

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

DATE: FRIDAY SEPTEMBER 9, 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

James Gomes  
Chris Yuen  
Keone Downing

**STAFF**

Kevin Moore-LAND  
David Smith-DOFAW

Gordon Heit-LAND  
David Penn-DOFAW

**OTHERS**

David Day/Deputy AG  
Ivan Lui Kwan/D4  
Shelly S. Mahi/D2

Ross Smith/DOT-AIR  
Ernest Mattos/D2  
James K. Manaku Sr/D2,C1

- ITEM M-1** Issuance of a Revocable Permit for Aircraft Parking, Corporate Air, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).
- ITEM M-2** Issuance of a Revocable Permit for Construction Material Storage and Equipment Staging, Watts Constructors, LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-14: 15 (Portion).
- ITEM M-3** Issuance of a Revocable Permit for Office Space, United States of America, General Services Administration for and on Behalf of U.S. Department of Homeland Security, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
- ITEM M-4** Issuance of a Revocable Permit for an Area to Park a Fuel Truck, Air Service Hawai'i, Inc., Lāna'i Airport, Tax Map Key: (2) 4-9-02: Portion of 55.



**ITEM M-5 Issuance of a Revocable Permit for an Area to Park a Fuel Truck, Air Service Hawai'i, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

**ITEM M-6 Issuance of a Revocable Permit for a Ticket Counter in the Main Terminal for Airline Operations, Hawai'i Island Air, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**

**ITEM M-7 Issuance of a Revocable Permit in the Main Terminal for Airline Operations, Hawai'i Island Air, Inc. Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**

Ross Smith with the Department of Transportation Airports Division-DOT-AIR reviewed items M-1 through M-7.

The Board had no questions, there was no public testimony.

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

**ITEM D-4 Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach Every Friday From October 7, 2016 to September 29, 2017, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 (Por).**

*Written testimony was submitted by Representative Tom Brower and Jerry Gibson.*

Kevin Moore Assistant Administrator for Land Division-LAND presented item D-4. The issue is whether to charge rent for the exclusionary zone around the firing site but as in past years the staff recommendation is to just charge for the actual footprint of the firing rack which is a \$50 per event charge.

Member Downing suggested brining this back to the October 24<sup>th</sup> meeting to figure out what is fair at this time.

Member Gomes asked member Downing if extending for 1 month would only be with respect to the stakeholders for Hilton Hawaiian, or would that involve all of Pyrotechnics.

Member Downing said for him it was just this particular issue, it's already set for other events; this is the only event that is not on the same fee charge.

Chair Case clarified that under this the Board would approve this for 6 weeks past the extension for the October 28<sup>th</sup> meeting. An amendment would be needed to approve this for a term not to exceed November 15<sup>th</sup>, 2016.

Ivan Lui Kwan Counsel for Hilton stated that they would not testify, but just deal with this at the next meeting.

Member Roehrig made a motion to approve as amended, Member Downing seconded.

The Board amended the term of the right-of-entry to run from October 7, 2016 through November 15, 2016. The Board further directed staff to return to the Board on October 28, 2016 with a right-of-entry request for the period from November 18, 2016 through September 29, 2017. In the meantime, Board Member Downing indicated he would talk to stakeholders regarding what is a fair rent to charge for the Friday night fireworks displays.

**The Board amended the term of the right-of-entry to run from October 7, 2016 through November 15, 2016. The Board further directed staff to return to the Board on October 28, 2016 with a right-of-entry request for the period from November 18, 2016 through September 29, 2017. In the meantime, Board Member Downing indicated he would talk to stakeholders regarding what is a fair rent to charge for the Friday night fireworks displays.**

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

**ITEM D-3 Resubmittal: “Consent to Assignment of General Lease No. S-5542, Nicholas E. Muragin and Lisa K. Muragin, as Assignor, to Kelonukai Ranch, LLC, as Assignee, Ola’a, Puna, Hawai’i, Tax Map Key: (3) 1-8-010:038, 043, 044 & 046,” and Response to Board Request for Additional Information on Prior Board Submittal of June 24, 2016, Item D-3.**

Moore-LAND explained that when this came to the Board on June 24, 2016 the Board asked for additional information which has been provided in the submittal. Gordon Heit from the Hawaii District Land Office was also present.

