

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

DATE: THURSDAY AUGUST 26, 2016
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

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

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig
Sam "Ohu" Gon

James Gomes
Chris Yuen
Keone Downing

STAFF

Kevin Yim-DOBOR
Daniel Ornellas/LAND
Bruce Anderson/DAR
Erin Zandre-DAR
Curt Cottrell/PARKS
Barry Cheung-LAND

Russell Tsuji-LAND
Sam Lemmo-OCCL
Luna Kekoa-DOCARE
David Sakoda-DAR
David Smith/DOFAW

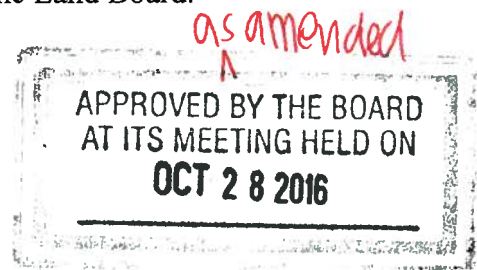
OTHERS

Julie China/Deputy AG
Dan Morris/J-1
Luana Froiseth/ D-7
Christy Gusman/D-5
Cord Anderson/ D-3
Ross Smith/DOT-AIR
Kawika Winter/F-1
Dave Day/D-11

Ulalia Woodside
Eric Leong/DOT-HAR
Kyle Kimo Gusman/D-5
Kevin Herring/D-3
Chris Kramer/D-9
Ken Church/K-1
Li Cobian/D-11

Chair Case thanked former Board Member Ulalia Woodside for serving on the Land Board with a lei.

Woodside welcomed Board Member Sam "Ohu" Gon to the Land Board.



Chair Case announced that they would try to have the Haena briefing around 11am, then after that the Oahu Revocable Permits.

Chair Case then turned the gavel over the Member Gomes.

ITEM J-1 Approve Mediated Settlement of Rent Dispute of General Lease No. H-82-4 to GKM, Inc., Lessee, Located at Honokōhau Boat Harbor, in Kailua-Kona, Hawai‘i, Tax Map Key (3) 7-4-008:042.

Kevin Yim staff officer with the Division of Boating and Ocean Recreation-DOBOR presented item J-1. He noted a typo on the 3rd page the \$133,000 should actually be \$70,500.

Yim also introduced AG Dan Morris who was present to answer questions.

Unanimously approved as submitted (Gon, Roehrig)

Member Gomes announced that item M-1 was withdrawn.

ITEM M-1 Approval to Authorize the Department of Transportation, Harbors Division to Subdivide, Through both the City and the Land Court, the 28.026-acre Land Area Located at Honolulu Harbor, Immediately off Nimitz Highway, Between Piers 24 and 29, Under a Joint Development Agreement with the City. Tax Map Key 1-5-038:011 (various).

Withdrawn

ITEM M-2 Authorize One-Year Holdover of Harbor Lease No. H-79-5 to Matson Terminals, Inc., Situated at the Sand Island Container Complex Piers 51 to 53, Honolulu Harbor, O‘ahu, Tax Map Key No. (1) 1-5-41.

Eric Leong with the Department of Transportation Harbors Division-DOT-HAR presented item M-2 and had no changes.

Unanimously approved as submitted (Oi, Gon)

ITEM D-8 Issuance of a Right-of-Entry Permit to IUCN Oceania Regional Office for Vaka Arrival for the Moana Pasifika Voyage to be held on September 1, 2016, at Waikīkī, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037: portion of 021.

Russell Tsuji, Administrator for Land Division-LAND had one amendment to add on the organizer of the event Pacific Islands Institute Ltd., as a co applicant and they will be providing the liability insurance.

The Board amended the D-8 Submittal by adding “Pacific Islands Institute, Ltd, as a co-applicant.” Pacific Islands Institute, Ltd, a domestic LLC, is the private event organizer and has provided the required insurance for the event.

Unanimously approved as amended (Gon, Oi)

ITEM D-7 Issuance of Right-of-Entry Permit to Na Wahine O Ke Kai, for Event Staging, Operations and Storage Purposes Related to the 2016, Hawaiian Airlines, Na Wahine O Ke Kai Canoe Race; Hale O Lono, Kaluako‘i, Moloka‘i, Tax Map Key (2) 5-1-002: 012 por.

The applicant, Luana Froiseth had nothing to add.

Member Oi asked if the last time they came to the Board it was discussed that this was going to be made simpler.

Member Yuen said there have been discussions, this one had issues 2 years ago but everything is fine now. In general when there are right of entries that are annual and long standing that they try to not have them come back every year. He thought they delegated the ROE to the chair.

Chair Case said she would follow up.

Member Roehrig suggested that if there were no problems then the Chair could just sign.

Member Oi commented that the men’s race was coming up soon too.

Member Gon stated that maybe that one wouldn’t need to come to the Board if the Chair discovered that procedure sufficed.

Tsuji explained that it was recommended by AG Bill Wynhoff that certain type of commercial right of entries be brought back to the Board and be delegated. For staff, just out of safety they bring the item before the Board.

Member Oi asked what the dates of the races were. Froiseth disclosed that they had a calendar of 10 years. Member Oi asked if both the men’s and women’s applications could be done at the same time.

