

Chair Case added that if you were, you did not really connect until the last day. Stice added that they were unaware.

Chair Case added that it needs to be a legitimate process.

Member Woodside made motion to approve submittal with amendment to the consideration of \$1500 to take the charge of area that the Stices thought it would be.

Member Yuen seconded the motion.

Member Yuen added that he thought there is an issue with the promoters of you taking the heat and continued to think the basis the Member Woodside stated as reasonable. Member Yuen commended that the Stices for trying to do good for community. If this is going to go on in the future it has to go by a professional basis. Stice acknowledged yes and were very clear on that.

Member Oi added that he agreed with Member Woodside and looking forward that you will not get the property for \$1500 for future events.

Chair Case asked if they can get a permit for a portion of the parcel. Ornellas answered that they could subject to the review and your consent.

Member Roehrig closed with advising the Stices to get the community involved to help you with getting these permits.

**Unanimously approved as amendment (Woodside, Yuen)**

**ITEM C-1     Request to Amend a Fiscal Year 2014 Grant from the Legacy Land Conservation Program to Mohala Hou Foundation by Substituting Aloha Kuamo‘o ‘Āina for Mohala Hou Foundation as the Grant Awardee.**

*Written testimony was submitted by Lea Hong, Tom Lunneburg, and Keola Beamer.*

Sheri Mann acting administrator for the Division of Forestry and Wildlife- DOFAW introduced herself and expanded on item C-1. There is no change in disposition of the grant.

Member Woodside disclosed that Neal Hannahs is a former supervisor, it will not alter professionally this decision today.

Member Yuen thought that the capacity of the partner org. was a factor in evaluation of these grants and asked how is it that we have these grants awarded with these place holders.

Mann explained to her understanding is that the same scrutiny was used on the new awardee. So I think that they knew, yes it was awarded to Mohala Hou foundation, based on their background but the same was used on the new entity.

Member Yuen added that the new seems appropriate then the old. Mann responded that it was musical oriented entity. Based on timeline funding I believe it was important to move forward.

Laura Kaakua, added that it was formed but not a 501c. 3 nonprofit status at the time. That was the key they were waiting for. Kaakua continued to explain that they knew they wanted this board to come about that had land management experience, family ties etc. and those individuals were involved to testify before the commission.

**Unanimously approved as submitted (Woodside, Oi)**

**ITEM E-1     Establish a Volunteer Agreement with the Stevens World Peace Garden, LLC at the Le'ahi Millennium Peace Garden, Diamond Head State Monument, Honolulu, O'ahu Tax Map Key: (1) 3-1-42: por.10.**

Curt Cottrell, Administrator for State Parks-PARKS, introduced Item E-1 and continued that this is a nice amendment to the ft. Ruger path way and millennium peace garden. This is a renewal of a 5 year agreement. We do not anticipate great changes. Pg. 10,11 that is the orientation of diamond head road and the entrance to the state monument.

**Unanimously approved as submitted (Yuen, Roehrig)**

**ITEM E-2     Establish a Volunteer Agreement with Friends of the Future at Lapakahi State Historical Park, North Kohala, Island of Hawai'i Tax Map Key: (3) 5-7-01: por.22.**

Cotrell-PARKS added that this is a very significant site for PARKS, very rich both culturally and archeologically. They have the ability to integrate community interest. This is for a 5 year agreement for stewardship and supporting management for a section of Lapakahi.

**Unanimously approved as submitted (Yuen, Roehrig)**

**ITEM D-3     Set Aside to the Department of Transportation, Highways Division for Rockfall Mitigation and Stabilization Purposes, Relating to Federal Aid Project No. NH-019-2(41) at Laupahoehoe, North Hilo, Hawaii, Tax Map Key: (3) 3-6-004: Portions of 015 & 017;**

**Grant of Perpetual, Non-Exclusive Easements to the Department of Transportation, Highways Division, Under Federal Aid Project No. NH-019-2(41) at Laupahoehoe, North Hilo, Hawaii, Tax Map Keys: (3) 3-6-004: Portion of 017; and**

**Construction Rights-of-Entry to the Department of Transportation, Highways Division for Rockfall Mitigation and Stabilization Purposes, Federal Aid Project No. NH-019-2(41) onto State Parcels at Laupahoehoe, North Hilo, Hawaii, Tax Map Keys: (3) 3-6-004: Portion of Homestead Road.**

There were no changes and no public testimony.