Member Gomes commented that he was satisfied with the answers he go back and was satisfied with this applicant getting the lease.

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

Member Yuen asked Mattos to stay for item D2 if he was present.

**ITEM D- 2 Results of the Public Auction Sale of State of Hawai’i Leased Lands on the Island of Hawai’i, Held on August 23, 2016. (NON DECISION MAKING/NON ACTION ITEM)**

Moore-LAND informed the Board that D2 was a report from the Hawaii District Land office on the reports of an auction held on 4 different items on August 23, 2016. 3 items each had only one qualified applicant bidding who bid the upset rent, and one item which was an intensive ag lease in Hilo had no bidders. Gordon Heit was present, he handled the auction.

Member Yuen asked if Mattos was aware that the lease requires him to maintain the fence along the highway because of the high speed traffic. Mattos was aware.

Member Yuen asked if there were other interested individuals who were not qualified by our selection process. Heit said yes, the one property, item 3 had 4 applications and only one met the qualification. The others that didn't qualify did not have adequate financing or an adequate business plan.

Member Yuen asked how much they would have to show to have financial capability to bid on the lease. Heit explained that there was no set amount; it just applies to your business plan. Heit noted that they had no financial capability and no experience. He was at a loss as to why there is such a low response to these properties. LAND did all they could to put it out there.

Member Yuen commented that there should be something available for first time farmers. Member Gomes agreed with Member Yuen.

Heit understood that it would be the department of Agriculture-DOA that would get them started and show them how the process works.

Chair Case said there were discussions with Chair Enright about moving the process along. Heit said that they were part of the process.

Member Yuen commented that the State has a surplus of Ag lands. He was surprised that there were only 4 applicants.

Member Gomes commented that all Ag lands under DLNR should be transferred to DOA. Chair confirmed that there is an ongoing process. Member Roehrig agreed with Member Gomes; people need to get educated and DOA and DLNR need to work together.

Member Downing asked Member Yuen if a lease is being given out for 30 years, then maybe the lease needs to be broken down to a shorter period. He said all that the department is concerned about is if we are paying the annual fee. Member Yuen responded that these guys want the land for 1 or 2 crops; you would hope that they would have control over a site. Member Yuen explained that it is easier to let it go for a longer term. Member Downing was just trying to understand why people didn't put a bid in.

Member Oi suggested turning over the 3 parcels to DOA because it is their responsibility.

Chair Case again said they were in discussions, the pasture leases would be looked at next. Some of them DLNR will want to keep because they have conservation value.

Member Roehrig asked if there would be any purpose to have a briefing on the agenda of what staff is doing at both DLNR and DOA. Chair Case said explained that it's DOA's mission to work improve the agricultural industry; DLNR is land transfers.

Shelly S. Mahi from the island of Hawaii testified reminding the Board of HRS 172-11 and 174C-11 in non compliance.

James K. Manaku Sr. testified that what he was hearing was scary. The department is selling remnant land when land is what brings money.

### **Non Decision Making**

**ITEM C-1 Request Approval to Amend the Project Description for Legacy Land Conservation Program Project 12-04, Kūka‘iau Ranch Forest Legacy Conservation Easement, and to Redirect Project Funds to Legacy Land Conservation Program Project 16-05, Upper Kūka‘iau Ranch Acquisition, at Kūka‘iau and Koholālele, Hāmākua, Hawai‘i.**

*Written testimony was submitted by Hui Mālama I ke Ala ‘ūlili.*

David Smith Administrator for the Division of Forestry and Wildlife-DOFAW introduced David Penn, Access and Acquisitions Coordinator and presented item C-1. Smith explained that this was approved by the Legacy Land, but the project fell through because the land owner backed out. There is an upper piece that they are willing to sell so DOFAW is looking to transfer the funds on that. DOFAW is looking to take the \$600,000 that was allotted to the lower parcel and put it in the upper parcel. The purposes are similar. If the \$600,000 goes back into the Legacy Land fund, it could go back to competition.

