

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

DATE: THURSDAY OCTOBER 28, 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 9:04 a.m. The following were in attendance:

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig
Sam "Olu" Gon

James Gomes
Chris Yuen
Keone Downing

STAFF

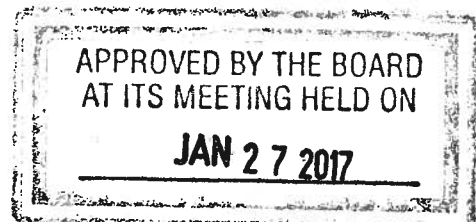
Sam Lemmo-OCCL
Steven Schmelz/DOBOR
Berry Cheung/LAND

Ed Underwood-DOBOR
Russell Tsuji-LAND
Dave Smith/DOFAW

OTHERS

Colin Lau/Deputy AG
Gorge Vares/ A2
Derwin Hayashi/K1
Johnny Kai/K1
Steve Oppenheimer/K1
Patricia Ching/K1
Christina Lizzi/K1
Ellen Watson/K1
Dayle Kobayashi/K1
Alex Tender/K1
Toni Lee/K1
William Murtagh/J1
Edward D. Demello/J1
Ivan Lui Kwan/D7
Hilton Rep/D7
Tyler Green/D1

Li Chobian/A2
Bill Wynhoff/K1
Daryl Wong/K1
Jolyn Okimoto Rosa/K1
Kuipo Kaumukahi/K1
Willa Mae Loo/K1
Dainel Trockman/K1
Bianca Yasaki/K1
Kopili Pang/K1
Alexander Jamile/K1
Ann Kobayashi/K1
Mitch Roth/J1
Jerry Gibson/D7
Bob Hampton/D7
Kathleen Clavish/D10
John Pang/D1



**ITEM C-1 Request for Authorization for the Chairperson of the Board of Land and Natural Resources to Sign, Execute, Amend, and Extend Agreement(s), Contract(s), and Other Document(s) for the Capital Improvement Project Grants-in-Aid to Moanalua Gardens Foundation, Inc., in the Honolulu Watershed Forest Reserve, Tax Map Keys Nos.: (1) 1-1-012:002, (1) 1-1-012:015, and (1) 1-1-013:001, Moanalua Ahupua‘a, Kona District, Island of Oahu and
Request Approval of Declaration of Exemption to Chapter 343, Hawaii Revised Statutes, for the Project.**

Deferred

ITEM D-4 Consent to the Assignment of Grant of Non-Exclusive Easement S-5638, Chevron U.S.A. Inc., Assignor, to Island Energy Services, LLC, Assignee, Honolulu, O‘ahu, Tax Map Key No.: (1) 1-1-003:239.

Deferred

ITEM A-1 Approval of August 12, 2016 Minutes

Member Gon and Member Oi were not present for this meeting so they recused from voting on this item.

Member Roehrig and Member Yuen provided their comments/amendments.

Unanimously approved as amended (Roehrig, Gomes)

ITEM A-2 Approval of August 26, 2016 Minutes

Member Yuen provided comments/ amendments.

Li Cobian and Gorge Vares were present if the Board had questions.

Unanimously approved as amended (Gon, Gomes)

ITEM K-1 Contested Case Hearing Request Regarding the Board of Land and Natural Resources’ Denial of a Time Extension for the Modification of Conservation District Use Permit (CDUP) OA-30 for Paradise Park by Paradise Park Inc., Located at 3737 Mānoa Road, Mānoa, O‘ahu, Tax Map Key No.: (1) 2-9-054:018.

Written testimony was submitted by: Jason Umemoto, Oz Stender, Hula Girl Tours & Travel LLC., Lori Lee, Alexander Alika Jamie, and Jeff Wong, June Kawasaki, J-4 Pacific American Foundation.

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands-OCCL noted that the department's attorney Bill Wynhoff was present for questions.

Lemmo gave background; in 1966 the BLNR approved a Conservation District Use Permit (CDUP) to establish a botanical and zoological garden for recreational purposes in the back of Manoa Valley-Paradise Park. By 2004 most of the park grounds were unused for 20 years. Then, they submitted a proposal to DLNR to open a Hawaiian Cultural Center. On October 24, 2014 the Board authorized the modifications. All of these actions were subject to a final plan review by the department. One standard condition, #8 was that they were required to start work within a year. Paradise Park did not do so. They requested a time extension on May 27, 2016, it went before the Board and the Board denied the request. At that time counsel for Paradise Park made a request for a contested case hearing, it was followed up by a written petition. Today they were here to make a recommendation on whether or not to grant the petitioner a contested case hearing on the time extension request. This went to the State Attorney General's office for review and the opinion was that the rule makes it clear that the granting of an extension was at the discretion of the Land Board. Lemmo noted that Paradise Park may reapply for the uses they applied for previously.

Member Roehrig wanted to know who wrote the opinion. Chair Case made it clear that who wrote the opinion was not relevant.

Lemmo continued that there was no due process requirement to provide a contested case. Staff is going to recommend that the Board deny the request for a contested case.

Derwin Hayashi representing Paradise Park asked that the Board go with the motion for reconsideration today and defer the contested case hearing for 2 months. He believed that when the Board made its decision on May 27, 2016 it was based on false and misleading evidence/facts/testimony by the party. One question was no notice. A lot of the parties said they didn't receive notice. All the letters that were sent had the Manoa neighborhood Board ccd.

Hayashi gave a power point presentation.

Chair Case appreciated Hayashi's background information but asked him to only comment on the item on the agenda which was a request for a contested case.

Hayashi again asked the Board to grant them a motion for reconsideration.
Chair Case said no.

Hayashi told the Board that they are allowed to make adjustments provided that the entire Board agrees and the parties agree. He suggested Wynhoff research the "Bart" case.

Member Roehrig told Hayashi that he needed time to read and digest the request. He told Hayashi he should've sent the documents with his request in 24 hrs. before the meeting so the Board can review the information.