**Unanimously approved as submitted (Roehrig, Oi)**

**ITEM K-2     Acceptance of the Final Environmental Impact Statement (FEIS) for the Schofield Generating Station Project, Department of the Army and Hawaiian Electric Company, Inc., located in the Wahiawā District, Island of Oahu, Tax**

**Map Key(s): (1) 7-7-001:001 & 002; (1) 7-3-001:001, 002, 006, 009, 011-013, 019, 022 & 024; (1) 7-6-001:001 & 006; (1) 9-4-012:001, 003 & 011.**

Lemmo-OCCL introduced item K-2 and added that a generating facility is being built on army land but they need a 46kv connection coming off federal land, hooking up to a HECO substation, doing so it crosses state land. Since they have to do an EIS, OCCL offered to help the EIS to comply with chapter 343. OCCL laid out our analysis as efficient as possible, laying out reasoning and scope, highlighting alternatives they consider, and finally asking you to accept the final EIS. It is basically a 50MW bio diesel generating facility on the army base. Pg. 3 of the report describes the benefits of having this facility.

**Unanimously approved as submitted (Woodside, Oi)**

**ITEM K-4 Time Extension Request HA-16-01 by William Spencer of Hawaii Oceanic Technology for a two-year extension of the construction deadlines for Conservation District Use Permit (CDUP) HA-3495 for an open ocean mariculture facility offshore of Malae Point, North Kohala, Hawaii, Tax Map Key (3) 5-0-000:000 (submerged lands).**

*Written testimony was submitted by Carl Benhardt, Leimana Damate, Priam Kanealii, Wendy Minor, Cindy Rocher, Josephine Tanimoto and Thomas Kapp.*

Lemmo-OCCL added to item K-4 and explained that they have received all their permits, on nuance of this is they are going to deploy one cage as a beta case. That will be run by a bio diesel engine. There have been comments that they had changed the project. OCCL recommend they get another extension; they would have until October 2017 to initiate and October 2020 to complete.

Bill Spencer, CEO of Hawaii oceanic technology introduced himself and added that this is only the second time I have made a request, our lease was granted in 2012, we came back in 2013 the first time making the request because our army corps permit was not secured until Aug. 2013. It took them 4 years to process our sec. 10 permit. By that time our lease had been granted in 2010 but not perfected until 2012. By the time the army corps permit was granted we barely had enough time to start construction, we came before for an extension.

Member Roehrig added that Kawaihae is a good surfing and paddling area many of my friends have competed there. Have you assessed what the impact is going to be on the watersports in the area and asked what have you found out? Spencer our lease side is 2.6 miles west of Malai point, 7 miles North West of Puwaihahi harbor. We are nowhere near any recreation activity that would be happening around Kawaihae harbor.

Member Roehrig added that we have a very important 1 man/2 man canoe race that starts at Keokea, kKohala and goes along the coastline to Kawaihae harbor so what is the prevailing water current in that area, has that been figured out. Spencer added that in the EIS which is not required by law only an EA and cultural assessment because of the significance. We hired a UH

professor from SOEST, he determined this location based on observations that the current was .2 knots. We are 2.6 miles off the coast, not hugging the coast.

Member Woodside asked if this current time extension is to secure financial arraignments. Spencer added that we are in negotiations with a financial backer, we are expecting paperwork in the next few weeks. The magnitude of the project is not easy to get financed. There is no quick return on investment, it is more long term. As it stands we are confident they will follow through with this.

Member Woodside asked how come it has taken 6 years. Spencer responded that any wise investor is going to make sure we have all the permits necessary to undertake the project, it was not until Aug. 2013 that we had all our permits in place. The process was long. EIS took a year, then getting our CDUP, then our army corps permit, our EPA permit, coastal zone permit, all which took various time. During that time we had a recession, given the scope of the project.

Member Woodside added that she seen the board have granted extensions for permitting reasons because it could take a long time. But it expresses that you have demonstrated financial hardship, but the packet does not discuss it. Spencer added that the people that we discuss financing with is a US based company, public company worth over half trillion dollars. They are capable doing this project, we are confident they will go through it. Only challenge is getting a capable investor.

