

APPROVED BY THE BOARD
AT ITS MEETING HELD ON

APR 28 2017

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

DATE: FRIDAY JANUARY 27, 2017
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 9:01 a.m. The following were in attendance:

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig

James Gomes
Chris Yuen
Keone Downing

STAFF

Sam Lemmo-OCCL
Dave Smith/DOFAW
Gordon Heit/LAND
Maria Carnevale/DAR

Russell Tsuji-LAND
Ross Smith- DOT
Curt Cottrell- PARKS

OTHERS

Amanda Weston/ Deputy AG
Ed Bushor/D3 & D4
Michael Lam/D3 & D4
Rick Fried/D3
Gordon Heit/D4
Senator Kaiali'i Kahele/D4
Peter Savio/D3 & D4
Dan Purcell/All

Linda Chow/ Deputy AG
William Spencer/D6
Randy Vitousek /D7
Clarence Lyman/D9
Chris Conger/D11
Keli'i Alapai/E1
Presley Wann/E1
Anthony Imberi/F1 & F2

ITEM A-2 Approval of October 28, 2016 Minutes

Member Yuen noted that he submitted comments.

Unanimously approved as amended (Gomes, Yuen)

ITEM A-1 Approval of September 23, 2016 Minutes

No comments, no changes.

Unanimously approved as submitted (Gomes, Yuen)

ITEM F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Michael F. Ellis and Lieutenant Commander Keith A. Golden, National Oceanic and Atmospheric Administration (NOAA) Ship OSCAR ELTON SETTE, for Access to State Waters to Conduct Shipboard Support Activities.

ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Elizabeth I. Kretovic, National Oceanic and Atmospheric Administration (NOAA) Ship HI'IALAKAI, for Access to State Waters to Conduct Shipboard Support Activities.

Maria Carnavale presented these agenda items for Division of Aquatic Resources. There were no questions and no testimony.

Unanimously approved as submitted (Gomes, Oi)

ITEM M-1 Issuance of a Revocable Permit to American Airlines, Inc. for the Purpose of Airline Operations, Honolulu International Airport, Tax Map Key: (1) 1-1-003: 042 (Portion) and (1) 1-1-003: 050 (Portion).

ITEM M-2 Issuance of a Revocable Permit for Rental Car Vehicles Overflow Parking, EAN Holdings, LLC dba Enterprise Rent A Car, Honolulu International Airport, Tax Map Key: (1) 1-1-07: 008 and 1-1-07:009.

ITEM M-3 Issuance of a Revocable Permit to Energy Industries, LLC for Warehouse Purposes, 3219 Ualena Street, Honolulu International Airport, Tax Map Key: (1) 1-1-4: 18 (Portion).

ITEM M-4 Issuance of a Direct Fixed-Base Facility Lease to Pleasant Aircraft Leasing, LLC, Kahului Airport, Tax Map Key: (2) 3-8-01: 19 (Portion).

ITEM M-5 Issuance of a Revocable Permit for Office Space in the Main Terminal, Hawaii Island Air, Inc., Kahului Airport, Tax Map Key: (2) 3-8-001: 19 (Portion).

ITEM M-6 Final Approval for the Acquisition of Privately-Owned Land and Set Aside to the Department of Transportation for Addition to Kahului Airport, Situate at Kahului, Island and County of Maui, Tax Map Key: (2) 3-8-001-268 (Portion).

Ross Smith of DOT-Airports presented items M-1 to M-6.

For M-6, the BLNR had approved other acquisitions in the area previously.

On M-4, Member Yuen asked whether the DOT's concerns about the "grant assurances" to the FAA, which led them to ask for a direct lease rather than a public auction for this fixed base operator, applied to other types of leases. Smith replied that the FAA grant assurances specifically mentioned fixed base operators. He also said, in response to a question, that this fixed base operator would offer a variety of services to other airport users.

Unanimously approved as submitted (Roehrig, Oi)

ITEM C-1 Request Approval of the Native Forest Restoration at 'Ukulele Forest Stewardship Management Plan and Forest Stewardship Agreement with Haleakala Ranch Company, Tax Map Key (2) 2-3-005:004, Makawao, Island of Maui.

And

Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Project.

Dave Smith, DOFAW administrator, presented item C-1. He added that DOFAW consulted with other agencies about the Chapter 343 exemption.