Chair Case disclosed that she was involved in the conservation easement transaction while at The Nature Conservancy-TNC, but she doesn't have any involvement in this.

Smith added that the one issue with the conservation easement currently prohibits public hunting. He said he they would negotiate with TNC , but not sure where that came from or what the nature is. Smith said public hunting helps the department with the ability to manage the land, etc.

Chair Case commented that there was some technical discussion on whether the easement stays or goes.

David Penn said the legal question was whether or not the merger doctrine would apply. Penn explained that if the State took fee title to the property and acquired the easement from TNC to the State. If those two deeds continue as separate interests or if they would merge into one single interest under state ownership.

Member Yuen said the holder of the easement can give up any rights.

Chair Case thought the issue was the donation of the conservation easement by the land owner and whether you can that.

Penn understood that the land owner took an IRS tax deduction in conjunction with that donation, so that complicates things.

Member Yuen said to him it should be that if the State buys the property the valuation should include any loss in value due to the conservation easement and there should be no problem with the land owner retaining the deduction. He said it was a lovely area, a good for koa restoration.

Smith felt like it could be worked out.

Chair Case added that this was important because the conservation easement prohibits subdivision, but it doesn't allow active management, which is why it is an important parcel.

James K. Manuku Sr. was concerned about the ungulates compete with the bird's food. He said it's not the ungulates it's the mongoose, the rats, and the birds in the pet shops.

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

10:21 AM RECESS

10:32 AM RECONVENE

**ITEM D-1 Annual Renewal of Revocable Permits on the Island of Hawai'i. See Exhibit 2 for list of Revocable Permits. (Exhibit 2 ATTACHED)**

Kevin Moore-LAND presented item D-1. He explained that there were 3 Revocable Permits-RPs on Banyan Drive for the expired resort leases. He said those would be treated separately and would be brought back to the Board later; LAND is getting appraisal reports on those properties.

Chair Case noted that these did not include the water permits, which are on a separate track. She thanked LAND for being the testing ground for the RP process. She reminded the Board members that there was testimony submitted on this item.

Member Roehrig disclosed that he spent a couple hours with Heit the day before going through the list. Heit provided input so Member Roehrig was able to understand. Heit and his staff have put in a lot of time working on this.

Member Yuen asked for an amendment to the McCandless RP 5127. He said it was supposed to be for access only. This was discussed earlier, if this was going to be renewed, it should be renewed as access not pasture. Heit said they would cancel this permit and re issue a new one for easement purposes.

Member Roehrig disclosed that he had no involvement in McCandless but his sister is friends with the McCandlesses.

Chair Case confirmed that Member Yuen wanted to just change the character of use. She asked staff if this would not be a continuation, it would be a cancellation then a new one. Chair Case said that in the motion they would need to delete the McCandless RP.

Member Yuen said that it's expiring, they still needed to renew it, but direct staff to bring it back. Moore said they have until the end of this year.

Member Yuen was fine with renewing it with the understanding that it is going to be brought back and changed.

Member Yuen next asked about Glover on page #18, he asked if it was a quarry at one time. Heit said yes, it has 2 quarry licenses on it. One in 1959/1960 and ran for 20 years. In 1980 a new one was issued in 1981, at that time it ceased being a quarry. Glover came back to the Board requesting a long term lease and possible development into an industrial area, but the recommendation as an interim was to hold it as a revocable permit and it stayed like that until 2001. Member Yuen said it shouldn't be on an RP, something needs to be done.

Member Roehrig suggested looking at this parcel in trying to expand and make the KIAA development better.

Member Yuen asked what would be done when staff "explores" selling a lease in auction. Heit explained that they look at the location of the property to see if it meets criteria for leasing at public auction; it has to have access from a public roadway, if it's suitable for pasture use and if there isn't a higher and better use for it. Moore added that it also has to be mapped with an official State survey map.

Member Gomes asked if the RP to Parker Ranch page #4 was still "exploring" their lease since 1997. Moore said yes, that was one that should be expedited.

