

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

DATE: THURSDAY OCTOBER 14, 2016  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chair Suzanne Case called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS**

Suzanne Case  
Thomas Oi  
Stanley Roehrig  
Sam "Ohu" Gon

James Gomes  
Chris Yuen  
Keone Downing

**STAFF**

Russell Tsuji-LAND  
David Smith-DOFAW  
Marvin Miyasaka-LAND

Alton Miyasaka-DAR  
Kevin Moore-LAND  
Richard Howard-LAND

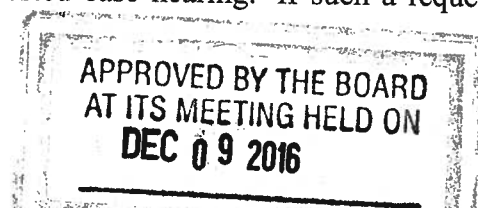
**OTHERS**

David Day/ Deputy AG  
Scott Chan/D7  
Shelly Stevens Mahi/D7,D15,D8,F1  
Eric Leong/M17-M19  
Tessa Munekiyo Ng/D8,D9  
Larry Geller/F1  
Shawn Martin/F1  
Mike Cutbirth/D12  
Senator Gill Rivere/D12  
Todd Navires/D12

Li Cobian/A1  
Chris Kinimaka/D7  
Donna Leong/D15  
Ross Smith/M1-M16  
Kathyrn Xian/F1  
Jessie Faye/F1  
Bryan Hawn Jr./F1  
Melissa Primacio/D12  
Kent Fonoimoana/D12  
Tyler Dosantos Tam/D12

Chair Case announced that all written testimony needs to be submitted within 24 hours of the meeting so that the Board members have enough time to review the document prior to the meeting.

Chair Case then read the paragraph stated at the top of the Board Agenda; In some of the matters before the board, a person may wish to request a contested case hearing. If such a request is



made before the board's decision, then the board will consider the request first – before considering the merits of the item before it. A person who wants a contested case may also wait until the board decides the issue, then request the contested case after the decision. It is up to you. Any request must be made orally by the end of the meeting and followed up in writing within ten days. If no request for contested case is made, the Board will make a decision. The Department will treat the decision as final and proceed accordingly.

**ITEM A-1 Approval of July 22, 2016 Minutes**

*Written testimony was submitted by George Vares.*

Member Gon recused from voting, he was not at this meeting.

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

Li Cobian signed up to testify on the minutes for August 26, 2016; Chair Case told him that those minutes weren't ready for approval, but he could make comments on them if he wanted to. Cobian said he was fine and had no comment.

**ITEM D-7 Re-submittal - Authorize the Chairperson to Accept the Release of Deed Restrictions regarding Public Recreation Purposes from the City and County of Honolulu at Aloha Stadium, 'Ewa, Honolulu, O'ahu, Tax Map Key: (1) 9-9-003:portions of 055, 061, 069, 070, and 071; and Transfer of Deed Restrictions from Aloha Stadium to the Central Maui Regional Sports Complex, Waikapū, Wailuku, Maui, Tax Map Key: (2) 3-8-007:104.**

*Written testimony was submitted by the Office of Planning and Senator Breene Harimoto.*

Russell Tsuji Administrator for Land Division-LAND explained that this item was being brought back to the Board from the last meeting where there was a minimum quorum of 4. There was some question on whether there was support from Maui County. Tsuji gave further background about the Aloha Stadium's federal restriction limiting it for recreational purposes. After the last meeting Tsuji contacted the Lt. Governor and asked if he could get a letter of support from the mayor of Maui and he did; that is included in the submittal. LAND was also able to get a letter of support for the Oahu Mayor as well as the Office of Planning.

Scott Chan and Chris Kinimaka were present for questions.

Shelly Stevens Mahi from the Native Protections Council testified that she wanted to make sure that there was proper title search of this. She supported a regional sports complex.

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

**ITEM D-15 Amend Prior Board Action of June 9, 2016, Item D-4; Set Aside to City and County of Honolulu for Affordable Housing Project for Homeless Families**

**Purposes; Issuance of Non-Exclusive Easement for Utility Purposes; Consent to Lease of Lands to aio Foundation; Moanalua, Honolulu, Oahu, Tax Map Key (1) 1-1-003:003, 204 to 207, and 212; (1) 1-2-021:035 to 038.**

**The Amendment is to add Tax Map Key (1) 1-1-003:211 and the portion of lands between the top of the bank (makai boundary) up to the mean lower low water mark to the set aside, and to delete the condition that the executive order be subject to a proposed easement area for a radio transmission tower site.**

*Written testimony was submitted by OHA.*

Tsuji-LAND said that this was an item that they were asking to bring back and correct an error that they discovered while getting the Governor's Executive Order ready at the attorney general's office. During that process, they discovered that a parcel was missing prior to Board approval so they needed to clean that up. He asked that the Board support the current Board submittal. Tsuji said that the County and Corp Counsel were present.

Donna Leong representing Honolulu Corporation Counsel appearing on behalf of the City thanked the Board on behalf of Mayor Caldwell, also on behalf of Mr. Kurisu.