Daniel Ornellas as Maui District land agent explained that the organizers are split in two. At one point he had the two on the same application, but he was advised that it was problematic because it was two different forms of communications, so he split them apart. When he did that, he was then asked why he split them apart. Ornellas said he didn’t get a clear answer, that’s why it’s split again this year.

Froiseth explained that it was her understanding that it was Ornellas’ request to split them because it was two different organizations.

Ornellas said there was obviously some miscommunication but didn't see why they couldn't both be heard at the same meeting date. He said it would have to be two separate submittals because they are two separate rights of entries held by two separate corporations.

9:15 AM Chair Case left.

Member Downing was bothered that a few months ago the Board approved them to finish the race, but not the start of the race. He said if this moves forward it needs to come to the Board for the start of the race and the finish of the race. Member Downing was okay with going with Ornella's recommendation.

Member Gomes said Chair would follow up on getting this approved for a longer period of time and the start and finish at the same time.

Member Roehrig was concerned about the liability issues.

Tsuji said the issue was the delegation of Chapter 92. It was not safety issues. Member Roehrig said if it wasn't safety issues then he was fine.

Ornellas noted that in the Board recommendation there are applicant requirements whereby the organizers are to provide marked areas to avoid in the interest of health and safety, and that staff be positioned when loading and offloading on those piers are occurring.

Froiseth said they don't allow loading and offloading in that area, this year they are going to put up signs and put up caution tape. Ornellas was referring to an area where boats would pull up and load and offload. That's where an injury took place which led to a lawsuit.

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

Unanimously approved as submitted (Yuen, Oi)

ITEM D-5 Request by Kyle Gusman Regarding Assignment of Interest of Lloyd Abreu (Deceased), Co-Lessee in General Lease No. S-4524, a pasture lease, to Kyle Gusman, and for Extension of General Lease No. S-4524, Kawaipapa and Wākiu, Hāna, Maui; Tax Map Key No. (2) 1-3-006:007.

Written testimony was submitted by Kyle K. Gusman, Mbr.

Tsuji-LAND explained that this was a request by Mr. Gusman. One of the lessees passed away, she apparently had a trust, but the family members can't locate that trust. There was no evidence that they were able to find that the lease or her interest in the lease was ever conveyed into the trust. LAND believes whatever interest needs to be probated court order.

Tsuji commented on Gusman's testimony; the Kahana State Park example he used was a special legislation, which is not subject to the probate code. This lease that is being dealt with today is a pasture lease which is subject to the probate code.

Tsuji explained that Gusmans' other example "Frelinghuysen" that was a probate court judgment.

Kyle Kimo Gusman and Christy Gusman introduced themselves. K. Gusman asked the Board to consider the assignment of lease to them. They referenced the Sogas case was because HRS 171 gives the Board authority to approve and Frelinghuysen case went through probate, they didn't have a trust. In the probate, it didn't specifically state the lease; it was covered on the residuary of the trust and the will. K. Gusman said Ethel's will did go to probate, and it did have a residuary clause in her will, same with Lloyd. The Gusmans' feel that with those two clauses in there it's up to the Board.

Christy Gusman testified that 5 years was a long time for a business to not know what they were going to be doing. They continue to do as much as they can in the community service that they do. They would like to continue to be able to do those things. She had several letters of support. C. Gusman said they spent several thousands of dollars. They have been advised that it is up to Board to make a decision.

Member Yuen said there was a lot of background on this, he read through this. Member Yuen asked the Gusmans if they have been operating the ranch for 5 years, K. Gusman said he had been helping for over 20 years.

Member Yuen was said he wanted to be fair and try to find a resolution. Member Yuen confirmed that Randall Abreu was the beneficiary of this trust and the trustee. The Gusmans confirmed. Member Yuen then asked what his position was. K. Gusman said they had a signed notarized letter giving the Board permission to assign them the lease, after Lloyd passed away.

Member Yuen told the Gusmans that the department had an issue with no one wanting to probate the estate. K. Gusman said there was no need to; they feel they don't have to.

Member Yuen asked if no one was willing to pay the expenses of probating this. C. Gusman said for Lloyd, they were told that because of the value of the estate there was not going to be a probate done. She said on June 6, 2003 the Board did an approval of Louie Abreu's interest, who was Lloyd's father and didn't mention anything about a probate.

Member Roehrig said the trust agreement that is here is made for the specific purpose for not going to probate. He asked if it was clear if Lloyd Abreu had an interest in this lease so that it went to this trust when he died. C. Gusman assumed so, his name was on it and he's been paying the bill. Member Roehrig asked if Randy was the trustee of this living trust and if they had a paper from Randy saying he was okay with assigning this to them. The Gusmans confirmed. Member Roehrig didn't see any reason to go to probate.

Tsuji referred to page#2 of the submittal written by Lloyd, he says he wanted his mother's name removed; Ethel- that can't be done. It can't be done when they pass. He didn't like the idea of his interest being assigned to Gusman; that's the way LAND read it. Tsuji said that Lloyd was

asking that the mom be removed and Mr. Gusman be on the lease with him until he passes. Tsuji didn't understand why Lloyd wrote this because this was not what LAND had written for.