Member Yuen handed out a map that he made of the areas of Parker Ranch, some of these are difficult pieces of property. He put a red X on the RPs, there's no scale but they are about 5 miles north to south. Member Yuen explained that in the Southern end there are spaghetti straps of property that are under RP and there are Parker land on either side, he said they could be put up for auction but didn't see how anyone would use these properties other than Parker Ranch.

Member Gomes didn't understand why this wasn't explored from 1997. Chair Case explained that it came down to staff, there's not enough staff.

Member Yuen felt like both Parker Ranch and the State could benefit from land exchanges like this. He wondered how this ownership pattern ever developed.

Member Yuen next asked why there were RPs that were not part of the Kapapala lease. Heit thought maybe it was needed at that time.

Member Roehrig was fearful of the ranch going out to public auction. The family that is running Kapapala is doing a fine job and wouldn't want them to lose it. He asked staff to speak with the family.

Chair Case added that this is one the DOFAW had in interest in too. DLNR has indicated that they don't want it transferred because it is conservation land, so an RP maybe the way to go.

David Smith Administrator for DOFAW commented there was a lot of conservation on the land. DOFAW has had a good relationship with the lessee for many years. If it were transferred, DOFAW might be interested. It would be kept within DLNR.

Member Yuen questioned the Jerry Igame RP located North of Punaluu, the note said approved by public auction by the Board, he asked how long ago it was. Heit thought it was in 2000.

Member Yuen asked if there was a law that a certified survey was needed to lease a property. Heit said meets and bounds were needed.

Shelly Mahi with the Native Protection Council with the Big Island of Hawaii asked if they were selling the leases of public property or the land. Chair Case explained that these were revocable permits, they weren't selling the land, they were giving them permitted right to use the property. Mahi testified that she was interested in any contracts having to do with Edwin Olsen Trust. Chair Case told her that land was not on the agenda. Mahi asked the Board to take note of patented Hawaiian properties.

Member Yuen commented that there was testimony submitted for the Kohala Ditch RP, he looked into it and the individual who wrote, owns a piece of property that is a mile down from the Kohala Ditch and her contention was that she's entitled to the water from the Kohala Ditch. The RP that the Board was looking at was about 6 miles further down the ditch near the end of the ditch. Member Yuen didn't see any claim that she may be affected by the Board's decision on the grant of an RP 6 miles down ditch from where her property was.

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

Chair Case added that OHA submitted testimony; they said the Task Force recommended a checklist approach, LAND is not doing the checklist itself in the chart, but they are reviewing the matters. She also said there was a section about including whether the lands are ceded lands or not, those are in the original RPs. She didn't think it was necessary, but if OHA wanted to continue to raise that point, then they can explain how that would help. OHA also had comments about particular RPs, two that were discussed (Quarry). There was a comment about RP 3755 and 7193 permittees are unregistered. Chair Case said that would be a requirement of renewal. Heit agreed.



Member Yuen added that the recreational uses of the Kohala Ditch all occur well upstream of the Board's proposed RP was.

Member Roehrig disclosed that he knew Wally Aki, and Frank Deluz, but knowing these people would not affect his vote on this matter.

Chair Case thanked staff for their hard work on this.

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

**ITEM D-5 Consent to Amended Subleases for General Lease No. S-5805 for the Extension of the Subleases' Terms; Waikiki Community Center, as Sublessor, to Native Hawaiian Hospitality Association and Waikiki Beach Chaplaincy, Inc., as Sublessees, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-6-025:008.**

Moore-LAND said the new rents would go into effect in January 2017.

Barry Cheung, District Land agent added that they just want to extend the term; the lessees were already on the property.

Moore asked to strike the \* sentence in the middle of page #2, the current rent was the same one approved in 2015, it's just the new rents would become effective next year.

**On page 2 of the submittal under the heading CURRENT MONTHLY SUBLEASE RENTAL", the Board deleted the sentence "\*Both changed since last Board approval in September 2015". In actuality, the rents under the subleases will not change until January 1, 2017.**

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

Member Gomes made a motion to adjourn, Member Oi seconded. All were in favor.

There being no further business, Chair Suzanne D. Case adjourned the meeting at 11:54 a.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