Shelly Stevens Mahi representing the Native Protections Council commended the Governor for helping out the homeless and asked the BLNR to look at a policy on Native Tennant Rights.

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

**ITEM M-17 Issuance of Revocable Permit to Resort Management Group, LLC, for Storage of Landscaping and Irrigation Construction Material and Equipment Staging, for 20,000 Sq. Ft. of Vacant Land at Honolulu Harbor, O'ahu, Tax Map Key: (1) 1-5-42: 15 (Portion). Located on Nimitz Highway and Adjacent to Pier 38.**

**ITEM M-18 Issuance of Revocable Permit to Clean Islands Council, Inc., for Storage of Marine Oil Spill Response Equipment, Kalaeloa Barbers Point Harbor, O'ahu, Tax Map Key No. (1) 9-1-14:24 (Portion).**

**ITEM M-19 Issuance of a Revocable Permit to HPBS, Inc., for Storage of Custom Pilot Boat, Kawaihae Harbor, Island of Hawai'i, Tax Map Key: (3) 6-1-03:23 (Portion).**

Eric Leong Property Manager with the Department of Transportation Harbors Division-DOT-HAR presented items M-17 through M-19.

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

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

Member Roehrig asked Leong to stick around for the item on fishing boats, because that's a harbors issue. Member Roehrig said he would have questions for DOT-HAR..

**ITEM M-1 Resubmittal: Issuance of a Direct Lease to Hawaiian Airlines, Inc. for a Cargo and Maintenance Hanger Facility Honolulu International Airport, Tax Map Key: (1) 1-1-002: 014 (Portion).**

Ross Smith Property Manager for the Department of Transportation-DOT-AIR reviewed item M-1 and gave the Board an update. Smith detailed that they want the Board to know that this is part of the master plan for the airport and is part of DOT project and program and while they are moving Hawaiian Airlines, it's because the master plan calls for making improvements to the inner island terminal side of the airfield in order that they can reduce some congestion right now. This is a project that benefits everyone who uses the airport.

Member Yuen asked if DOT was obligated to go through with moving Hawaiian Airlines now that both sides agreed to move. Smith said they were going to demolish their facilities so they do have the obligation to replace them, yes.

Member Yuen said it seemed like an agreement has already been made to move Hawaiian Airlines. He was curious as to what the role of the BLNR was if it has already been put in motion what has to happen at this point. Smith said that DOT looks at it as their master plan is public.

Member Yuen asked if another major airline company came in to Hawaii and wanted to be an inter-island carrier, then would they need a similar repair and maintenance facility. Smith explained that they would have to have their own, there is still space now, but it is rapidly running out. They would be able to taxi back and forth, but it would be a much longer drive then it is now.

Member Yuen commented that he hoped that the opportunity for another competitor wouldn't be blocked out by DOT filling up all their spots.

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

**ITEM M-2 Issuance of a Revocable Permit for Automobile Parking, Hawaii Island Air, Inc. dba Island Air, Commuter Terminal, Honolulu International Airport, Tax Map Key: 1-1-003: 001 (Portion).**

Ross Smith-DOT-AIR presented items M-2 through M-16 and the Board asked questions as he presented.

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

**ITEM M-3 Issuance of a Direct Lease to International In-Flight Catering Company, Ltd., for Operation of an In-Flight Kitchen, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 151 and (1) 1-1-003: Portion of 001.**

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

**ITEM M-4 Issuance of a Wi-Fi Concession Agreement to Boingo Wireless, Inc. at Honolulu International Airport (HNL), Kahului Airport (OGG), Kona International Airport at Keāhole (KOA), Hilo International Airport (ITO), and Līhu‘e Airport (LIH), Tax Map Keys: HNL: (1) 1-1-03:001 and :061 (Portions), OGG: (2) 3-8-01: Portion of 19; KOA: (3) 7-3-43: Portion of 003; ITO: (3) 2-1-12: Portion of 90, and LIH: (4) 3-5-01: Portion of 8.**

Member Yuen asked for future write ups like this, when there is a concession that doesn't follow the normal concession process, he would appreciate it the exception was put it that allows it to be done this way. Member Yuen said he looked it up, there is an exception, but it would be nice if it were included in the submittal.

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

**ITEM M-5 Consent to Sublease of State Lease No. DOT-A-91-0021, ALPS Aircraft Leasing LLC to Lani Lea Sky Tours LLC, Honolulu International Airport, Tax Map Key: (1) 1-1-72: 51.**

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

**ITEM M-6 Issuance of an Advertising Concession Agreement to Pacific Radio Group, Inc. at Kahului Airport (OGG), Kona International Airport at Keāhole (KOA), Hilo International Airport (ITO), and Līhu‘e Airport (LIH), Tax Map Keys: OGG: (2) 3-8-01: Portion of 19; KOA: (3) 7-3-43: Portion of 003; ITO: (3) 2-1-12: Portion of 90, and LIH: (4) 3-5-01: Portion of 8.**

Amend from 7 years to 10 years.