Hayashi asked that this matter be deferred that way he can properly brief and get the information ready for the Board. He also asked that a motion for reconsideration be set first, then after that Board meeting, the question regarding the question for contested case go forward. They believe that the motion for consideration would probably be definitive in this matter.

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 Roehrig seconded.

9:37 AM EXECUTIVE SECESSION

9:46 AM RECONVENE

Chair Case told Hayashi the DLNR/BLNR would treat his motion for reconsideration as a request and put it back on the agenda which she would review and get back to him following this meeting. It's a discretionary item, a considerable amount of time was spent on this item at the last meeting (maybe 3 hrs.). There is a detailed amount of testimony. Chair Case said that whether this is put back on the agenda or not was a discretionary matter.

Hayashi next withdrew his request of what was before the Board today and would resubmit at a later dated.

Wynhoff told Hayashi that if he withdraws his request, he would advise the Board that if he withdrew this request and submitted a new one, then that new one would be untimely.

Chair Case asked Hayashi if he was withdrawing his request for a contested case, or withdrawing his motion for reconsideration. Hayashi said they were going to withdraw the question on whether or not they are entitled to a contested case hearing, they will submit a motion for reconsideration before the Board, then they will bring back this matter regarding the denial of their request for a contested case hearing.

Member Roehrig asked Hayashi why he just didn't make a new request.

Hayashi asked for a moment to speak with his client.

Hayashi said he would like to take the case all the way up and believed he would do very well before the Supreme Court. He said he told his client that it would probably be in the client's best interest to do a motion for consideration and also submit a new application. That was why he was asking to defer this. He was going to withdraw what was before the Board today.

Member Gon told Hayashi that what was submitted today was submitted by staff, not by him, he cannot withdraw that.

Chair Case confirmed that what was before the Board was their request for a contested case hearing on the time extension; he separately requested “a motion for reconsideration”. She said they would consider that as a discretionary request to the Chair. The request for a contested case hearing would not be deferred.

Hayashi asked for a 5 minute recess to discuss with his client.

9:55 AM RECESS

9:59 AM RECONVENE

Hayashi said that Paradise Park was entitled to a contested case hearing because there were errors in the memo prepared by the attorney generals. Hayashi said Paradise Park owned the land, not leased.

Member Roehrig asked if there was a deed to the property and what was the identity of the entity on the deed.

Daryl Wong said it was Paradise Park Exchange LLC. He said the CDUP was related.

Member Roehrig asked for the paperwork to verify.

Hayashi addressed more errors the memo failed to address.

Chair Case said there were a number of people that signed up to testify on this item. She noted that there was a lot of written testimony that was submitted and suggested that the members of the public stand on their written testimony.

Johnny Kai worked on the sound production at Paradise Park and assured the Board that the sound was not blaring. The music ends at 9 p. m. The speakers were only 8 inches.

Jolyn Okimoto Rosa testified in support of the staff recommendation.

Member Gon reminded everyone that they were not here to hear testimony on the merits of a particular project in Manoa that has been proposed, they were here on the hearing of a contested case.

Steve Oppenheimer testified in support of the staff recommendation.

Kuuipo Kumukahi offered comments in Hawaiian and felt that a cultural center would be good.

Patricia Ching, Willa Mae Loo, Christina Lizzi, Daniel Trockman, Ellen Watson, Bianca Yasaki, Dayle Kobayashi testified in opposition and agreed with the staff recommendation.

Michael Pili Pang testified in support of the extension and wanted the culture center.

Alex Tender, Alexander Jamile and Toni Lee testified in support of Paradise Park.

Ann Kobyashi testified in support of the staff recommendation.

Member Gon commented that he appreciated the testimony on the item before the Board, responded in Hawaiian to Kuuipo Kumukahi's comments and thanked her.

Member Yuen made a motion to accept the staff recommendation, denial of a request for a time extension is discretionary. Member Gon seconded and pointed out that this has nothing to do with the idea of Paradise Park or the grounds there to be used as a cultural center. He said his own kumu was a member of the advisory committee of that initial proposal and it has many merits, but we are not here to discuss those merits, we are here to discuss this particular point of the procedure. Member Gon said that the idea of closing the door on that project is not in question here. The idea of re-opening the door on applying for the uses of the conservation district, what is appropriate, and what can be done in a timely manner. He encouraged resubmitting the application and making it clear what is to be done.

Member Roehrig said he would support the motion, he recognized this is a sensitive issue for the people of Manoa.

All were in favor.

Unanimously approved as submitted (Yuen, Gomes)

11:05 AM RECESS

11:16 AM RECONVENE

ITEM J-4 Request for Contested Case Hearing by William Murtagh Re Non Renewal of Commercial Launch Ramp Permit at Keauhou Bay.

Ed Underwood Administrator for the Division of Boating and Ocean Recreation-DOBOR presented item J-4. Underwood handed out an Exhibit, the recommendation was to deny the contested case.

Member Roehrig asked Underwood and Murtagh about a copy of an email that was sent from Underwood to Murtagh in 2014. Member Roehrig felt like Underwood was picking on Murtagh. Underwood assured Mr. Roehrig that wasn't the case, he didn't call for this audit and wasn't involved in this audit.

Hawaii Island staff was also present for questions.

Chair Case reminded the Board to stick to the agenda item before the Board and if there were any other issues, that could be addressed at a later time. Member Roehrig said the issue was whether or not Underwood made it clear to his staff to start this project.

William Murtagh testified that he didn't believe he should've been audited, the submittal was wrong, the numbers were wrong but have been correct. He said he was told he was a random audit, then he was told it was because someone was selling a boat that he was leasing. As far as a contested case hearing, he didn't know why his permit was pulled. He did everything he was supposed to do, he met the requirements and didn't understand why he was here, he just wanted this permit back. Murtagh believed he was due an explanation other than, it was because they couldn't complete an audit. He said he needed a contested case hearing if he wasn't going to get his permit back.

Member Roehrig asked if Nancy Murphy gave someone a slip ahead of him, was that what started this controversy; she gave someone who was on the waiting list below you a slip ahead of you. Murtagh said yes, it was preferential treatment that runs in that office, it was him exposing that.