Member Yuen said he there was a question of what Lloyd intended. There are proof issues, if Lloyd did not assign his interest when he was alive and it passed and it becomes part of his estate, it's not specifically mentioned in the will it goes into the residuary clause to the trust. Member Yuen said the trust is who is the final beneficiary; Randall Abreu. If all that was correct, doesn't Randall Abreu have Lloyd's interest in the beneficiary.

Member Yuen said, assuming Randall Abreu is the sole beneficiary, then Randall can do what he wants and he could assign it. Tsuji said assuming that this was probated.

Member Roehrig disagreed that it did not need to be probated.

C. Gusman added that when the letter was written that Lloyd and her husband continue to farm together.

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

10:00 AM EXECUTIVE SECESSION

10:25 AM RECONVENE

Member Yuen didn't think the Board was ready to declare that the Gusmans have an assignment of this at the present moment. He thought that if they go through a process (he did not specify what process) that it looks like on the face that Randall Abreu has succeeded to Lloyd's interest and that he could ask the Board to assign that interest to the Gusmans. In the meantime this lease is about to expire prior to the next Board meeting. Member Yuen said the lease could be held over for 1 year, so he made a motion to hold this lease over to 1 year. Technically the holdover would be to Lloyd Abreu's Estate at this point. In that year the Gusmans need some legal advice, can continue to work on this assignment, and if they can get a formal letter from Randall Abreu that states exactly what it is he is trying to do.

Member Yuen suggested the Gusmans have an assignment from Randall Abreu and at the same time there has to be a request for an extension. With that the defaults would have to be cured.

Member Gomes comment that in this 1 year holdover the vehicles and equipment on the land be removed, some kind of conservation plan moving forward, perimeter fencing/water, the defaults in rent, and work with Maui Land Agent in moving forward.

Member Oi asked if Ethel's estate was clear. Tsuji said she had a part interest. C. Gusman said that attached to the documents should be Ethel's last will and testament. The will did go through probate and in her documents she also had a residual clause assigning Hazel Olivera, a past partner. In the event that Hazel is unwilling or unable to do so, it states that Lloyd Abreu then becomes her beneficiary. Member Oi told her to provide the court document.

Member Roehrig advised the Gusmans to get a lawyer in Maui, they need to be guided by counsel. Member Roehrig seconded the motion.

The Board approved a one year holdover pursuant to HRS 171-40. The holdover would allow the Gusmans some time to seek counsel on the estate and probate issues, since they're objective is to somehow get the lease assigned to Randall Abreu (if not already automatically assigned by any will or trust instruments, and ultimately assigned to Gusmans. A Board member commented about the getting the lease current on rent and insurance, and looking into the other requirements for an extension of the lease.

Unanimously approved as amended (Yuen, Roehrig)

ITEM D-3 Consent to Assign General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Assignors, to Kona ABC LLC, Assignee, 'Auhaukea'e 2nd, North Kona, Hawai'i, Tax Map Key: (3) 7-5-009: 043.

Consent to Limited Assignment of LLC Interest (Kona ABC LLC), Lessee under General Lease No. S-5188, by Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Assignors, to LSREF2 OREO (DIRECT), LLC, Assignee, 'Auhaukea'e 2nd, North Kona, Hawai'i, Tax Map Key: (3) 7-5-009: 043.

Tsuji-LAND explained that this was a settlement of a dispute and part of the settlement entails the assignment of a lease that is currently held by the D. G. Anderson family. Tsuji summarized the history in his words; D.G.'s sons were developing the shopping center, took out a mortgage to do the improvements. The State has a parcel that looks like a sandlot that is used as a volleyball court that is used for drainage. That area was leased and auctioned, D.G. Anderson won the auction, the mortgage went into default and the bank took back the property. The mortgage was never put on the leased property, and remained on D.G. Anderson family. There have been ongoing issues between the two sides and the matter was resolved, which is what is being presented today; consent to the assignment of the lease.

Kevin Herring with Ashford & Wriston representing LSREF2, the current owner of the Coconut Grove Marketplace echoed what Tsuji said; through mistake or oversight there was no formal easement for the drainage, there was extensive litigation that was resolved. They were asking for approval to transfer the lease to his clients, the owners of the shopping center so they can continue to use that parcel.

Member Downing asked if the settlement of \$892,000 went to the Andersons. Herring confirmed and explained that the allocation of the price was made by the Andersons. The funds were paid to settle the litigation.

Member Downing asked what the "premium" was. Tsuji said an analysis was made by the

Andersons to the property.

Member Downing asked if this property stayed as a drainage. Herring said yes, they wouldn't alter the use of the area. There are drainage elements that were installed that they would want to maintain.

Member Downing asked why this isn't going straight through the Andersons. Herring explained that after many intense negotiations, this was the agreed upon result.

Member Downing asked if the State benefits from these results. Tsuji said there was no effect.

Cord Anderson testified that this was more of a house cleaning matter on their end, when the shopping center was taken over the scheme was that the State parcel and the shopping center were all one. At the time they broke apart.

Member Downing understood that, but he wanted to know if the State makes money from the \$892,000. Tsuji said it was based on the allocation of the compensation of the lease.

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

Unanimously approved a submitted (Roehrig, Yuen)

10:45 AM Chair Case returned and took over.