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

**ITEM M-7 Issuance of a Revocable Permit for Emergency Services, Civil Air Patrol, Lāna‘i Airport, Tax Map Key: (2) 4-9-02: Portion of 55.**

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

**ITEM M-8 Issuance of a Revocable Permit for Aircraft Parking, Aloha Skies Aviation LLC, Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

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

**ITEM M-9 Issuance of a Revocable Permit for an Area to Park a Fuel Truck, Air Service Hawaii, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

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

**ITEM M-10 Issuance of a Revocable Permit for Aircraft Parking, Guardian Flight, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

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

**ITEM M-11 Sale of an Air Cargo Lease by Notice of Public Auction, New Cargo Building (Space No. 139-116), Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.**

Member Yuen asked if there were any direct leases in the new air cargo building. Smith said yes, they are done with the major air cargo dealers; there is still space left over. Space is being offered publicly. The upset is the same as the direct leases and similar in size.

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

**ITEM M-12 Issuance of a Revocable Permit for Aircraft Parking, Big Island Gravity LLC, 'Upolu Airport, Tax Map Key: (3) 5-5-06: Portion of 31.**

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

**ITEM M-13 Issuance of a Revocable Permit for a Skydiving Business, Big Island Gravity LLC, 'Upolu Airport, Tax Map Key: (3) 5-5-06: Portion of 31.**

Member Roehrig asked if the skydivers had an insurance policy that included the State as an additional insurer. Smith didn't think that could be made a requirement. The skydiving activity itself is not under the DOT. Smith said he would look into it.

Member Roehrig said if it's a windy place we may want to be an additional insurer because it subsidizes our liability if there is a lawsuit.

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

**ITEM M-14 Issuance of a Revocable Permit for Aircraft Parking, Big Island Gravity LLC, Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**

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

**ITEM M-15 Issuance of a Revocable Permit for Vehicle Parking, FedEx Ground Package System, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.**

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

**ITEM M-16 Amendment No. 5 to Concession Agreement No. DOT-A-11-0006, for Additional Space, Restaurant and Lounge Concession, Host International, Inc., Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.**

Member Oi asked if the existing bar would be removed. Smith confirmed, it would return to being lobby space.

Member Gon made a motion to approve items M-2 through M-16 less M-6 (M-6 as amended), Member Gomes seconded

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

**ITEM D-8 Amendment of Prior Board Actions of November 14, 2014, Item D-18, June 27, 2014, Item D-11 and August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to the Association of Unit Owners (AOUO) of the Hale Kai Condominium for Seawall/Revetment Purposes, Honokōwai, Lāhainā, Maui, Tax Map key (2) 4-4-001:seaward of 042.**

**The purpose of the amendment is to increase the easement area from 2,771 square feet, more or less, by an additional 149 square feet to a total area of 2,920 square feet, more or less.**

*Written testimony was submitted by Mayor Alan M. Arakawa, Mayor Kirk Caldwell, and Lieutenant Governor Shan S. Tsutsui.*

Russell Tsuji Administrator for Land Division-LAND explained that it was discovered that they need to add another 149 sq. feet for a total area of 2,920 sq. feet. LAND is asking that the Board allow them to mathematically calculate the per sq. foot and add that on to the fee. The AGs agreed.

Member Downing asked how this came about. Tsuji said it may have come up on a shoreline certification. It was there, they just didn't catch it.

Tessa Munekiyo Ng with Munekiyo Hiraga explained that a new application for a shoreline map was submitted as a result of a condition of SMA permit unrelated to work within the shoreline. In that certification process, the shoreline moved more mauka resulting in a slightly larger easement area. Tsuji added that most of these are caught during a coastline easement.

Member Downing if it could move in two years. Tsuji confirmed.

Member Oi asked if they were charging for the whole thing or the additional area. Tsuji said the additional area.

Member Downing was concerned because the wall has been there, the earth is moving, every time the earth changes, we go to the land owner for more money. Are we as a state going to use that as a way to get more money. Tsuji said that the Hawaii Supreme court says that structures seaward of the shoreline is going to be State land. There were be situations where that includes private property. It is required these folks get easements because of the liability. Under existing law the Board is hand bound to require fair market of the easement. Tsuji has been trying for years for legislation to relive the department of that.

Member Oi asked what would happen when there are existing structures that are not going to be set backs. Tsuji explained that current shoreline certifications are required by the County.

Shelly Stevens Mahi with the Native Protections Counsel made a correction that the State of Hawaii does not own these lands. The lands are held in trust through congress.

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

**Item D-9 Grant of Term, Non-Exclusive Easement to Steven Robert Campbell and Deana Darlene Campbell, Trustees, Campbell Family Trust dated April 15, 1993, for Concrete Seawall Purposes; Issuance of Management Right-of-Entry; Assess Administrative Cost of \$500, Halaka‘a, Lāhainā, Maui, Tax Map Key: (2) 4-6-003:Seaward of 007.**

Tsuji-LAND conveyed item D-9 detailing that new evidence from the Office of Conservation and Coastal Lands-OCCL indicates that this is a non-conforming structure. This was being brought to the Board requesting that they be allowed to have an easement for this wall. There were comments from the planning department about rebuilding and noted that there is a prevision that if it's demolished beyond 50% then they would not be allowed to rebuild the wall.