Member Roehrig asked who those staff members were. Murtagh said Nancy Murphy, who was the District Manager at that time, Dan Mersburgh and William Nahale. Mersburgh and Nahale were still there.

Chair Case reminded everyone that what was before the Board today was there was a request for a contested case hearing. She asked Murtagh what the accurate figures were. Murtagh said what was submitted today were the accurate figures, not the documents in the submittal.

Member Yuen asked what his business was exactly. Murtagh said this was a commercial ramp permit that he attained for 1 year, he wasn't sure what he was going to do. Now he has a fishing business. He was open to doing whatever.

Member Yuen confirmed that Murtagh did fishing charters and people paid him for the fishing charters. Murtagh confirmed, he said in the 2nd year, he did do different stuff. He didn't have set rates, it depends.

Member Yuen asked what records he kept of the gross receipts. Murtagh said he wrote it down in a journal.

Member Yuen asked if people actually prepay charters for \$15,000. Murtagh said yes. Member Yuen was trying to understand how all the numbers were even numbers; \$1,000 and \$5,000. Murtagh said it was because he didn't know if he was going to need this.

Member Downing asked Murtagh if his tax returns balance out and if this money is shown in his tax returns. Murtagh said he was advised not to discuss.

Chair Case asked if the auditor asked for his income. Murtagh said he was advised not to provide that information.

Member Downing told Murtagh that they do have a right to find out how much money he makes because he was in a cash business. Murtagh said he didn't want to discuss this; he was advised not to.

Chair Case asked if Murtagh if he ever provided any written receipts, he said no.

11:55 PM RECESS

12:00 PM RECONVENE

Member Gomes told Murtagh he felt like he was stacking the deck, he didn't understand how he is running a business with no track record. Murtagh said he may be guilty of bad bookkeeping, but that's it. He said he never gives anyone a receipt and never has. Mr. Murtagh then introduced Mr. Mitch Roth, Hawaii County Prosecutor, to provide additional information and testify on his behalf ¹.

Mitch Roth identified himself as the elected Prosecuting Attorney for County of Hawaii. He was elected four years ago then recently elected again. Roth indicated that he was here because he was outraged about what has happened to Murtagh. Roth explained that he met Murtagh because there was a case in his office because the Island of Hawaii office tampering with records that he put in based on the size of this son's boat. He backed up and said that first, the Prosecuting Office said there was not enough to proceed. Murtagh called and complained. Roth never met Murtagh in his life before. Roth said he check with the Deputy and confirmed that the documentation was poor. Roth called and started asking around at DLNR and the DOCARE office and different people; Roth claimed he was told was yes, there was stuff done that was done wrong. He said he asked for further documentation, and furthermore it was done and there was a belief that it was vindictive and had to do with other things. He believed that there was a permit, Murtagh was on a list, he was moved on that list and people were put above him. Roth said he talked with the Deputy Director Kaluhiwa and there was no question that there was some wrong things that happened there and then Murtagh was retaliated against.

Chair Case asked Roth if he was talking about this permit or another situation. Roth said that this permit plays part into this whole thing. As he started looking into what was going on with the case in the office where they changed a number the size of the boat so he would not be on a mooring permit, Roth started asking people in the community about what's going on with DOBOR and what's happening. He said there were several people that told him DOBOR retaliates. Roth said Murtagh was putting in a permit at the same time, people were telling Roth that there was a person who was working at that office in Kona that had a side business of helping people move their permits through. He didn't go through that person. Roth said that in his 20 years of being a Prosecuting Attorney, he has never seen anything that comes this close to this and what he believes is happening here. Roth believed there was corruption. He said he brought it up to different people in DLNR and they have told him that they believe that this is retaliation. He said he sent a letter to Chair Case and the Attorney General; he even talked to the Governor about this.

Chair Case told Roth that she checked on that and Roth did send him a request to investigate and on May 27 and June 20th she responded to his request to investigate. She made it crystal clear that she and the Department do not tolerate corruption and if there is any evidence that there is

¹ Verbatim minutes for this portion are attached as Exhibit A to the end of the minutes for individuals that want a more detailed description of this portion.

anything going on, they will look at it and investigate anything that comes to their attention. Roth clarified that he did not get back because Chair Case's request was, who are the people in the DLNR that told you that they believed. To Roth that was an inappropriate request because you have retaliation, you have whistle blowers, and you don't give up the name of those who give out that information. Roth said he had someone from the Attorney Generals, a state investigator get in touch with him. He said he talked to Kaluhiwa about that and told him why he felt so strongly about that.

Chair Case made clear that the DLNR will certainly will and do anything that comes to their attention and they have on this case.

Roth said it was his understanding that Murtaugh was passed up, then there was this whole thing on the Keaahou moorings and became an embarrassing thing he understood for DOBOR. He said Kaluhiwa and the Governor went out and looked at the moorings and DLNR changed their minds on that. Roth said there was a series of things, while he was doing his investigation, this whole audit came up. He was told this was a random audit, and he found out that it was not a random audit, it was a targeted audit. Roth apologized, he was there on his own dime today, he took time off, he didn't have a relationship with Murtaugh, he just felt there was so much injustice here. Murtaugh deserves to have a hearing; as far as how his payments were done, Mr. Demello who owns a business, who's not really related but ohana, like "uncle" over there. Demello told Roth that he sends his clients, they pay the money and they do these kinds of things. To Roth it's like a timeshare situation. What hasn't been said that Murtaugh told him was that the guy that was that the boat that he was selling the boat and letting him use that boat came down with cancer and there was work that needed to be done and Murtaugh was asking for extensions which weren't willing to be given so he had to do prepaid charters. Roth said he didn't see anything that said you couldn't do prepaid charters. As far as income taxes, Roth said he was a prosecuting attorney, if he wanted to look into your income taxes it's near impossible for him as the prosecutor to get your income taxes even if he knows that you're violating the law so him sitting up here saying that his attorney didn't advise him of that, Roth couldn't blame Murtaugh because he couldn't do that.