ITEM D-9 Amend Board Action of February 22, 2013, Item D-11, as amended by Board Action of July 24, 2015, Item D-12; Issuance of Right-of-Entry to Maunalua Fishpond Heritage Center for Scientific Study, Educational, and Conservation Purposes, Honolulu, O'ahu, Tax Map Key: (1) 3-7-002:018 & 077.

The Amendment is to Request a further Extension to the Right-of-Entry Permit Approved at the Prior Meetings.

Tsuji-LAND presented item D-9, he had nothing to add.

Member Gomes asked what progress or studies have been done since February 2013.

Chris Kramer from the Maunalua Fishpond Heritage Center introduced himself and Laura Thompson. Kramer explained that in their first right of entry, they came across the first fishpond that had been neglected for 30 years. They cleared the pond and eliminated the invasive brush. They have paired up with scientist from UH and they have ground water monitoring. They have students that do monitoring. They have had cultural surveyors doing historic site assessments

that was used in the draft EA. They have been gathering a lot of data. Kramer said that in the interim they can still have access to maintain it.

Kramer gave more detail about the cleaning up of the fishpond. Their intent is to get the fishpond as close to functioning and thriving as possible. Kramer estimated the pond was really, really, really old.

Tsuji explained that the highway was widened and during that time something happened to the water flow. As a result there was house over part of the fishpond with a glass floor that was damaged. Because of the flow, DOT had to acquire his interest, which is how the state got its interest.

Member Gomes thought it was a great project, he just wanted to know more about it. Aunty Laura Thompson commented that she would like the Board to have a big interest in the sewer department. She said when the highway was widened someone busted the sewer line. 1 million gallons of fresh water coming from the mountains of East Oahu went into the busted sewer line, got treated then went out to the ocean. It was fixed partially, but not completely. Now more of the fresh water is going out to the ocean.

Unanimously approved as submitted (Gon, Gomes)

ITEM M-3 Issuance of a Revocable Permit for Aircraft Parking, Juliet Charlie Leasing Corp., Honolulu International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

ITEM M-4 Amendment No. 1 to Concession Agreement No. DOT-A-11-0010 for the Purpose of Adding a Service Counter, Speedishuttle, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-03: 42 (Portion).

ITEM M-5 Issuance of a Revocable Permit for an Office Space, Allegiant Air, LLC, Diamond Head Extension, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 042 (Portion).

ITEM M-6 Amendment No. 12 to Travelers Services Concession Agreement No. DOT-A-03-0001, Lenlyn Limited dba Ice Currency Services USA, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 050.

ITEM M-7 Issuance of a Revocable Permit for an Employee Breakroom and Office, Securitas Security Services USA, Inc., Honolulu International Airport, Tax Map Keys: (1) 1-1-003: 057 (Portion).

Ross Smith Property Manager with the Department of Transportation-Airports Division-DOT-AIR presented items M-3 through M-7.

Unanimously approved as submitted (Gon, Gomes)

ITEM K-1 Conservation District Use Application (CDUA) HA-3767 for a Single Family Residence and Related Improvements by Ken Church Located at Wailea, South Hilo, Hawai'i, Tax Map Key (3) 2-9-003: 060 and a portion of 029.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Land-OCCL presented item K-1. Lemmo stated that Mr. Ken Church owns three (3) adjacent parcels of land that are currently undeveloped and were formally used for sugar cane cultivation. The properties were formally owned by Mr. James McCully who had previously applied for a single family residence (SFR) on Parcel 29 and was awarded the CDUP for the SFR in 2008. The home was never built and McCully subsequently sold the properties to Church. Church was granted a Conservation District Use Permit (CDUP) for the consolidation and resubdivision of his three (3) parcels and also received a Site Plan Approval from the Board in August 2015 to construct a storage shed on Parcel 29. The house is proposed to be located on Parcel 60. Lemmo provided details regarding the existing uses on Parcel 60 as well as specific details regarding the proposed SFR structure which would also include an attached garage, pool area, and outdoor cooking area. Lemmo noted that the structure is about 125 ft. from the top of the Pali. Lemmo further stated that Chair Case issued a Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project in July of this year. Both the EA and CDUA were sent to a number of agencies for comment. The project did not generate any significant comments. Therefore, OCCL recommends approval of the CDUP.

Member Gon asked about how high the Pali was up from sea level.

Mr. Ken Church, property owner, stated that the Pali was generally 90-120 ft. high. Church added that they wanted to build the house as far away from the Pali as possible.

Member Gon asked Church if he was ok with the long list of conditions. Church was fine.

Unanimously approved as submitted (Roehrig, Gomes)

**ITEM F-1 Informational Briefing on the Finalization of the Management Plan for the Hā'ena Community-Based Subsistence Fishing Area. Hā'ena, Kaua'i.
(Non-Decision Making Item)**

Bruce Anderson Administrator for the Division of Aquatic Resources-DAR thanked the Board for taking the time to listen to the briefing about the Hā'ena Community-Based Subsistence Fishing Area.

Anderson gave background; the CBSFA was designated in 2006. In 2011 the DLNR received a proposed management plan which was the result of about 5 years of discussion. The plan was adapted into a department pool which the Board approved for a public hearing and was eventually signed into law back in August of 2015. There was a stipulation that the DLNR continue to work to create a management plan in consultation with the Hā'ena residents and other interested parties. That has been done.