Member Roehrig comment that by looking at the engineer study that was done, the engineer believes that the substantial problems resulting from the removal of this wall. He suggested saying that the wall will not be removed. There is no modeling to try to forecast the effects of moving a wall on the shoreline.

Tsuji confirmed, but OCCL does look at the area and ask themselves if the wall can stay without further damaging the shoreline. In this case they feel that removal of the wall is not going to further restore anything that has already been damaged.

Member Roehrig had reservations about removing this and allowing them to remove any portion of wall. He wants them to just leave things the way it is unless it is certain that the department is not creating more liability for the state. He was concerned that the department would be sued. Chair Case said that just because someone decides to sue doesn't mean that the State will be reliable.



Member Yuen asked if the standard easement says you absolutely should not rebuild or destroy or does it leave open the option for permit. He didn't think it should foreclose the possibility that if the wall is destroyed then they can apply for a permit to rebuild the wall. Tsuji said it's a policy with OCCL, they didn't want to encourage new structures to be built.

Member Yuen said this was a nonconforming wall so it was legal for this wall to remain, the current administrative rules say that for all nonconforming uses, not just seawalls; if they destroy it to the extent that it would cost more than 50% of the replacement value to replace the structure, that you have to go through the normal permitting process. That's what he thinks should apply. You can't let them destroy an existing seawall.

Member Roehrig was okay as long as the rules don't give them an automatic opportunity to take down the wall. He asked Tsuji to look at it and be sure that's the situation. The language in of the easement document should mirror the language in the administrative rule.

Tsuji said he would work with OCCL and the AGs.

Member Downing asked what if the engineer was wrong and the water came around from the northern side of the wall.

Tessa Munekiyo Ng with Munekiyo Hiraga said that the wall actually fronts the entire property. The adjacent property's wall is what would be at risk of damage.

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

10:12 AM RECESS  
10:20 AM RECONVENE

**ITEM F-1 Recommendation to Deny The Petition For Amendment of a Rule From Kathryn Xian, Karen Chun, Cory (Martha) Harden, Larry Geller, and Michael Gagne, Filed on September 21, 2016, Requesting That Hawaii Administrative Rule (HAR) Section 13-74-20 Be Amended. (See Attached Petition)**

*Written testimony was submitted by Bryant Carvalho, Law Office of Lance D. Collins, JoAnn Garrigan, M.D., Larry Geller, Cory Harden, Natalie Nimmer, Patti Osborne, and The Pacific Alliance to Stop Slavery.*

Alton Miyasaka with the Division of Aquatic Resources-DAR presented item F-1. The submittal hasn't been changed since it was presented in the documentation. Miyasaka paraphrased the revisions. The petition had an amendment in the rule.

In subsection B of the proposed rule in the provision it adds the phrase "whether the applicant is eligible for landing privileges in Hawaii and such other information as the department may require" Member Yuen said he read that as the information would only be furnished to the

department and would not be used as a qualification to getting a fishing license. Miyasaka said the ability to ask the question isn't within their authority.

Chair Case commented that this was beyond the scope of the licensing work. Miyasaka added that the list of specific information that DAR is currently asking when issuing a license was originally included in the statute that required this information. That specific language was removed from the statute when it was transferred from the statute to the rule. The information that is required has to be relevant to the purposes of the license. For example, they can't ask for the color of your car, because it is not related to the activity of fishing.

Member Yuen said that everyone agreed this is a problem and Bruce Anderson's (Administrator for DAR) stated that DLNR/DAR is the wrong agency to deal with this problem. Member Yuen asked if there was a suggestion as to where this should go. Miyasaka said there were a number of different agencies, primarily on the federal side, that deal with situations like this. Member Yuen didn't think any of these laws applied to these people, they're not covered by any US laws. He agreed that this is not the DLNR's responsibility. Miyasaka added that the US Coast Guard would be involved, DOCARE is on the boats regularly, but he wasn't sure when the last time enforcement was done. Miyasaka said there were a lot of issues and a lot was being done to address them, but it will take time to figure out.

Chair Case's question was if this was done, is the underlying problem solved. There should be a discussion, if this was a part of the equation that should be addressed, then it should be addressed. She was interested in hearing from the petitioners what part of the solution it would provide.

Member Roehrig commented that the existing proposal gives the department major responsibility for these boats. There was a discussion about the process of the licenses for foreign crew members on the longline boats. Miyasaka explained this was a special procedure for these boats but that a different procedure is used for commercial licenses for non-longline boats.

Member Gomes asked how long the license was good for. Miyasaka said one year, if the ship has a new crew, each new crew member has to get a license good for one year.

Chair Case asked for confirmation that normal fishing licenses are not verified when people apply locally for them online. The identity of a person on that longline boat with an I95 document, is verified by a Coast Guard and DOCARE and border patrol and periodic onsite inspections. Miyasaka confirmed; if DAR is aware that a person has falsified that information, that person's license can be revoked.

Member Roehrig asked how DAR would verify the identity of a person. Miyasaka explained that they would go by the documents provided for that person. DAR assumes that the information is correct.