Member Yuen was trying to understand how Roth is here not as the Hawaii Prosecuting Attorney, but as Mitch Roth in his individual capacity. Roth said yes and no; he saw something and heard from different people in the DLNR that there was a problem her. He referred this to the Department of the Attorney Generals to ask them to do an investigation; at the same time he referred this to Chair Case and asked her to do an investigation. What Roth feels happened here was that the government treated Murtagh wrongly. Politically Roth said this was not a good thing for him to do, but he felt so strongly that this was inappropriate.

Chair Case said what we are trying to uncover here is what is before us, is there appropriate documentation that the use of the permit met the requirements. She said that basic business practice is that you keep records.

Roth said that Mr. Murtagh's right to do business is being taking away. He felt that the decisions that are being made were being made because the right questions were not asked.

Edward D. Demello testified in support of Murtagh. He confirmed that he paid Murtagh over \$16,000 in cash and never asked for receipts.

Member Yuen asked Roth to itemize the acts of retaliation against Murtagh. Roth believed that Murtagh was on a list for a mooring; his son was on a list. There were people that were being moved around, Murtagh stood up. His son had a boat, that was one size and that number got changed. Murtagh said that the matter was corrected. Roth said his son was next in line, but DOBOR passed him up because he was 17. Roth believed Murtagh was audited because of the criminal investigation that was going on in district office.

Member Gon asked Underwood who was providing the information regarding this matter. Underwood said Steven Schmelz, the Hawaii District Facilities Security Officer. Schmelz said he was the person that initiated the audit, he wasn't directed by anyone. What he saw that was unusual was that for the first 7 or 8 months was \$0 in gross receipts reported for the permit, then in the next 3 months it was \$6,000, \$4,000 and \$5,000 to make the minimum amount. So that to him was a red flag. The second was that vessel that Murtagh had leased; the owner of the vessel went in to sell it to another person. Murtagh had no idea that the boat he had exclusive possession over had been sold. Murtagh then executed a new lease with the person that bought the boat. Schmelz then contacted the auditor because he didn't think he was using the permit as it should be used. Schmelz said that at the time he just recently transferred to Hilo from Maui and had no issues with anyone. He explained that the main purpose for audits was to verify if a person was really operating their boat or if it was just a tax write off.

Member Yuen said there was a rule that said the Department may renew a commercial permit if you generate a minimum amount of gross receipts, then there is another rule that gives a series of excuses why you couldn't meet the minimum gross receipts. He said the basic idea was to have an active business using the limited number of permits. Underwood confirmed yes.

Member Downing asked if there was anything in the rules that say how many days the boat needed to be in use. Underwood said that was correct. Member Downing didn't understand the "red flag". Schmelz explained that in the rules it says that if you don't use your boat for 60 days you could lose your permit. It's not just one month of 0 amounts, its 7 out of 8 months of 0 amounts.

Member Downing said that the DLNR should not tell a person how to run their business. Chair Case said that it needs to be in use, there are other people who want to use that ramp permit. Member Downing argued that there are other people that pay the minimum. He said Murtagh may just be a better business man if he can make \$15,000 in one day. Chair Case said to her that would be a red flag.

Underwood said that today was the first that DOBOR heard that there were presold charters. All they are asking for was proof that the boat was running; gas receipts were fine but nothing was submitted.

Member Roehrig asked Schmelz if he was aware of all the issues going on in the offices there. Schmelz was aware.

Member Roehrig asked to see the email Underwood sent again. Chair Case told member Roehrig that it was it was not on record and not part of our submittal, so they will move forward without it.

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 Gon seconded.

12:51 PM EXECUTIVE SECESSION

1:45 PM RECONVENE

Member Yuen made a motion to adopt the staff recommendation; he was satisfied with the legal advice. He took seriously the allegations of retaliation, not that he necessarily believed them, but they have to be taken seriously. Objectively the Department has explained why there was an audit done for Murtagh and a few others. There is supposed to be a certain amount of receipts to ensure that there is an active business being operated with this commercial license. Member Oi seconded.

Chair Case pointed out a typo on the submittal on page #2; the letter was dated April, 2015; it should be 2016. She advised Murtagh that his permit would not be renewed. She told Murtagh that she did sign the letter to him stating that his commercial launch ramp permit would not be renewed because it is the practice of the Department that there is careful attention and it goes all the way up to the Chair. Chair Case also told Murtagh that she takes any allegations of wrong doing seriously and is open to anything anyone wants to bring forward that the Department should be following up on. They are trying to create a positive path forward on all fronts on matters at Keauhou. She assured everyone that any evidence of wrong doing will be followed up on. Chair Case was satisfied that there was sufficient review and insufficient documentation and that is not a right to a contested case hearing. She would be supporting the motion.

Member Oi told Underwood that his office should go out and visit the tenants and see if there are any problems.

Member Gomes reiterated what member Oi said; there needs to be a better job helping and working with these people and better transparency with the public. He said he felt for Murtagh.

Member Gon suggested staff continue to reach out and continue to get to what the basis of this problem is and work it out.

Member Roehrig said he would vote no, there needs to be a fundamental change.

AG Colin Lau reminded the Board to make sure the motion reflected the amendment to the submittal.

Chair Case said page #2, the date April 26, 2015 to April 26, 2016. Member Yuen moved the amendment, Member Oi seconded.

6:1 Vote; Member Roehrig was not in favor.

Approved as submitted (Yuen, Oi)

ITEM D-7 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach Every Friday Starting November 18, 2016 to September 29, 2017, Waikiki, Honolulu, O'ahu, Tax Map Key No.: (1) 2-3-037:021 (Por).

Russell Tsuji-LAND presented item D-7. Jerry Gibson and counsel were present for questions.

Member Downing asked Tsuji how he goes about choosing if there are multiple groups that want this space.

Tsuji explained that has never happened, but if it did happen then the first to apply would probably be taken first.

Member Downing said this space was being pre-booked for \$50 for this space. He asked what would happen if a halau, or school group wanted to come in on a Friday. They would pay .10 a square foot. He was trying to understand that LAND was willing to give up 52 spaces a year for \$50 a time, blocking anyone else who wants to pay more to use this space.