Anderson briefly described the plan; the plan included comments by stakeholders. There were approximately 9 community meetings. The management approach in that plan included

management goals and objectives, management activities and the methods of community based monitoring. In this final plan, there were sections added that included detail in response to stakeholder consultations. The public comment period extended for 6 weeks, 21 people submitted comments. In response to the comments additional changes were made to the plan. DAR responded to almost everyone that commented.

Anderson detailed that signage has been installed related to the new rules; they are working with DOBOR to install buoys near the Pu'uhonua area. They have secured funding and a contract with HIMB, the area is going to be monitored for the next 5 years. DAR will be monitoring and evaluating the management measures in the next 5 years. DOCARE has provided a makai watch training program for the community. The community has secured funding from the Hawaii Community Foundation to support its implementation of management activities and is working with UH to conduct monitoring activities of its own.

Member Downing asked what legal input did the Makai Watch program have in the court of law. Luna Kekoa Makai Watch Coordinator for DOCARE explained that the volunteers are trained that if they call-in, or submit a report, DOCARE recommends but does not mandate they testify on behalf of their report, versus the DOCARE officer taking the report and having to re-account what the volunteer witnessed. The volunteers are also trained in DAR and DOBOR regulations in general, as well as place-based specific rules, such as the CBSFA so they can differentiate a violation from a non-violation, and know whether to report or not.

Member Downing commented that he would like to see the Makai Watch "deputized". He said he has seen volunteers' comments thrown out in court. Kekoa wasn't sure, they haven't had a case where a volunteer has had to testify. He was willing to report back to the Board if and when that does happen.

Erin Zandre, consultant to DAR commented that other evidence is taken, the volunteers are trained to take documents; such as pictures.

Member Downing wanted to make sure that the volunteers word means something, he would like to see more strength in the Makai Watch Program. Anderson said that they were treated as witnesses.

David Sakoda Marine Law Fellow commented that this was outside of his expertise, but he did clerk for Circuit Court for a couple years. In trials a witness is asked to state their name and their credentials, so based on their training, a Makai Watch volunteer can refer to that training as evidence of having those credentials.

Member Downing appreciated that there was a program that they can learn, but he didn't want to lose Makai Watch volunteers. Anderson agreed, DOCARE appreciates them, this has great potential.

Member Oi asked if DOCARE should increase Kauai staff in Hā'ena because with DOCARE being present there, there would probably be less people to break the law. Anderson agreed and

said they were looking into creating a team for marine debris issues. Member Oi was excited to hear that.

Kawika Winter testified as Lima Huli Garden Preserve in Hā'ena, the outgoing Makai Watch Coordinator, a substance fisherman in the area, and an affiliate professor at UH. He came today to that the Board and everyone that helped to get this point. Winter reminded the Board and the Community as well as this management plan call out for a need in a rules package in DOBOR. The existing rules package is great but does not address all the needs. Winter said it might be necessary to have a rules package for OCCL as well.

Zanre added they have been in consultations with DOBOR so they are aware, and have voiced their support in keeping the ball rolling.

Member Gon asked if the comment about OCCL was mentioned in the management plan. Winter didn't think it was mentioned.

Chair Case asked what the commercial activity was happening on the beach. Winter said there are scuba gear, that have DLNR permits, but they take up all the parking and residents can't access easily (County issue).

Chair Case thanked every for their hard work and support and looked forward to the future.

Non Action Item

ITEM E-1 Issuance of a Revocable Permit to Michael Fernandes and Leland Fernandes, for Pasture Purposes, Lot 22, Wailua Rice and Kula Lots, Wailua, Līhu'e, Kaua'i, Hawai'i, Tax Map Key: (4) 3-9-004:008.

ITEM E-2 Issuance of a Revocable Permit to Michael Fernandes and Leland Fernandes, for Pasture Purposes, Lot 24, Wailua Rice and Kula Lots, Wailua, Līhu'e, Kaua'i, Hawai'i, Tax Map Key: (4) 3-9-004:001.

ITEM E-3 Issuance of a Revocable Permit to Mary Thronas, Trustee of the Mary Thornas Trust, For Pasture Purposes, Lot 23-A and 23-B, Wailua Rice and Kula Lots, Wailua, Līhu'e, Kaua'i, Hawai'i, Tax Map Key: (4) 4-2-003:003.

Curt Cottrell Administrator for State Parks-PARKS explained that this was formally Land Division land that was set aside for the Division of State Parks primarily to consolidate land tenure within the Wailua state parks area. Parks was unaware that the property had previous dispositions with the tenants on them. Cottrell explained that Parks was in negotiation with the Department of Agriculture –DOA and would like to eventually transfer these parcels to DOA. Cottrell wanted to issue these 3 RPs for the next year with the hopes that that they can remove the parcels from the State Park. He didn't see any harm in keeping the parcels separate and didn't see it as an income generating project.

Member Gomes asked if he could get this to DOA within a year. Cottrell said yes, his goal would be to request an EO and set aside to the DOA. Member Gomes was okay with that.

Unanimously approved as submitted (Gomes, Gon)

ITEM E-4 Amend Prior Board Action of December 12, 2003, Agenda Item D-34, Grant of Term, Non-Exclusive Easement to Sally Zukeron Trust for Masonry and Concrete Block Walls Purposes, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 3-1-035:023.