Kathryn Xian, Executive Director of the Pacific Alliance to Stop Slavery, says they work with these affected workers and have done so for the past 2 years. She said the petition doesn't ask the Board to step out of its jurisdiction. Xian urged the Board to get as much information as possible before making a decision to deny this petition because there a lot of legal issues should the

petition not be supported. She said that the specific details were cited in Lance Colin's testimony that was submitted to the Board. Xian told the Board that instead of saying this is a federal problem, the Board can help fix it. She urged the Board to defer.

Member Yuen was in sympathy of what Xian was trying to do on the labor side, but was struggling with how these proposed amendments help the fishermen on the boat. Xian said that information is everything, they would like to know who is being detained on board, who they are and how many of them and which boats. She said workers often switch from boat to boat which she thought might be a federal violation.

Member Yuen said that the Department has a list of who's on board and asked what this rule would add. Xian said it doesn't have the detained on Board status information, those are probably in violation of HRS.

Chair Case said that in Xian's view, if someone has a "detained on board" status, it can be assumed that there is an issue there. She said that is the underlying consideration and the overall goal would be to sort that out. Who does that would be the question here. Chair Case asked how these changes she was requesting, provide more information? Xian said more information would only bring more transparency to the public and the department.

Chair Case asked Xian what was she trying to accomplish? Did she want immigration and labor officials to check on the status of their working conditions? Did she want them to be able to get off the boat and go home? What was the ultimate goal?

Xian said there needs to be information, transparency and reform on all levels. Chair Case confirmed that what Xian was saying was that there are findings of labor abuses in the long line industry, and asked Xian where she would go with the transparency. Xian said on top of this petition, they need work visas and the ability to come on land. She said they have to come off the boats, the boats are not equipped for residential use. The foreign crewmembers are in a state of deportation.

Larry Geller testified as an individual. Geller said he wasn't testifying on a labor issue, but on a conservation issue. He said the rules need to change, something needs to change. Geller testified that the change needs to start with the way fishing licenses are issued.

Jessie Faye from the office of Rep. Carl Rhodes. Rhodes was present earlier but had to leave for another meeting. Faye said they didn't have a specific position on the petition itself, but noted that this matter is of significant concern to Rep Rhodes and wants to continue to look at this going forward and was willing to help the Board and the Department.

Sean Martin representing the long line industry as president of Hawaii Longline Association. Martin explained in detail the process of getting crew members.

Member Gomes asked Martin if he was in favor of this. Martin said it depends on the needs of the Department.

Shelly Mahi testified that it sounded like there were tuna boat sweat shops and people were not getting paid properly. Mahi suggested better representation by agents and more communication between DLNR, the Feds and these agents from foreign countries. She said there was concern of abuse of civil rights. Mahi supported amendments based on information and the Native Hawaiian Fishing rights need to be included.

Bryan Hawn Jr. from UH Manoa proposed that the Board deny the amendment on the basis that it invades privacy. Hawn said that there are holes in the regulatory process that should be looked at. He commented that the content of the first speaker was out of line, this item took almost 2 hours and that's a waste for resources. Chair Case explained that this was an important topic and whatever the outcome, the Board wants people to be able to testify. Hawn understood but felt like those people should be straight forward and look for other outlets.

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

12:27 PM EXECUTIVE SECESSION

12:47 PM RECONVENE

Chair Case commented that this was an important topic, so they want to make sure that is done correctly. She thanked everyone for being patient as this took over 2 hours.

Member Oi asked if the rules for the license was being changed currently, and the one that is being used (in the petition) is the current one. Miyasaka confirmed, but he didn't have a copy of the proposed rule amendment.

Member Yuen said he sympathized with the petitioners to have improved labor conditions and make sure that the fishermen are protected by some kind of decent labor laws. Member Yuen made a motion to deny the petition because he didn't see how the proposal would fix the problem. For the fishermen to have better information of what the license application says is not likely to help their lives very much. Member Yuen said he was encouraged that Representative Rhodes' office was here, and that the department is working with other people that are involved to improve the situation. He felt it may take legislation, but if someone could figure out a way for DLNR and the commercial licensing system could play a role in this, then he felt like the Board would be happy to jump in and help out. For these reasons, he moved to deny the petition. Member Roehrig seconded.

Member Roehrig hoped that staff would come up with a proposal were the fees can be collected, the licenses can be granted, and be done in a situation where those being licensed have informed consent for what they are doing. He also said he would like to be assured that they were getting adequate medical care.

Member Gon, like Member Yuen, commented that he too was heartened that this took great public interest and interest at the legislative level. He too was hopeful that a solution would be found.

Member Oi suggested DAR, HAR and the State legislators can create a safety zone for these people to shower and use the restrooms.

Miyasaka said he was told that the industry was working on that and if such a facility is created, they will possibly be able to house the workers in that facility.

Chair Case stated that DLNR is committed to working with all the players involved in this to try to continue to explore this to identify the issues and solutions.

Denied; all were in favor.