Tsuji said that was the Board policy.

Member Downing is considering only approving these preset dates for a quarter of a year at a time and would like to keep this space open for people who may want to use this space for something different.

Tsuji said if the Board approves this then those dates are set, if the Board only approves some dates and times then it would be open to anyone else.

Member Gon asked if there has ever been a time where anyone else has come in after the set date and asked to use the lagoon on a date that has already been set.

Barry Cheung-LAND said there was a time when someone else came in for the same date, but it was resolved between the two parties.

Chair Case pointed out that the rental amount is the same \$50 per event date.

Ivan Lui-Kwan counsel for Hilton Hawaiian Village introduced Jerry Gibson with Hilton Hawaiian Village. Lui-Kwan said they didn't realize the staff recommendation was to keep it the rate \$50, if that was the recommendation then they support the recommendation. They stand on their written testimony.

Bob Hampton and Waikiki Beach Association stand on their written testimony.

Member Oi asked Hampton whatever happened to the zip line. Hampton explained that they did their concept events to test it, then they examined two different locations for landing zones. They

are re-examining those locations and are in the process of doing a draft environmental assessment.

Member Gomes made a motion to approve.

Member Downing asked to amend the submittal to allow them a 6 month conditional permit with DLNR's right that if there is an event that wants to come in and pay the DLNR fee then they should have the right to and to give them notice that this day is going to be used for another event, verses giving them something for a year. Member Downing understood the desire to keep it as it is. To just give someone the right to this spot for \$50 for 52 weeks only seems right if no one else wants it that is willing to pay more.

Chair Case asked for clarification as to what the amendment was.

Member Downing said the amend was a conditional permit for 6 months with DLNR's right that if there is a request for the use of that same area on that day, then they are allowed to use that area, stopping the fireworks. The value for DLNR for that one day is greater. Secondly to move the location to the lagoon. Member Roehrig seconded.

Member Yuen asked to hear what Hilton has to say about this.

The Hilton rep. agreed that anything that was done from now on that was a paid fireworks display would be done in the lagoon. They would study moving the show in the super pool to the lagoon. They have to further discuss and study moving the Friday fireworks to the lagoon because it would be an inconvenience to people watching.

Member Yuen asked about competing uses, he assumed there were some that were not booked through the Hilton. He was trying to understand that commercial group could book Kahanamoku Beach and not come through Hilton. The rep. said it would be difficult because Hilton pays for the beach. Tsuji said they have a concession agreement, if it's a right of entry that is not covered by the concession agreement.

The rep said he was fine for the first 6 months, but would rather study the lagoon further.

Member Yuen was concerned of the possibility of this getting canceled then the public wouldn't know. The rep. agreed; there would be a lot of people that would miss it.

Member Yuen didn't think a lot of money would be wasted. Member Downing said he would rather have the option open if something else were to come along.

Chair Case suggested amending the amendment to go with the 6 month with the understanding that they will look at the lagoon possibility and not the part about stopping the fireworks. She said it was important to have dependability on this time frame. She felt it would be complicated and potentially disruptive to change something that was regularly planned.

Chair Case suggested 3 Friday night events in the lagoon so that anyone that wants to go can go. The rep agreed.

AG Colin Lau asked when this permit would end. Chair Case clarified it would end May 19th.

Member Downing questioned the \$500 fee. Kwan asked then Board to refer to his testimony about the fees, that all say the same that there needs to be a rational relationship to the fee being charged and the service or benefit being delivered. The \$50 is for no commercial.

All were in favor.

The Board amended the submittal by: (a) limiting the Right of Entry for 6 months, from November 18, 2016 to May 19, 2017; and (b) requiring at least 3 Friday night shows have the firing site at the Lagoon area, and the operator and Hilton is to appear back before the Board with a report.

Unanimously approved as amended (Downing, Oi)

ITEM D-8 Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. for Beach Event Purposes on November 3 and 4, 2016, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:Portion of 021.

Tsuji-LAND asked the Board to change the ROE to 4:00 p.m.

The Board amended the end time for November 4, 2016 to 4:00 p.m.

Unanimously approved as amended (Roehrig, Gomes)

ITEM D-10 Acceptance of Surplus Federal Real Property located at Marine Corps Training Area Bellows, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-015:portion of 001.

Member Gon asked if Waimanalo Health Center would be the recipient in this. Barry Cheung-LAND explained that upon the transfer they would process the amendment to the existing nonprofit lease to cover the area; they would also work out what the proper arrangement would be. It would also come back to the Board.

Kathleen Clavish CFO at the Waimanalo Health Center testified that they have been interested and good stewards of the land for over 20 years. They work well with the church and they support the staff recommendation.

Unanimously approved as submitted (Gon, Gomes)

ITEM D-1 Cancellation of Revocable Permits Nos. S-7407, S-7444 and S-7613 to Coco Palms Ventures LLC; Issuance of Revocable Permits to Coco Palms Hui LLC, Wailua, Kawaihau, Kauai, Tax Map Keys: (4) 4-1-003:044 por., (4) 4-1-003:017 and (4) 4-1-005: 017.

Tsuji-LAND detailed that the current revocable permits that they have are under the name Coco Palms Adventure LLC but has been taken over by Coco Palms Hui LLC. LAND is asked the Board to cancel and reissue under the Hui.

Tsuji also asked to make an amendment to add a recommendation; #2 to terminate the revocable permit S-7047, S-7444 and S-7613.

Member Roehrig asked who these people were and asked Tsuji to put that in the submittal in the future.

Tsuji explained that this Hui was in the development agreement process to finish the lease and get an agreement. The Board approved the Hui in the past.

Tyler Green commended the Board for their contribution and service. Green was a managing partner of Coco Palms Hui. They are the ownership group of the Coco Palms group on Kauai. He lives on Oahu but goes back and forth to manage that project.