Cottrell-PARKS presented a photo that explained the situation. They are requesting from 68 sq. Ft. to 112 sq. ft. of the easement to continue the wall around to prevent the though material from coming down into their property. Cottrell noted that he was very sensitive of people cutting into the monument, but this request was reasonable.

Unanimously approved as submitted (Gon, Gomes)

ITEM C-1 Request for Authorization to Negotiate, Execute, and Amend a Contract(s) to Furnish and Deliver Two Trucks for the Division of Forestry and Wildlife, Hawai'i Island.

Dave Smith Administrator for the Division of Forestry and Wildlife-DOFAW reviewed item C-1. There were no changes, no public testimony, no comments.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM C-2 Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for Vessel Support for Marine Debris Removal from Kure Atoll.

Smith-DOFAW made it clear that the exemptions were being considered under items #3 and #38.

Unanimously approved as submitted (Gon, Gomes)

ITEM D-1 Consent to Assign Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372, Franklin C. Wheeler, III and Cynthia J. Shanholt, Assignors, to Opal Point Holdings VI LLC, Assignee, Pu'uwa'awa'a, North Kona, Hawai'i, Tax Map Key: (3) 7-1-002: portion of 008.

Amend Grant of Non-Exclusive Easement under Land Office Deed No. S-28,372, to add provision to allow easement to "run with the land," thereby authorizing future assignments without the written consent of the Board of Land and Natural Resources, Pu'uwa'awa'a, North Kona, Hawai'i, Tax Map Key: (3) 7-1-002: portion of 008.

Tsuji-LAND had no changes.

Member Yuen believed the road was gated, but it says non-exclusive. Tsuji explained that sometimes they are allowed to close gates as long as they give the key to LAND/DOCARE.

Chair Case asked if non-exclusive did not necessarily mean public access. Tsuji confirmed.

Member Roehrig said he went there year ago and guards were blocking the pond. He asked if that was allowed. Tsuji said it was private land.

Member Yuen said the deed clearly has the pond on private property.

Member Roehrig asked if this was a private pond, then the public has no right to go in. Tsuji confirmed.

Chair Case commented that there was a lot of public interest in this property, but no opportunity.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-2 Consent to Mortgage of Sublease K-15 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawai'i Authority (NELHA), Lessee, Keāhole Point Hatcheries LLC (KPH), Sublessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, 'O'oma 1st, North Kona, Hawai'i, Tax Map Key: (3) 7-3-043:092.

Member Yuen asked what the percentage rent was. Tsuji said they weren't getting any rent.

Member Yuen asked if this was a blanket clause to this parcel. Tsuji explained that this was a specific clause. They are allowed deductions, they're running at a loss. It's their net.

Member Yuen asked if they were making a profit off this parcel. Tsuji said no, the land was under one lease. LAND doesn't get updates on the new rents, they do provide an annual report. The annual report has always shown negative. Tsuji also noted that the DLNR often gives away lands to another government agencies where no rent is collected.

Member Yuen said NELHA makes money on this operation, but they lose money on their whole operation, then they have expenses to provide water and other services to the other properties.

Member Roehrig asked if we got a percentage of bioastin. Tsuji said no, the department doesn't have a contract with Cianoteck. Member Roehrig asked why we don't get a cut, they are making billions. Tsuji said he would look into it.

Unanimously approved as submitted (Oi, Roehrig)

ITEM D-4 Issuance of Right-of-Entry Permit to the Federal Aviation Administration onto Unencumbered State Lands of the Old Hilo Airport, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-1-012:041.

No changes, no comments, no public testimony.

Unanimously approved as submitted (Roehrig, Gon)

ITEM D-6 Issuance of Right-of-Entry Permit to Hawai'i Amateur Surfing Association for a Youth Surf Competition at Haneo'o, Hāmoa, Hāna, Maui, Tax Map Key: (2) 1-4-007: seaward of 009.

No changes, no comments, no public testimony.

Unanimously approved as submitted (Yuen, Roehrig)

ITEM D-10 Set Aside to City and County of Honolulu for Parks Purposes, Nānākuli, Wai'anae, O'ahu, Tax Map Key: (1) 8-7-006:028 and 8-7-008:074.

Member Downing asked if the City wanted it and were they going to use it as a park. He didn't want to give land away if the city was going to sell it. Tsuji said this was a set aside. They can't sell set aside lands.

Unanimously approved as submitted (Gon, Oi)

12:15 PM RECESS

12:49 PM RECONVENE

ITEM D-11 Annual Renewal of Revocable Permits on the Island of O'ahu. See Exhibit 2 for list of Revocable Permits. (EXHIBIT 2 ATTACHED)

Written testimony was submitted by Librado Cobian and Kamana'opono Crabbe, Ph. D..

Tsuji-LAND requested an amendment; to remove revocable permit-RP 7851 it shows up on page 17 exhibit 2, the RP to Jacob Kaleo-Hines because of lack of the required liability insurance. Tsuji also asked for a request for a second amendment, that D-11 be amended by noting the DLNR recently has been named in a lawsuit. The permittee has not been named, DLNR has been named seeking to terminate RP 7570 page 9 exhibit 2, issued to Hawaii Motor Sports. Tsuji noted that the Hawaii Motorsports Association is not named in the lawsuit and staff is not recommending at this time to take immediate action by terminating the RP pending the litigation of the lawsuit.