Member Woodside asked when they anticipate the first sphere to go in. Spencer answered that they hope to begin construction by 2017 and completed by 2020. Deployment would be 2018-2019.

Member Downing asked where the majority of this fish going is. Spencer answered that the first sphere is a concept and it depends how many fish we put in there, we have always been concerned about flooding the market locally with fish. We have done public outreach, and herd from consumers who say are in favor of not over paying for sashimi and on the opposite end over flooding the market and hurting businesses. Hawaii consumes 35 tons of sashimi grade Ahi. One ocean sphere can produce a 1000 tons. We are likely to sell a small percentage into the local market, the rest to Japan. It is a market issue, depending on demand. 15 years ago when the law was passed to lease an ocean column in Hawaii to do Mari culture? The legislators deemed it an economic strategic opportunity for Hawaii, to grow fish and produce an export crop sold to the world. Japan consumes 600,000 tons of sashimi grade tuna a year, China is becoming a huge consumer. Hawaii has the second largest exclusive economic zone for growing seafood in the US.

Member Downing asked what our lease rent is. Spencer answered that it is 1% of gross revenue from our operation. Our permit allows for 12 ocean sphere. Each sphere would Gross 100,000,000.

Leimana Damate from Kohala moku, introduced herself and testified on Item K-1 stating that there has been concern of this project. First when the cultural impact statement was done in 08, the people interviewed in the CIS were prominent people from Hawaii, ranchers with one



historian. Other than that the people interviewed in the CIS were not actual practitioners. Since then, there has been a resurgence of cultural activity in the whole state, particularly in Kohala. Damate continued on added that where this project is located, the practices go out further than 2.6 miles in Kohala. It is on the southern border of fishing Koa. The people are concerned that they have no communication with the community with no community benefits plan. How much of the benefit goes to the people at Kawaihai? The communities recommend a closer relationship with transparency, they were sympathetic that it took 8 years and the project proves to be a boost to the state economy. They are not confident that it will happen in 2 years. The concern is that there is going to be a strong impact on the practices in the AG system themselves. There is no hard proof that all the Kukai that comes down from the fish is not going to be swept up by the current and swept on shore. It would impact the spawning process. Balance must be maintained. Once the submittal was examined it seemed that DLNR was taking a neutral position and so they wanted me to stress that DLNR needs more information on the different practices, different things people in Kawaihai are going through such as working with the coast guard and DOBOR. Their main complaint is that they never had communication with project managers.

Spencer added that he respected what Damate has said, he wanted to assure her and her group that 1. Communication is a 2 way street and our information is accessible. I am more than happy to work with them and listen to them. I have scientific advisors stating that it will never touch the bottom and we have an example where 80 million gallons of human waste is treated, is being discharged a ¼ mile off sand island and 5 miles away from Waikiki beach, that is not making anyone sick. Fish feces does not have e coli in it, it is a liquid, 20% calcium carbonate that counteracts co2. I am happy to talk at length with anyone that wants to speak to it. Driving force is to produce seafood protein in an environmental matter.

Member Yuen asked what the aquaculture that we approved off of melha was and what was approved on it? Lemmo added that it is an expansion of the facility.

Member Yuen added that it was much shallower and closer to shore.

Member Oi hoped that Spencer work it out with the community.

Member Downing asked if this going to be the final extension and could we make this the final extension? Chair Case did not think so.

Member Roehrig added that he hope the people that live there in the area will have an opportunity from benefiting from this. Secondly, local people in the area are going to watch you very closely, if they start to find sickness or pollutants. Listen to the Aha Moku people.

**Unanimously approved as submitted (Yuen, Oi)**

02:55PM      Member Roehrig left meeting

**ITEM K-1      Conservation District Use Application (CDUA) MA-3745 by James Agyropolous, for a shoreline erosion control device that will partially rest on state**

**submerged lands, located at Kuau Bay, Makawao, Maui, offshore of Tax Map Key (2) 2-6-009:005.**

Sam Lemmo, introduced Item K-1 and added that the applicant proposing to build a hybrid revetment wall for erosion control, pretty much a clay embankment. Structure is predominantly landward of the shoreline, a 432 sq. ft. area. They are going to remove and demo old sea wall and structural remnants. There are places where it is appropriate and inappropriate to put up structures. This case is not like that, there is no beach in the adjacent area. The EA was accepted by the County and demonstrate support for this project.