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

12:57 PM RECESS

1:45 PM RECONVENE

**ITEM D-17 Set Aside of Various Properties Encumbered by Leases and Revocable Permits to the Department of Agriculture for Agriculture Purposes, Island of Kauai. (A List of Properties Proposed for Set Aside is Attached as Exhibit A)**

*Written testimony was submitted by Rand Teruya.*

Tsuji-LAND (Marvin Mikasa-LAND accompanied him) explained that they were seeking to turn over to Department of Agriculture-DOA in consistent with act 90. The list was sent to DOA and they came back with their comments that two of the revocable permits were too small for feasibility and therefore should not be transferred. Tsuji told them that Act 90 didn't have a minimum lot size. These are AG tenants, they're doing agricultural and they want to go over to DOA. Tsuji indicated that he was not trying to stop them from going to DOA, he wants them to approve the transfer of all the lists.

Member Gon asked if DOA objected to the two that were under 500 acres. Tsuji confirmed.

Chair Case disclosed that the goal was to do these now island by island. She said that to the extent that there's something that also serves important DLNR purposes, they may not transfer it.

Tsuji said that one lease DOFAW indicated, they have 1 more term to go, potentially if it's still available they would like DOA to return it to DLNR for nene management. There is an existing tenant with a long term lease that is doing pasture of that land.

Member Yuen asked if it would be simpler not to send this parcel to DOA that DOFAW would like to come back. Tsuji said it would not get the benefit of a DOA lease. Unlike DLNR 171 DOA has the ability to extend leases as they get closer to the end of the term. Tsuji suggested having a footnote on this item 5322 at the end of the term if DOA could consult with DLNR.

David Smith Administrator for the Division of Forestry and Wildlife-DOFAW communicated that DOFAW just wanted to get it on the table as an issue. They weren't sure if in 2030 if it would be a viable proposition. They see some of this going to DOA that could be useful to DOFAW. DOFAW would like for it to be kept alive as a potential for return at the end of the lease. There seem to be benefits to the lessee and that's a motivating factor.

Chair Case suggested a conditional transfer (5381) when and if this lease expires DLNR has the have a right to review it for a possible return it to DOFAW.

Tsuji was able to look at this site last week, he said it was an unusual dry area.

Chair Case recused from item 7794 because that was a family member of hers.

Member Oi asked if they were going to approve the two that DOA did now want. Tsuji they were hoping to even though it still needed to be approved by DOA's Board.

Member Oi made a motion to approve as amended with the conditional transfer (5381). Member Gomes seconded.

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

**ITEM D-2 Request for Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative (KIUC) for Utility Purposes; and Immediate Management and Construction Right-of-Entry Permit at por. of Kekaha, Waimea, Kaua'i, Tax Map Key: (4) 1-2-002:por. of 001, 009 and 040.**

No changes, no comments, no public testimony.

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

**ITEM D-12 Issuance of Direct Lease to Na Pua Makani Power Partners, LLC, Lessee, for Wind Power Project Purposes; Kahuku-Mālaekahana, Ko'olauloa, O'ahu, Tax Map Key: (1) 5-6-008:006.**

*Written testimony was submitted by Buddy Ako, Jalen C., Keawe Rillamas, Chue Otterphone, Ben Rabanal, Aaron Swafford, Norma Rabago, Rick Rabago, Bob Comeau, Sim Caban, Dino Vendiola, Jeo Kalili, Bob Ueda, Jan Hipa, Bill Long, Tim Welch, Mona Wago, Wade Wago, Cheryl Wago, Phyllis Moses, James Moses, J.K.P, John G., Koto Waller, Lorraine Tosiek, Matt Tosiek, Detreck Abraham, Christopher Delaunay, Na, Seamus Fitzgerald, Hawaii Laborers-Employers Cooperation and Education Trust, John and Charlene Keliiliki, Jake Primacio, Melissa Primacio, Hawaii Construction Alliance, Brooke Wilson, Dione Kalohoa, Travis Murakami, Ralph "Kai" Ho'ohuli, Richard Balicoco, Dennis Villanueva, and Elizabeth J. Rago.*

Member Gon disclosed that he served on the Endangered Species Recovery Committee with advises on projects such as this windfarm.

Kevin Moore Assistant Administrator for LAND presented item D-12. This project was for about 232 acres. On July 22, 2016 the Board accepted the final environmental impact statement, then after that on July 23, 2016 the FEIS was published in the environmental notice, then the Board's acceptance letter was published in the environmental notice on August 8, 2016. Two public hearings were held here in the Board room after hours, the transcripts of those proceedings were attached in the submittal. Today the proposed lease is being presented. The opposition to the project was identified in the submittal, but the staff recommendation was to go ahead and issue the lease in part because of the Sates renewable clean energy goal (to have 100% clean energy by 2045).