Tsuji gave background detailing that this was on encumbered lands, not unencumbered lands to a general lease to the US Army for training purposes. In 1971 the legislature asked the department head to look into the possible development of off road vehicle recreational facilities. DOFAW informed the chair in 1972 that they have been working with the Hawaii Motorsports Association through federal funds connected with the Na Ala Hele program. DOFAW was present and has been administering that with the Association.

Tsuji said that the plaintiff in the lawsuit was Li Cobian, is seeking to have the court terminate the RP to The Hawaii Motorsports Association. Tsuji explained how unusual this was, LAND doesn't usually issue RP's over leases. The arrangement that was worked out with the Army was that they would use the land during the weekday, and the Hawaii Motorsports Association would use it on the weekends and holidays.

Tsuji introduced Barry Cheung, Oahu district land agent and Richard Howard with LAND who has been working on this RP with the Task Force. Howard put together the spread sheet and the comments.

Chair Case acknowledged LAND for creating the spreadsheet with relevant information. They want to use this process to catch up with rents that have not yet been updated.

Member Gon, being new asked if this was the first time the other Board members were seeing this spread sheet. Member Gomes confirmed.

Tsuji told Member Gon that the purpose of this was to go into detail as to why this is an RP versus something else. Member Gon appreciated that, but said it didn't give him an idea of where they are in the process. Tsuji said that a challenge that they would see would be permits for piers of anything in the ocean should've been converted to an easement. Oftentimes those private owners (with the exception of Hilton) may have been reluctant because of cost.

Cheung said for the utility easements, they started bringing HECO and utility easements to the Board, maybe just the first two, and continue to work with HECO. For the shoreline, they sent

letters out to the shoreline pier holders and asked them if they were interested. They got the first positive response from one, they didn't get any denials yet.

Member Downing asked if changing a pier to an easement, would the State lose money. Cheung said the process would require typical appraisal. Tsuji said they don't want to collect rent, they want to collect a onetime payment. Tsuji said it was possible to lose money.

Member Gon asked if there was a way to see if the amount of rent at that time is the same as it is now or if they have adjusted upward on the annual rent.

Richard Howard-LAND clarified that the last adjustment in the rent was what was current now. Tsuji said that was why they wanted to have slight increase in the interim. Howard confirmed that what was seen here was annual rent.

Member Gon asked if that was the proposal, but has not been exercised here. Howard said no, what was on the spreadsheet was what they were paying currently.

Member Gon asked if that was what was being approved today. Chair Case referred to page #2 of the submittal as to what was being recommended today. Chair Case clarified that paragraph #2, "approve rent adjustments" should include as referenced above. Member Gon agreed, because they were not listed in Exhibit 2, if those were reflecting the old amounts. Howard agreed.

Member Gon questioned RP 6660. Cheung said that would come to the Board next month. Member Gon asked if the recreational use was in a floody/muddy/wet condition. Cheung said it was for horse riding; equestrian.

Member Gon asked if RP 7402 was zoned ag (agriculture) land. Tsuji said yes, this was East Kapolei. It's temporary because they are hoping to relocate him because it's close to the rail line.

Member Yuen commented that a lot of these have a 2010 date and was wondering if some of these were actually really older. There was a point when DLNR updated the language and reissued the RP. Tsuji confirmed that was 2010. Member Yuen said that under the remarks column it states a year where the rent was previously set. Chair Case commented that if the original entity is known, then the original date should be noted.

Member Yuen commented that the remarks explaining the reasons for the RP are good, but the one that concerned him were "helps department maintain the property". He said there should be another reason. Cheung said he could use RP 7477 page #6 as an example, this parcel 39 is at the end of the road and is abutting the shoreline, and the City and County would not make a park there. Because it's next to a residence they would not be able to secure any long term lease. If

they allow these folks to use it as landscaping, it would save staff from going there to cut trees, grass, trash, that's what is meant by maintain the property.

Member Yuen said that was fine, but he was more concerned about ones like on page #7, Olomana Golf Links. The only comment was "permittees use the parcels to assist in maintain the property". Cheung agreed there should be a better justification. Member Yuen said the alternative would be to RP this.

Chair Case suggested for anything that can't be leased out explain why. Tsuji understood, but told Chair Case that the submittals for the upcoming ones have already been submitted.

Chair Case explained that for this year's RP's they are doing them between now and the end of the year. The previous year's practice was to do them all in December.

1:28PM Member Roehrig left.

Member Oi asked about RP 7587. Tsuji explained that these types of encroachments are problematic. They are asking the Board to order a removal of a structure in the ocean.

Member Downing asked if they should just do one blanket, remove them all. Tsuji said they were previously told by the legislature and the Board to provide them amnesty.

Member Downing asked about RP 7514, they and 3 RPs and 2 of them talk about no access from public road, which is why they are getting the deal they are getting. He asked if they just got a parcel last month. Member Gomes said that was for parking. Cheung added that this was a small area for them to fold the table cloth. The one that was brought before was for employee parking across the street. RP 7832 shares the same parcel number but only occupy a portion of it.