Member Downing added that on exhibit 5 and asked where the high wash mark is. Lemmo answered that he tried to line it out for you and the High wash is not going to go on top of the structure but bottom side on the blanket.

Member Yuen asked in the Google earth photo in exhibit 1 where it shows the beach, is this the house that says eroded scarp. Lemmo answered that it is the dugout.

Member Oi asked how it is going to improve shoreline access. With the old drawings show rocks and concrete. Lemmo answered that if you look at the design profile, there is a flat apron that is being proposed on the bottom of the toe of it. I have not seen the detail drawings. This is a low resolution plan. One of the conditions of the permit is that they try to do the best they can to accommodate. Those are old ruminant material from a structure that has completely failed.

Member Oi asked when you talk about excess traversing the beach, is it crossing over the property to the beach? Lemmo mentioned that there is a rock ledge there and I think maybe the consultant can elaborate more.

Mike Summers, land use planner, expanded on Item K-1 by adding that we got involved in 2012 with this project, met with the land owner and looked at the site. One thing that stuck out was just how significant of a problem this section of shoreline was. Essentially there has been so much erosion the shoreline is a hazard to the owner of the property, it is a 20 ft. embankment, concaved. It is falling in over itself. If you are at the top of the property it is a safety hazard for the owner. At the bottom of the property there is debris that fall. An issue for people that use the beach. We estimated that 190 cubic yards of erosion has taken place, equivalent to 15 dump truck loads. We got a situation where it is causing sedimentation. DLNRs policy is when you have remnant debris fronting the property, essentially you are responsible of removing the debris. Basically a seawall constructed pre 1960s that separated from the embankment that is on the shoreline. That seawall creates a major hazard. There is overhanging remnants. One thing from my perspective I can see the actual armoring process of arming the shoreline, which will not have an impact on beach access. We have support from OCCL staff and have unanimous support for the EA.

Member Downing asked how they tie in to the neighbors. Summers answered that our structural engineer could go over that.

Keo Marcia, structural engineer added that basically what we do on either end we have an end wall to retain the earth in the adjacent property and also make sure to keep all the inflow going inside this concave bowl.

Member Downing asked that the neighbors on the other side if they have side walls? Marcia answered that they did not and they have clay, we are giving them additional protection.

Member Downing asked if the flow from the water that is rolling into a bowl that water is going to move in a different direction if it comes from east or west. Marcia answered that it would not and it would be the same direction, ours would be basically a revetment.

Downing added that this water flow when you create that slope, there is going to be a speed of water coming down. But when you create this bowl, this water is going to flow in and flow out. I am trying to understand it.

Chair Case clarified that your question is whether the wall will be better worse or same for the neighbors.

Marcia acknowledged that it will be better, assuming that a possible condition directly hits laterally, it comes back.

**Unanimously approved as submitted (Downing, Yuen)**

**ITEM D-6 Amend Prior Board Action of November 14, 2014, Under Item D-12, for the Imposition of a \$5,000.00 Fine, an Additional \$1,000.00 Per Day Violation, and \$220.00 in Administrative Costs Against Maui Kayaks Inc., for Unauthorized Commercial Activities Conducted on State Unencumbered Lands. This Amendment Changes Payment of Fine and Fees from within Thirty (30) Days of the Date of the Board's Action, to a Thirteen (13) Month Payment Plan at 7% Interest of the Declining Balance, Inclusive of an Additional \$500.00 Administrative Fee for a Total Payment of \$6,945.40; at Por. of Keauhou, Kalihi, Waipao, Papaanui, Kaeo, Honuaula, Makawao, Makena, Maui, at Tax Map Key: (2) 2-1-007: Seaward of 083 and 093.**

*Written testimony was submitted by Paul L. Horikawa.*

Member downing asked how long has this been going on, since when.

Kevin Moore answered that there is a history to it. In 2008 Maui district office is asking for an additional \$500 in administrative fee in handling the payment plan.

Member Downing asked in 2013 they asked for a contested case hearing for it, what happened to it? Daniel Ornellas answered that they asked for it but never followed up with the written statement.

Chair Case added just to recap, this was from a year ago and they got fined for unauthorized commercial activity and they have not paid anything yet.

Ornellas answered that they got board approval in 2014, we sent correspondence to the violator with no response.