Mike Cutbirth manager of Na Pua Makani Power Partners gave some background of how they ended up to this point. The EIS concluded that there were no adverse environmental impacts to this as a result of this project. A long list of benefits was provided. The project has held or attended approximately 25 public hearings in the last 3.5 years and they have listened carefully to the community. They have made at least half a dozen major changes to the design over that time period based on the community input including moving the turbines further away from the community, reducing the number of turbines from 13 to 10 to 8. Cutbirth said 80% of the comments have been in support and the Laie community association last month approved a resolution supporting the project. He noted that Hawaii has the highest cost of electricity in the nation and the electricity generated by this project will be half the cost of burning oil which will help stabilize and reduce electricity costs for all the residents on Oahu. The project will also reduce the cost of foreign oil. This project will be the lowest cost wind energy project in the history of Hawaii. This project is expected to generate about 3.6 million dollars for rent and royalty to the State over the next 20 years. Cutbirth made it clear that they would not use Siemens turbines like the ones used in Maui that had a blade fall off. They are using turbines manufactured by Vestas who's the leading manufacturer in the world and have been manufacturing for almost 50 years. The EIS fully address health and safety issues. Na Pua Makani believed that there were about 3 dozen emails and testimony sent into the Board in support of this project. They appreciated the Board's approval of the lease.

Melissa Primacio a resident of Kahuku testified in support.

Senator Gill Rivere testified in opposition. He supported glean energy, but didn't believe windmills were the way to go.

Kent Fonoimoana introduced himself the Kahuku Community Association President and representative of the Koolauloa Neighborhood Board said he was present to share that not a single person on either of those Boards supported this proposal. He said that 95% of the community was in opposition.

Fonoimoana, Kahuku Community Association President, Member of Kahuku Neighborhood Board, and Co-Chair of Makanipono o Kahuku asked for a contested case.

2:25 PM      RECESS  
2:31 PM      RECONVENE

Todd Navires a 30 year resident of Kahuku testified in support.

Tyler Dosantos Tam Executive Director of the Hawaii Construction Alliance testified in support.

Member Yuen made a motion to deny the request for a contested case hearing. He said that there was no contested case hearing for the lease of State land as has already been held by the Hawaii Supreme Court. The second reason Member Yuen said that inadequate grounds have been stated. Member Roehrig seconded.

All were in favor to deny.

Member Yuen then made a motion to approve the lease as submitted per the staff submittal. He explained that this was an important project to move forward with for renewable energy. He said there were no renewable energy project with no negative effects somewhere. Member Roehrig seconded.

Member Downing said if they were going to clean up then they are either given the lease for an extra year and they are charged monthly until the cleanup gets done in a reasonable manner versus them having the whole year to be able to clean up the whole land. Secondly, Member Downing then asked how something can be written in to where they can guarantee that something be donated to the community. If they were to fail, then the guarantee is over.

Member Gon said that the AG has requested a recess.

2:44 PM RECESS

Member Gon left the meeting.

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

2:47 PM EXECUTIVE SECESSION

3:09 PM RECONVENE

Chair Case stated that there was a motion to approve the staff recommendation as submitted and there was a second.

Member Downing was not in favor.

5:1 vote

**Approved as submitted (Yuen, Roehrig)**

Fonoimoana asked what his recourse was at this point.



Chair Case advised following up with his attorney.  
Fonoimoana said his attorney was the one that told him to ask for a contested case.  
Chair Case told Fonoimoana to tell his attorney that it was denied.

**ITEM D-11 Issuance of Right-of-Entry Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display on October 21, 2016 at the beach fronting Kahala Hotel, Waiālae, Honolulu, O‘ahu, Tax Map Key: (1) 3-5-023:seaward of 041.**

Russell Tsuji-LAND had nothing to add.

There were no questions and no public testimony.

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

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

*Written testimony was submitted by OHA.*

Tsuji-LAND along with Marvin Mikasa and Richard Howard also with LAND had nothing to add and no amendments.

Member Roehrig said one thing that startled him was that there were so many that were approved for sale so many years ago. He asked if there was a trail of anything that explains why these were so many years out from the last time the Board made a decision till today. Member Roehrig said that if those rules weren't in place now then they need to be in place. The majority of the RPs on Kauai are of this nature. Member Roehrig asked Tsuji what could be done to prevent this from happening again in the future.

Tsuji said they could ask for more staff; Kauai has 1 district land agent and 2 land agent (only one position is filled). Tsuji said he couldn't speak for what happened 20 years ago, but his guess was a lot of times they have taken matters to the Board for going out to auction when it wasn't ready.

Member Roehrig asked if it was documented somewhere, not just for Kauai, but for each island. He said if there was no paper trail, then one needs to be created from here on.

Mikasa said the Kauai office is working on a plan now to go over all the RPs and try to categorize it and get a list for public auction.

Tsuji said there is a log of what the status is, and that identifies where the last piece of work was.

Chair Case summarized that progress is being made, this is a really good list of the status of the RPs. It is noted that a number of them have been approved for sale some time ago. There is a log, LAND is working on prioritizing them. Tsuji is understaffed, it is known that progress needs to

be made, Member Roehrig is suggesting that there needs to be a careful log of when progress is being made and when it's not.

Member Oi added that a lot of these are agricultural lands and should've been turned over to the Department of Agriculture.

Tsuji said that these are still in the process of being transferred over.

Member Yuen was worried that this is what people are concerned about; there is someone on an RP and they're happy, regardless if there is someone out there that is qualified, then they need to be given the opportunity. Chair Case added that is the reason why these need to go out to public auction.