Member Downing was curious as to how big their parking was. Tsuji noted that 7514 was .047 of an acre generating almost \$2,300 a year. This land has no infrastructure. Member Downing suggested putting what it was actually used for and not just put it as parking.

Member Gomes asked where the pasture use RPs were getting their water from. Cheung said they just haul in their own water supply. Member Gomes asked if that was why the rent was so cheap. Cheung confirmed.

Member Gon asked how many of these permittees were going to balk when the rent went up. Tsuji said some might end up giving up their RPs. Cheung clarified that the rent was annual rent.

Chair Case stated that this was the challenge, they didn't want to lose income, but they also didn't want to ignore something that hasn't been updated in 17 years.

Member Yuen asked if there was another reason for the Polo Club. Cheung said the RP 7561 and suggested maybe revisiting this. He understood this area was subject to flooding, he also suggested extending a nonprofit lease to this Polo Club. Member Yuen didn't have a problem with it, he just wanted a better explanation of why it's under an RP and if it's been with this club for a long time then we do a direct lease for a nonprofit.

Li Cobian testified regarding Hawaii Motorsports Association as a managing entity for the Kahuku Motor Cross Track. He has been a park member for about 25 years and asked the Board to consider postponing the renewal until they have more time to go over the complaint that he filed. He made it clear that he did not want to shut down this park, his intent was to fix some severe problems with the management. Cobian said he was brought into this about 1.5 years ago and they wanted help with the RTP funds. There was so much violence, cash being controlled and violence with the management. He said helped link them up with "Aaron" who was able to get them about \$80,000 in support for fuel, water, trash. Usually they spend about 75 gallons a month in fuel. After "Aaron" got them fuel, they went through about 300 gallons in about 2.5 weeks. Cobian questioned it. The water truck that he brought up there, they vandalized and told him to get out. Cobian said he loved that park, his heart is there. His problem was with HMA. He didn't put HMA in the lawsuit, his suit/request was for the Board and the Land Division to look at his complaint. Cobian said he was the only one with the background and resources to help the park in that way; everyone else is scared. He again asked the Board to please look into the complaints.

Dave Day the Attorney representing DLNR in the federal lawsuit was present to answer any questions.

David Smith, Administrator for the Division of Forestry and Wildlife-DOFAW said he met Mr. Cobian, HMA, and the Army. They have some concerns about how it was being managed; it had nothing to do with Mr. Cobian's complaint. Smith explained that the use of this area arose in the 70's and 80's, there were lots of problems with motor cross trespassing on the State forest reserve lands. As a way to help resolve that, they wanted to get a motor cross area which is why the park was opened. Since then, there have been no problems since that time with people riding in forest reserves. DOFAW looks at this Motor Cross Park as a resource protection type of thing.

Smith said that before Cobian there was no other interest in this. It's hard to get vendors to drive up and help maintain the site. Smith asked around and no one else has had a problem with the park. Since Cobian is having issues with the park, they are going to revisit and go out with an RFP and tighten up the use and rules of how the park is managed. Mr. Cobian has a bunch of

other concerns that will be addressed in the RFP as precautionary measures. Smith said he met with the folks that managed it, but didn't get any red flags. They don't want to shut down the park, but would like to renew the RP for now then come back at the beginning of December to go out with an RFP to help manage the park, update it, and look at the costs of the annual rent.

Member Yuen asked if they would still be going out with the RP after the RFP. Smith said yes, it's an unusual lease to the army, then there's an RP on top of that to use it when the Army's not using it. Then the Army has issues unrelated to the park. They would really to bring in someone who makes these motor cross parks and make a flow trail. He said that it was an important component to be in terms of being compliant with the federal grant.

Smith committed to coming back to the Board the first meeting in December to present an RFP that the Board to look at. Smith said they could renew it for a year, but if they can get someone else in or renew their permit, or they get another vendor, they could cancel them in 30 days and start up with a new vendor.

Member Downing asked if they were up to date with rent, and insurance was compliant. Smith confirmed that they were compliant and said he never had a problem with them.

Tsuji reviewed the amendments made by the Board:

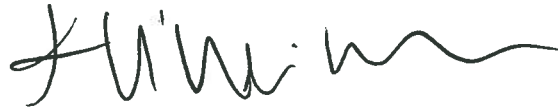
- (a) Amended the D-11 Submittal to remove "RP 7851 [page 17 on Exhibit 2], Jacob Kaleo Hines, permittee, from being renewed due to lack of the required liability insurance;
- (b) Amended the D-11 Submittal by noting that DLNR recently has been named in a lawsuit seeking, among other things, the termination of "RP7570 [page 9 on Exhibit 2], issued to the Hawaii Motorsports Association, Inc., but the permittee itself, the Hawaii Motorsport Association is not named in the lawsuit; as such, staff is not recommending any immediate action to terminate the RP at this time, pending the litigation or resolution of the lawsuit; and
- (c) Amended the D-11 Submittal by noting in the column that RP 7514 to United Laundry was not being used for parking purposes, but for related laundry purposes.

Member Yuen made a motion to approve as amended. He noted that there were a number of comments made by Board members, but those are not included in the motion.

Unanimously approved as amended (Gomes, Gon)

There being no further business, Chair Suzanne D. Case adjourned the meeting at 1:58 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Ku'ulei Moses
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land and Natural Resources