Chair Case asked if they stopped doing the unauthorized activity. Ornellas answered yes and no, and the area where they were cited, they don't operate there any more, they go to another beach, we have not caught them in the act, they have a county permit to operate in this one park so they go to other state unencumbered lands.

Member Downing showed concern as to why should it be 13 months and that we should make an amendment to make it 6 months.

Chair Case asked if we have anything in the land process on if there is a subsequent violation? Ornellas answered that they did, at a second violation we can charge a higher fee. This would be a first offense.

Member Oi asked if DOCARE can confiscate their equipment. Even though this is a kayak operation.

Clarence Yamamoto, branch chief for DOCARE Maui introduced himself and added that if we get approval from chair, we can confiscate the kayaks as evidence, only storage would be an issue.

Ornellas added that they are asking for clarity on authorization to confiscate.

**Unanimously approved as amended (Woodside, Downing)**

**ITEM D-9 Amend Prior Board Action of September 11, 2015, Item D-6, Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach Every Friday From October 2, 2015 to September 30, 2016, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Por).**

**The purpose of the amendment is to reinstate the safety zone fee of \$500 for the aerial fireworks display occurring every Friday.**

*Written testimony was submitted by Stephanie Pascual, Rick Egged, Jerry Gibson, and Nappy Napoleon.*

Chair Case asked if there is an overarching policy on fireworks, and if so, does the Board set it. Moore responded that for the ones that occur on unencumbered state lands, it is this board that handles the matter. For most events on neighbor islands, the display is twice a year and at same locations.

Ivan Lui-Kwan, legal counsel for Hilton introduced Jerry Gibson, area vice president, Rob Martin, president of Waikiki beach activity and Rick Gabe, executive director of Waikiki improvement association.

Jerry Gibson, introduced himself and explained that the fireworks display benefits the entire community, it has become a tradition that the local businesses look forward to. Many people enjoy the fireworks. The 3000 people await at the beach to view fireworks. Hilton is happy to allow display for general public. During fireworks display they are not denied access to the beach. Hilton spends \$446,887 a year for fireworks production. They truly believe the fireworks contribute to the community. The compromise he sees is to charge the \$550 permit to us every time we do an independent firework event when it is not for the community.

Rob Martin, who has been with Hilton for 25 years introduced himself. Martin didn't know the lagoon area well. I am bringing letters from associates and affiliates that operate in the area. First from Nappy Napoleon, he is the founder of Anuenue canoe club. He is in support of the fireworks. Second from Erol Kane, owner of Hawaii hotspot surf school, emphasizes importance of Hilton fireworks on free entertainment. Lastly, Doug Ewald, owner of Hawaii Nautical, family owned tour business, Ewald attested to Hilton Hawaiian village firework display. Safety is everyone's concern, the perimeter that is set up for 90 minutes before the show. The reality of the situation of the area is that there is no negative impact to beach goers. First the area is adjacent to cars and moving area, they migrate further Diamond Head on the soft sand beach. Second, the area has become compacted. Third, it is the furthest distance for all activities. Fairly remote. Lastly the waters have sharp coral. This is an area beach as a transition zone. He asked the board to please consider this beautiful tradition that the Hilton has sustained for decades.

Rick Gabe, added that they strongly oppose the fee, normally this would be a charge for a one time firework show. It is a valuable community event. People from all over Waikiki anticipate it. Estimated at 100k people watch this on a weekly basis. They view it as a visitor amenity so we would respectfully request that waiver continue.

Member Downing added to all 3 that he had heard 2 of you state that this is not a revenue generating proposition. Yet you advertise in your website that you can purchase \$20 a ticket to view the fireworks. The sand was stated that the eastern side of the beach is all coral, the reason it is hard coral was it was always hard coral, it was dredged, to create the pool that everyone swims in. When Hilton got the rights to get the lagoon one provision was to upkeep the beach. When it gets into fees, we charge others \$500 across the board. Yes the community does come down, but there is an advantage to Hilton on how tour boats sell tickets to watch fireworks. That is good name recognition to Hilton, possible put some of the fees to the boat to supplement the fireworks.

Lui-Kwan said that the ticket for \$20 is for a show, they perform then the fireworks fire off. As far as commerce, tax benefits to the state from being on the boats, restaurants surrounding all in Waikiki.