John Pang representing Coco Palms Hui explained to Member Roehrig that the entity that currently owns the bulk of the Coco Palms property is a Delaware LLC, it says "foreign" because it's non Hawaii. To clarify member Oi's question was that, the permit that is the action to cancel as issued to Coco Palm Ventures. The property then got taken over by the subsidiary of Prudential Insurance Company which was the lender on the project. Prudential earlier this year sold the project to Coco Palms Hui. The transfer of the permitting did not come back to the Board. The leases are still in the names of Coco Palms Venture. The originals are sitting in escrow pending the Board's consent. After this the intent is to come back to the Board for consent.

Green gave more history and backdrop.

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

The Board amended the Recommendation section by inserting a new recommendation number 5 as noted below:

5. Termination of Revocable Permits Nos. S-7407, S-7444 and S-7613 upon the issuance of the respective replacement revocable permits.

Unanimously approved as amended (Oi, Roehrig)

ITEM M-1 Issuance of a Revocable Permit for a Field Office, Hawaii Retail Services LLC dba Hawaii Unified, Diamond Head Domestic Building, Honolulu International Airport, Tax Map Key No.: (1) 1-1-003: 053 (Portion).

Ross Smith Property Manager for the Department of Transportation Airports Division-DOT-AIR presented item M-1.

No questions, no comments, no public testimony.

Unanimously approved as submitted (Gon, Gomes)

ITEM C-1 Request for Authorization for the Chairperson of the Board of Land and Natural Resources to Sign, Execute, Amend, and Extend Agreement(s), Contract(s), and Other Document(s) for the Capital Improvement Project Grants-in-Aid to Moanalua Gardens Foundation, Inc., in the Honolulu Watershed Forest Reserve, Tax Map Keys Nos.: (1) 1-1-012:002, (1) 1-1-012:015, and (1) 1-1-013:001, Moanalua Ahupua'a, Kona District, Island of Oahu and Request Approval of Declaration of Exemption to Chapter 343, Hawaii Revised Statutes, for the Project.

David Smith Administrator for the Administrator for the Division of Forestry and Wildlife-DOFAW conveyed item C-1. They are going to develop a master plan.

Chair Case noted that there was no more public testimony.

Unanimously approved as submitted (Gon, Gomes)

ITEM C-3 Request to Conduct a Public Hearing Regarding the Draft Kamehameha Schools Safe Harbor Agreement, Ka'u District, Tax Map Key Nos. (3) 9-9-001:004, (3) 9-9-001:007 (por.), (3) 9-9-001:024 (por.), (3) 9-9-001:034 (por.), (3) 9-9-001:017, (3) 9-9-001:018, (3) 9-9-001:019, (3) 9-9-001:020, (3) 9-9-001:021, (3) 9-9-001:027, and (3) 9-9-001:035 Hawai'i Island.

Dave Smith-DOFAW reviewed item C-3.

Member Gon disclosed that up until recently he served on the Endangered Species Recovery Committee that advised Kamehameha Schools on details of this, but there was not benefit to him and the decision here.

Smith added that it was simply permission to grant a public hearing.

Unanimously approved as submitted (Gon, Gomes)

ITEM D-2 Issuance of Right-of-Entry Permit to Hawaii County Fire Department on Unencumbered State Lands, Waiākea, South Hilo, Hawai'i, Tax Map Key No.: (3) 2-1-012:024.

Tsuji-LAND had nothing to add. No questions, no comments.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-3 Issuance of Right-of-Entry Permit to the Hawaii Amateur Surfing Association for a Two Day Surf Competition Event (Honolua Legends of the Bay) at Lipoa Point, Honolua, Lāhainā, Maui, Tax Map Key No.: (2) 4-1-001: Portion of 010.

Tsuji-LAND had nothing to add. No questions, no comments.

Unanimously approved as submitted (Gomes, Gon)

ITEM D-5 Issuance of Revocable Permit to AOA 1942-1946 Pauoa Rd Inc. for Parking Purposes; Termination of Revocable Permit No. 7722 issued to 1942/1946 Pauoa Road Owners Association; Nuuanu, Honolulu, O‘ahu, Tax Map Key: (1) 2-2-010:portion of 021.

Member Downing asked why we keep these lots.

Tsuji said that the only ones they sell right now are the ones that are a remnant.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-6 Issuance of Revocable Permit to Kwock Nam Lau Trust and Eunice Y.M. Lau Trust for Parking Purposes; Termination of Revocable Permit No. 7544 issued to Kwock Nam Lau Trust; Nuuanu, Honolulu, O‘ahu, Tax Map Key: (1) 2-2-010: portion of 021.

Tsuji-LAND had nothing to add. No questions, no comments.

Unanimously approved as submitted (Gomes, Gon)

ITEM D-9 Issuance of Right-of-Entry Permit to Malama Honua Public Charter School Foundation for Due Diligence Purpose; Waimānalo, Ko‘olaupoko, O‘ahu, Tax Map Key No. (1) 4-1-013:019.

Tsuji-LAND had nothing to add. No questions, no comments.

Unanimously approved as submitted (Gon, Gomes)

ITEM J-1 Authorization to Enter Into a Use and Occupancy Agreement between the State of Hawaii, Department of Land and Natural Resources, and the State of Hawaii, Department of Transportation Regarding the Construction of Job No. B13CH73A, Kawaihae Small Boat Harbor (South) Roadway and Water System Improvements, Kawaihae, Island of Hawai‘i.

Ed Underwood-DOBOR reviewed item J-1. Underwood said the road to highway was the one being paved.

Unanimously approved as submitted (Gomes, Oi)

ITEM J-2 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules, Installation of Vessel Sewage Pump-Out Stations, Statewide Various Boating Facilities, Hawai'i.

Member Roehrig asked if sewage pump stations were going to be put in and if some kind of chapter 343 EAs or EIS were needed for potential sewage pump spills.

Underwood said that when they redid the exemption list this was one that was specifically put into the list. These pump straight from the boat to the tank.

Unanimously approved as submitted (Gomes, Yuen)

ITEM J-5 Authorization to Issue Procurement Solicitations and Award Contracts Under Hawaii Revised Statutes Chapter 103D for Real Property Appraisals of State DOBOR Facilities, Submerged Lands and Shorelines Under Its Jurisdiction; and Declare Projects Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules For Appraisal Services of State DOBOR Facilities, Submerged Lands and Shorelines Under its Jurisdiction (Statewide).