Member Yuen asked when Kauai auctioned anything last. Mikasa said he had to look, he wasn't sure.

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

**ITEM D-3 Amend Prior Board Action of September 25, 2015, Agenda Item D-3, Approval for Acquisition of Perpetual Easements and Authorization of the Chairperson to Negotiate and Execute Rights-of-Entry on Private Lands for the Menehune Road Rockfall Mitigation Project, Waimea Valley, Waimea, Kaua'i, Tax Map Keys: (4) 1-6-010: 001, 002 & 003 (portions).**

**The purpose of this amendment is to provide updated information regarding the owners of the parcels identified as Tax Map Key Nos. (4) 1-6-010:002 and Tax Map Key No. (4) 1-6-010:003, and to correct a Tax Map Key reference in the prior Board action.**

No changes, no comments, no public testimony.

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

**ITEM D-4 Amend Prior Board Action of July 8, 2016, Item D-1, Sale of Portions of Remnant State Parcels to Stephen P. Rapozo, Sr. Trustee of the Stephen P. Rapozo, Sr. Trust, Mervin L. & Fay T. Rapozo, Trustees of the Mervin L. & Fay T. Rapozo Trust, Doreen A. Rita and Madeline M. Yamaguchi, Castro Tract, Kapa'a Homesteads, 4<sup>th</sup> Series, Kawaihau, Kaua'i, Hawai'i, Tax Map Keys: (4) 4-6-010:004 and 005 portions.**  
**Issuance of Immediate Right-of-Entry Permit to Stephen P. Rapozo, Sr. Trustee of the Stephen P. Rapozo, Sr. Trust, Mervin L. & Fay T. Rapozo, Trustees of the Mervin L. & Fay T. Rapozo Trust, Doreen A. Rita and Madeline M. Yamaguchi, for Access and Utility Purposes, Castro Tract, Kapa'a Homesteads, 4<sup>th</sup> Series, Kawaihau, Kaua'i, Hawai'i, Tax Map Keys: (4) 4-6-010:004 and 005 portions.**

**The amendment is to correct the name of one of the trust applicants to Stephen P. Rapozo, Jr., Trustee of the Stephen P. Rapozo, Sr. Trust.**

No changes, no comments, no public testimony.

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

**ITEM D-5 Amend Prior Board Action of August 26, 2016, Item D-2, Consent to Mortgage of Sublease K-15 with Estoppel Certificate of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, Keāhole Point Hatcheries LLC, Sublessee/Mortgagor, Ulupono Holdings LLC, Mortgagee, 'O'oma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:092.**

**Purpose of the amendment is to change the Sublease number referenced. It should have been Sublease K-35, not Sublease K-15.**

No changes, no comments, no public testimony.

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

**ITME D-6 Annual Renewal of Revocable Permit S-7581 to Ulupalakua Ranch, Inc., Kama'ole, Kula, Maui, Hawai'i, Tax Map Key: (2) 2-2-007:003.**

*Written testimony was submitted by OHA.*

Member Gomes recused, he is employed at Ulupalakua Ranch.

Tsuji had a request to the AGs to look at this to see if it should be in the form of a water lease. Tsuji gave background explaining that this was a water lease originally, at the time there was some litigation going on and the court came out with a decision saying Ulupalakua was entitled to 30% of the water and the State was 70% or something similar. Tsuji thought later when the lease expired there was a new RP issued and LAND believes that when the lease expired, staff may have issued the RP, then gone back and read the case, then may have interpreted the case to mean that they own 30% of the water. Tsuji thought it may have been misread and the case meant under the lease they were entitled to 30% of the water, but when the lease expires, the question then becomes are they really entitled to 30% or do they need to apply for a water lease. That's the question LAND is asking the AGs to confirm. Meanwhile, LAND is asking the Board to continue with the RP while they look into this matter.

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

**ITEM D-10 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on October 18, 22, November 8, and December 31, 2016, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 (Portion).**

Tsuji-LAND disclosed that member Downing met with Hawaii Explosives. Member Downing said everything was good right now.

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

**ITEM D-13 Cancellation of Revocable Permit No. S-6660 to Wanda Nakoa and the Issuance of a Revocable Permit to Mary Nakoa to Serve Horse Paddock Purposes, Lualualei, Wai'anae, O'ahu, Tax Map Key (1) 8-9-002:005.**

Tsuji had nothing to add, no questions, no public testimony.

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

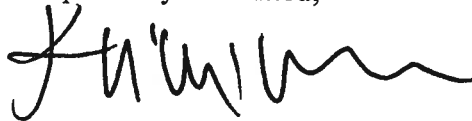
**ITEM D-14 Issuance of Right-of-Entry Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display at Unencumbered State lands off Ko 'Olina Beach on October 28 and 29, 2016, Hono'ulil'uli, 'Ewa, O'ahu, Tax Map Key: (1) 9-1-057:seaward of 003.**

**Withdrawn.**

Member Gomes made a motion to adjourn, Member Yuen seconded.

There being no further business, Chair Suzanne D. Case adjourned the meeting at 3:34 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