Member Downing noted that they are saying that everything you do for the fireworks is community based but it seems business based. Lui-Kwan responded that if you have 100,000 people enjoying fireworks, there is PR value, economic value, and joy.

Martin responded to Member Downing and added that he thinks you are right that there is PR value when a company does something to the community. Both sides are right but that PR benefit is true of all kind of free public events.

Martin added that they just created the beach district this year, we created it out as a state funded DLNR sand replenishment project. There was a requirement that there was private sector funds to public. All of the hotels pay, everyone who benefits pays.

Member Oi asked how that fund could be used to pay for fireworks. Martin responded that the fund is specific to beach fund and management. Idea behind the fund is that is to be used for sand replenishment.

Member Downing made a motion to approve.

Member Woodside seconded the motion.

Member Yuen added that he is going to vote against it, he sees it as free entertainment and don't see the fee relating to actually commercial opportunity given up by the state.

Member Downing added that under that concept do they waive fees for all fireworks display.

Member Oi added that the next item number is fireworks related as well. He was on the fence because the Board waive the fees a year ago and now back to apply the fees. He felt that the public does enjoy it but he cannot see approving something a year ago and changing policy to make revenue. This whole day is based on charging people. He was hesitant to vote on this.

Chair Case added to reiterate, they are supposed to charge for state land. We have discussed mitigating factors, one is public benefit and in this case there is some demonstrated public and private benefit, the fact that the land would not be used otherwise is not a factor but it is true that there is other revenue generating use for it. She was unclear herself.

Member Oi thought they should defer this item. The surf contest is Maui for \$6,000 of labor is going to be used for cleanup. He said they should come up with an idea with Land division on criteria on how we are going to use the funds.

Member Downing mentioned that he would amend the motion to defer but when the next item comes we will have to defer it.

Member Yuen added that this is public entertainment.

Member Woodside added that this request for waiver was for this free community event not a one off special event.

Chair Case asked if they were to defer and ask staff to come up with criteria to develop a criteria how to evaluate fees that they may see excessive due to bulk use and asked if Hilton's permit expired this month. Lui-Kwan said that it expires end of November.

Member Downing made motion to amend my motion to defer item.

Member Woodside seconded the motion.

### **Item Deferred**

**ITEM D-10 Issuance of Right-of-Entry Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display on November 10, 2015 at the beach fronting Kahala Hotel, Waialae, Honolulu, Oahu, Tax Map Key: (1) 3-5-023:seaward of 041.**

*Written testimony was submitted by Jade HJaughian.*

Kevin Moore-LAND discussed impacts on dolphins and added that the same individuals are here to testify today.

Natalie Para representing Kego conservation testified on D-10 and added that she is here to request to deny the issuance or permit fireworks can show to harass monk seals as defined by the marine protection act. Research has shown they react strongly to fireworks and it takes a while for them to go back to haul-out sites. Rest periods are vital to monk seals. This time of year is the worst time for rest as tiger sharks are its predators. They had about 6-7 people removed before the fireworks show.

Janelle Ritten, representing geo-tanks, testified that in the alliance of marine animal parks and aquariums states, predators, hunger, noise, parasites, pollutions is what animals have to contend every day. Dolphin quest in Kahala pride themselves of being a part of this alliance, yet they want to justify firing loud fireworks near their dolphin enclosure. It should be noted that study has not been done on dolphins but none were observed in times of fireworks and no reports of dead or injured dolphins occurred. In her opinion Dolphin Quest knows and is denying that fireworks are harming their mammals.

Janelle played a video that they recorded.

Jesse Hinchey, a HPU student was with a friend on Waikiki beach and heard there was going to be a fireworks show at the Kahala and never knew there were dolphins there. They were told the dolphins were free to see to the public. He was met by a security officer that told me to leave since he was not staying at the resort. He was also threatened to be arrested.

Jade Hoyen, General Manager with Dolphin Quest, testified that the steps they take to take care of their animals is to ensure animal behavior is monitored on site. They have not observed physical or behavior changes based on the pyrotechnic activity. They appreciate the testifiers for caring about the animals that we care for. The behavior is sky hopping that dolphins do when they are curious about what's happening above water, it is normal behavior. They did not show diminished hearing and what the Kahala does in security, it is private property, and they can ask people to leave. It was a private function that night.