AG Colin Lau asked to strike recommendation #3 because they didn't prepare a detailed explanation. An analysis should've been attached.

Underwood said they would attach the analysis when they bring it back to the Board.

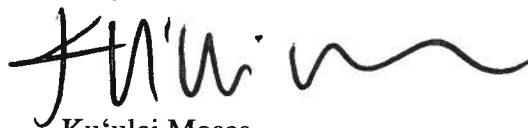
Chair Case noted that the recommendation was to strike #3 and have the environmental review exemption declaration come with each project that comes forward.

Unanimously approved as amended (Gomes, Oi)

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

There being no further business, Chair Case adjourned the meeting at 3:31 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,

A handwritten signature in black ink, appearing to read 'Ku'ulei Moses', with a stylized, wavy line extending from the end.

Ku'ulei Moses
Land Board Secretary

Approved for submittal:

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

Suzanne D. Case
Chairperson
Department of Land and Natural Resources

EXHIBIT A

Mr. Murtagh: I'd like to - Ms Case, can Mr. Roth come up? maybe he can explain some of this stuff a little bit more clearly.

Ms. Case: Let's see if the Board members are done with questions. Any other questions, Board members?

Mr. Gomes: Mabye later.

Ms. Case: Maybe later. All right. Thank you. Mr. Roth, would you like to testify?

Mr. Roth: Yes. Good afternoon. My name is Mitch Roth, I'm the prosecuting attorney for the County of Hawai'i - the elected prosecuting attorney. I was elected four years ago, and then recently reelected again. The reason I am here is I am - in kind of goes to what Mr. Roehrig has said - outraged about what has happened to Mr. Murtagh. I gotta tell you, I met Mr. Murtagh because there was a case in my office because of the island of Hawai'i office tampering with records that he had put in based on the size of his son's boat. I asked for follow-up - actually, let me go back for a second. What happened was, our office said there's not enough to proceed here. And he called and he complained. Never had met this guy in my life. I checked with the deputy and he said yeah, the documentation was poor, I called up and started asking around at DLNR, the DOCARE office, different people. And what I was told was yes, there was some stuff that was wrong that was done. I asked for some further documentation. Furthermore, it was done and there was a belief - a belief - that it was vindictive and that it had to do with reprisals for other things. Let me kind of bring you through what I understand happened here. There was a permit, he was on the list, he was moved on that list to put people above him, I've talked to Mr. Kaluhiwa the deputy for DLNR, I understand that there is no question there were some wrong things there. And then he was retaliated against. This is a belief.

Ms. Case: Sorry, are you talking about this permit? or another situation?

Mr. Roth: Well this permit ties in part into this whole thing. As I started looking into what was going on, the case in the office where they changed a number of the size of the boat so he would not be on a mooring permit, we started looking around. I started asking, you know, is there a real, is there anything here? And I started asking people in the community, what's going on with DOBOR? And I had several people, several people tell me that they retaliate. You know Mr. Murtagh was putting in a permit at the same time people were telling me there was a person working in that office in Kona that had a side business of helping people move their permits through. He didn't go through that person. That's, in my years, over 20 years as a prosecuting attorney, I've never seen anything that comes as close to what I'm seeing that I believe is happening here. I believe that there is corruption. I brought it up to the fact that I talked to people in different areas in DLNR that they've told me that people believe that this is retaliation.

I even sent a letter to Chair Case and to the attorney general. I've even talked to the Governor about this.

Ms. Case: I recall that, and I checked and you did send me a request to investigate and, so twice in May and June, I asked you for any information on which we should follow up.

Mr. Roth: Yes Ms. Case, Chair Case, I apologize, and I don't mean this as an –

Ms. Case: Let me just finish, just for the record, this is May 27 and June 20, I responded to your request that we investigate with a request for investigation because we have looked into this. And you know, our concern is, to make it crystal clear, we don't tolerate corruption. And so if we have any evidence that there is anything going on we will look at it. And so –

Mr. Roth: Again I apologize for not getting back – let me just explain why I did not get back. Your request was who are the people in the Department of Land and Natural Resources that believe – that told you that they believe. To me that is an inappropriate request because when you have retaliation, you have whistle blowers, you don't give up the names of those informing. So I had someone from the attorney general's, a state investigator, get in touch with me. I actually talked to Kekoa about that and told him, you know, why I felt so strongly about that. In this case, I just want to answer some of the questions also. I don't mean to attack the Department of Land and Natural Resources. That is not my –

Ms. Case: I just want to make clear that, you know, we certainly will and do investigate anything that comes to our attention. And we have in this case. So –

Mr. Roth: Okay. So my understanding is he was passed up, and there was this whole thing about the Keauhou moorings, Mr. Murtagh brought that issue up, it became an embarrassing thing I understand for DOBOR, DOBOR eventually went out and talked to – actually I believe Kekoa and the Governor actually went out and looked at the moorings, and you guys changed your mind on that. There's been just a series of things. Now there's another one out there that I understand is going on. While I was doing my investigation, this whole audit came up. I asked and I was told it was a random audit. And I found out it was not a random audit, it was a targeted audit. I apologize – you know, I'm here on my own dime today, I did not come – I took time off, it's not like I have a relationship with Mr. Murtagh. I don't. I just felt that there's so much injustice here, that he deserves to have a hearing. As far as how his payments were done, Mr. deMello, who owns a business that is, you know, not really related, he's like 'ohana as in "Uncle" over there who's not really related. Mr. deMello has told me that yeah, he paid the money, he sends his clients on the fishing boat, they go fishing, they do these things. And to kind of make you understand what this looks like to me, it's a timeshare. Kind of a timeshare situation. I'm gonna pay for charters in the future. I'm gonna need this amount of money, you know, to do this. What hasn't been said, that Mr. Murtagh has told me, is that the boat that he was trying to get, the guy who was selling him the boat or letting him use the boat came down with cancer and there was work that needed to be done. And you know, Mr. Murtagh was asking

for some extensions which weren't willing to be given so he had to do prepaid charters. I didn't see anything that said you couldn't do prepaid charters. As far as income taxes. I'm a prosecuting attorney. If I want to look at your taxes, it's near impossible for me as the prosecuting attorney to get your income taxes even if I know that you're violating the law. So him sitting up here and saying his attorney has told him not to divulge that, I can't blame him because I couldn't do that. Yes?