Member Downing asked if the dolphins are in stress, do they go to the surface or dive underwater. Hoyen answered that she was not sure how to answer the question. She is not a behaviorist and is not sure what a stressed dolphin is to look like.

Member Woodside asked how frequently Kahala does fireworks. Hoyen answered that not frequently and these are private groups that requested it.

Member Woodside asked how normal is that behavior during fireworks displays and what other sorts of observations were made. Hoyen answered that it is consistent to the observations.

Chair Case asked when you have private events, is it normal to not allow members of the public? Hoyen responded that it is a function of the Kahala.

Member Downing added that the Kahala basically does not want the public. Hoyen added that you are able to access the public access beach, if you are there to enjoy the fireworks.

Chair Case asked if you have had an issue with it being observed during fireworks. Hoyen answered the dolphins, she personally did not.

David Hemick representing HPU, and anti-tanks Hawaii testified that he had a video of us on the phone saying that anything with the dolphins are open to the public. His question was that why that night was a big deal.

Nichole West, worked for dolphin quest for 16 years added that she was there the last time they had fireworks. What she observed is that dolphins do look up but do resume baseline behavior. Nothing out of the ordinary whatsoever. The type of behavior you would see if dolphins were stressed if observed she would alert the company. If she observed anything that would compromise their overall health, she would bring it to their attention. She has watched the dolphins 5 times when fireworks were displayed.

Samantha Rivera, representing HPU and empty the tanks Hawaii testified that she was also there and did not see trainers. Ultimately in the future for the next fireworks show could Kahala record their reactions, rather than word of mouth. She didn't think there have been enough observations. She didn't understand why they kick people out, and there were other tourists there too. They did not close off the area where the dolphins were.

Member Yuen made a motion to approve this, his concern was noise being produced around the dolphins when kept in enclosure, they had a lengthy report from DAR and reasonably satisfied.



Member Downing seconded the motion and added that he had seen the video with splashing, are we experts to determine erratic behavior. Member Downing knows the emotional part of it, but no one is giving him scientific fact so in that part he will vote to approve. On Nov 10<sup>th</sup> he said he would go and observe.

**Unanimously approved as submitted (Yuen, Downing)**

**ITEM J-2      Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules; Issuance of Easement to Hawaii Fueling Facilities Corporation for construction, access, and maintenance of monitoring/recovery wells and interceptor trench at the Keehi Small Boat Harbor, Tax Map Key No. (1) 1-2-025:113.**

*Written testimony was submitted by Jason Maga, and J. Andrew Helmlinger.*

Ed Underwood Administrator for the Division of Boating of Ocean Recreation-DOBOR had no changes to item J-2.

**Unanimously approved as submitted (Oi, Woodside)**

**ITEM J-1      Delegation of Authority to the Chairperson of the Board of Land and Natural Resources (Board) to approve a Grant Agreement with the Polynesian Voyaging Society (PVS) to assist in funding the Malama Honua Worldwide Voyage.**

Ed Underwood Administrator for the Division of Boating of Ocean Recreation-DOBOR had no changes to item J-1.

**Unanimously approved as submitted (Woodside, Oi)**

**ITEM L-1      Appointment of Tyler Johansen and Kirk Derasin to Serve as Directors of the Kau Soil and Water Conservation District.**

**ITEM L-2      Appointment of Harry Toki to Serve as Director of the Waiakea Soil and Water Conservation District.**

**ITEM L-3      Request Authorization to Select Consultants and Authorize the Chairperson to Negotiate, Enter, and Execute Agreements with Consultants to Implement and Administer Projects in Support of the Cooperating Technical Partners (CTP) Grant.**

**ITEM L-4      Request Authorization to Select Consultants and Authorize the Chairperson to Enter Into Contracts or Agreements and Sign the Necessary Related Documents Needed to Perform Activities Required Under the Community Assistance Program-State Support Services Element (CAP-SSSE) Grant.**

Carty Chang Chief Engineer-ENG had no changes to items L-1 through L-4.

**Unanimously approved as submitted (Downing, Woodside)**

**ITEM F-1 Request for Approval of a Permit Application for Mr. James K. Mawae for Netting Activities Within Area 1a Only, In Kaunakakai Harbor, Molokai (10/23/2015 – 9/30/2016); And Request to Delegate to The Chairperson the Authority to Approve Future Kaunakakai Harbor Fisheries Management Area Netting Permits.**

*Witten testimony was submitted by Kamana'opono Crabbe, Ph.D and Then 'Aha Kiole o Moloka'i.*

Mike Fujimoto and David Sakoda introduced item F-1 and added that they created zones and allow fishermen to harvest in zone 1A off the pier and require to get a permit from us, to notify us and DOCARE. Last time they granted a permit was 2009 and 4 applicant applied. There is no criteria in the rule to deny the permit, but there is provisions that the applicant must abide by. DAR proposes to amend the rules to remove permit requirements and keep the zoning because we feel the zoning will address the user conflict problem and we don't need to continue issuing the permits.

Member Woodside mentioned that it says here the permit is here to capture a load a fish a day, and asked what the other names that are marked up are. Sakoda answered that it is a team operation my understanding is there is a main vessel and support vessels assisting with the surrounding area. He didn't know if they are all involved in the same time. They are all authorized under the permit.

Member Woodside asked if there is a time where they were told their permit was invalid. Sakoda answered akule is the more sustainable fishery in Hawaii, resource sustainability was not a concern of the development of this rule. It was managing conflicts over that.

Chair Case asked if there was a permit issued in 2009 and were they in effect. Sakoda said there were 4 applications granted and are not in effect.

Chair Case asked if you are not concerned about the sustainability of the fishery. Sakoda answered that they have not received any complaints of these applicants or permitted conduction operations, it seems the permit system is a way to impose these conditions where they have to notify harbor master and DOCARE of activities done. I don't know if anything would change if we remove the permit system. Benefits of permits is that it is revocable. It creates an issue because if people want to testify before the board, there is no criteria in the rule.

Member Woodside asked if anyone applies to get a permit. Sakoda answered yes.

Member Oi asked what a load consists of. Sakoda answered to his understanding it is very selective, they can surround the whole school and release what they need and keep what they want. It is very selective. This application is for one vessel and one captain.

Member Woodside asked during this process, this can be a commercial take, would they need to report their take, and what is their usual take. Sakoda explained that they did and they need to submit their commercial take report. He didn't have the numbers on but could look them up as individual or aggregate catches.

Chair Case added that in the testimony submitted, the 2<sup>nd</sup> thing addressed a request to change the authorization from full board to the chair and asked if that is not what you are pursuing. Sakoda responded that it is one of the recommendations. The reason for that request was the last time we came before the board, the board asked why we are hearing this and we should delegate it to the chair.

**Unanimously approved as submitted (Oi, Downing)**

**ITEM D-4 Issuance of Direct Lease to Napuu Water, Inc. for Solar Photovoltaic System Site Purposes, Puuwaawaa, South Kona, Hawaii, Tax Map Key: (3) 7-1-001: portion of 006.**

Kevin Moore-LAND mentioned that Puuwaawaa is in North Kona and not South Kona.

**Unanimously approved as amended (Oi, Woodside)**

**ITEM D-8 Issuance of a Two Day Right-of-Entry Permit to TEAM Unlimited, LLC. for a Trail Run Competition, and the 2015 XTERRA Off – Road Triathlon World Championship, Kapalua, Lahaina, Maui, Tax Map Key Numbers: (2) 4-2-004: Seaward of 014, 015 and 016.**

**ITEM D-1 Partial Withdrawal of Lands Under Governor's Executive Order No. 2188; Reset Aside to the County of Hawaii for Its Proposed Mass Transit Agency Base Yard Facility; and Immediate Management and Construction Right-of-Entry at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-013: Portion of 148.**

No changes to item D-8 and D-1.

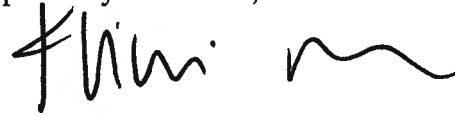
**Unanimously approved as amended (Oi, Woodside)**

Member Woodside made motion to adjourn.

Member Downing seconded the motion.

There being no further business, Chair Suzanne D. Case adjourned the meeting at 5:22p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ku'ulei Moses', followed by a wavy line.

Ku'ulei Moses  
Land Board Secretary

Approved for submittal:

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

Suzanne D. Case  
Chairperson  
Department of Land and Natural Resources