Mr. Yuen: I need to ask you this question because you started off – you know I know you and you're the prosecuting attorney and when you started off you introduced yourself as the prosecuting attorney. And then just a minute again you said you're here on your own dime.

Mr. Roth: I'm here –

Mr. Yuen: I'm trying to understand –

Mr. Roth: Why?

Mr. Yuen: Well, no. I'm – because you're, what you're doing is very close to your role as a prosecuting attorney. But you're not – I'm just trying to understand this because you have a public role as a prosecuting attorney, and that would include investigation and prosecution of public corruption. And yet you're sitting here and saying you're not doing this as a prosecuting attorney, you're doing this as Mitch Roth?

Mr. Roth: So, yes, and no. And it's kind of difficult for me, and I'm not here as his attorney as well.

Mr. Yuen: Okay.

Mr. Roth: It came to me because I saw something, and I heard from people in the Department of Land and Natural Resources in different areas. There's a problem here. As far as my ability to investigate, I don't have that ability by myself. We have investigators but they don't do this kind of investigation. I referred it to the Department of the Attorney General to ask them to do an investigation. At the same time I referred it to Chair Case to ask her to do an investigation. What I feel happened here, and the reason why Mr. Murtagh called is that he felt government, which I represent, treated him wrongly. And I looked at this, and what I heard was he was treated wrongly. The information that came back, the investigation that came back, there was two different things – what I was verbally told and what came back on paper was two different things.

Mr. Yuen: I just wanted to really understand the point. If you would go ahead with what you were saying. It's still –

Mr. Roth: It's hard for me because politically this is not a very good idea for me to do. I put myself in all sorts of peril by doing this. But I felt so strongly, just as Mr. Roehrig was enraged

by the email. And I saw that email too. It was inappropriate. It just seems that you know, if you have one thing that goes against you, okay. If you have two things that go against you, well that's a little bit hinky. If you have three things, well now you're starting to get into coincidence. Now there's four things.

Ms. Case: But I have to say Mr. Roth, that I think what we're trying to, like, uncover here is what might be, you know, suspicion, or, you know, conspiracy, guesses, you heard, from what are the facts. So back to the audit, what is before us is, is there appropriate documentation that this permit met, the use of this permit met, met the income requirements. They have two reasons for them. One is, if you're making a lot of money, you have to pay up.

Mr. Roth: Sure.

Ms. Case: And that doesn't look like that's happening here. But two is, if you're not using it, there's a long waitlist, and people, somebody else has a right to that permit if this is not being used. And so this is, you know, a couple of years from the things that you're talking about happened, staff moved on, you know.

Mr. Roth: Some of them are still here. But let me go to your question.

Ms. Case: What we're trying to do is focus in on what is going on with this permit, and is there appropriate documentation. And basic business practices are you keep records that show, and this is, you know –

Mr. Roth: So let me ask you something.

Ms. Case: There's no documentation here, and they're round numbers, they don't, they look like they're, I'm with Mr. Gomes, they look like they're sort of plug numbers. And so without any other documentation.

Mr. Roth: I got you. If I'm doing an investigation I'm gonna ask some questions. Who are the people that gave you this money? I didn't see that question being asked. Mr. deMello right here, he is the person who's willing to get up and testify that he paid the money. Okay how do you prove, where do you go from that in your investigation. That's really a big question. As far as a contested case hearing, he has a business that he's trying to do, you're taking away his right to do business, you're taking away a livelihood. That is a due process issue and I believe he deserves to have a hearing on that issue. By the way, when this issue first came up, I just want to let you and the Board know, I talked to Kekoa and I said "Look, I don't want this to end up –" – really where we're at today. We really should get together and we should mediate this and we should sit down and, have someone sit down and talk to him and ask the appropriate questions. I think the decision that you are making here was made on not, on partially because the right questions were not asked. You asked for documents that you really don't have legal authority to ask for. He gave you what he had, he had his accountant give you what he had. If I was his attorney, I

would have done this much differently. I would have built a case from much different, I would have brought Mr. deMello in, I would have brought in, he's got some other people that also have done these prepaid timeshare charters, and I would have done it a lot differently. I'm here really to say "Hey, we have some things you really need to look into." And it's so deep for me, that I took off my time, and paid – he didn't pay for me to come here. I paid for me to come here. Because I feel that strongly about where we're at today. And so that kind of goes to why I'm here, because it just felt wrong, to me as a representative of government, somebody had to stand up. I couldn't just let it go.

Mr. Yuen: Basically because you feel this is a retaliatory action.

Mr. Roth: I absolutely feel it's a retaliatory action. That is my opinion. And again, I've expressed that opinion to Mr. Wykoff (*sic*), I've expressed it to, you know, Chair Case, to Kekoa, to various people, and part of that was people in the department had told me that.

Mr. Murtagh: Can I come back up there?

Ms. Case: Not yet, thanks; we're asking Mr. Roth questions. Does anybody have any questions?
Mr. Roehrig.

Mr. Roehrig: Do you know where this email is?

Mr. Roth: Huh?

Mr. Roehrig: Do you know where this email is?

Mr. Roth: You know, Mr. Murtagh at one point showed me a copy when I was looking into the other things because – I saw it. I did see it, and I recall my reaction was kind of the same that you had. I was offended – that, you know, we as government, we do not treat people, you know, there's a law. It's the Aloha Spirit law, HRS 7.5. You treat people from government, we're supposed to as government treat people with aloha, and that wasn't the way it was done.

Ms. Case: Okay, thank you.

Mr. Roth: Thank you. And I apologize and –

Mr. Roehrig: Don't apologize.

[continues with further comments from Mr. Murtagh]