Unanimously approved as submitted (Gomes, Roehrig)

ITEM D-6 Mutual Cancellation of General Lease No. S-6017, Hawaii Oceanic Technology, Inc. for Aquaculture Purposes, Offshore Waters of Puanui, Pua'iki, Ki'ioikalani, and Kaiho'oa, North Kohala, Hawai'i, Tax Map Keys: 3rd/ 5-8-001: and 5-9-003: seaward of Puanui, Pua'iki, Ki'ioikalani, and Kaiho'oa.

Russell Tsuji, Land Division administrator, presented this item. The Lessee asked for the cancellation. The Lessee never utilized this ocean lease.

William Spencer, the Lessee's representative, confirmed that they never built anything in the ocean. He thanked the BLNR, OCCL, and other DLNR staff for their help. In response to a question about why the project took so long, Spencer said the permitting took eight years. The U.S. Army Corps of Engineers permit took four years. He stated that the "precautionary principle" can become a "paralyzing principle."

Unanimously approved as submitted (Oi, Roehrig)

ITEM D-11 Grant of Term, Non-Exclusive Easement and Issuance of Immediate Right of Entry to HMC Maui LP for Beach Walk, Trench Drain, Sign and Public Beach Shower Purposes, Hanakaō'ō, Lāhainā, Maui, Tax Map Keys (2) 4-4-013: seaward of 006 & 008.

Russell Tsuji presented this item. Member Oi asked about the law on structures that were legally built but due to movement of the shoreline were now makai of the shoreline. Russell Tsuji answered that these were then on state property and would need this easement to remain.

Chris Conger, representing the applicant, explained that the structures were legally built under an SMA permit but now, because of the movement of the shoreline, they were now considered encroaching. This is a coastal public access path.

Tsuji mentioned that DLNR had a bill at the Legislature which would allow the Board to grant easements in this situation but not charge fair market value, because it seems unfair to charge the landowner for the movement of the shoreline. Member Oi agreed that the owner shouldn't be charged.

Member Roehrig discussed the Land Court situation and the state's duty to guarantee Land Court property. Member Yuen said that the state supreme court ruled in the 1970's that a Land Court seaward boundary established by metes and bounds could be changed by erosion; the boundary established by Land Court decree was only prima facie evidence of the shoreline.

Randy Vitousek, an attorney, testified that the problem was that the state had changed its policy regarding shoreline certification. Previously, as stated by Peter Young when he was DLNR Chair, the shoreline certification was a regulatory line which established the setback line where structures could be built. More recently, the State has been treating the shoreline certification as the legal boundary between the State's property and private property. In Vitousek's view, another legal proceeding is necessary to establish the boundary.

Tsuji said that DLNR took the position that the land is owned by the State, not the encroaching structure.

Member Yuen asked Vitousek what DLNR should do when it sees a shoreline certification that appears to show an encroachment. Vitousek said the problem was that making the owner get an easement forced the owner to concede ownership based upon a shoreline certification that is only good for one year. He thinks OCCL is doing a good job but the AG's are giving bad advice.

Member Roehrig commented that this will be a recurring problem, largely because of sea level rise and global warming, and that this needs to be solved on a regional basis.

Unanimously approved as submitted (Gomes, Yuen)

ITEM D-7 After-the-Fact Consent to Assignment of Perpetual, Non-Exclusive Easements, Land Office Deed Nos. S-27,467 and S-28,277, John J. Lowrey and Catherine W. Lowrey, Assignors, to Bruce A. Meyer, Nancy P. Meyer, and Naupaka Limited Partnership, Assignees; Declaration of Exemption from the Preparation of an Environmental Assessment for Installation of Water Pipeline Within the Existing Easement Corridor of Land Office Deed No. S-28,277; Lālamilo, South Kohala, Hawai‘i, Tax Map Key: (3) 6-6-002: portions of 002.

Amend Land Office Deed Nos. S-27,467 and S-28,277 to Allow the Easements to “Run with the Land” and to be assignable without the prior written consent from the Board of Land and Natural Resources.

Gordon Heit, Hawaii Island district land agent, presented this item.

Unanimously approved as submitted (Oi, Yuen)

ITEM K-1 Conservation District Use Application (CDUA) OA-3778 for the Makikī Baseyard Improvements by the Division of Forestry and Wildlife Located at Makikī, Island of O‘ahu, Tax Map Key: (1) 2-5-019: portion of 008.

Sam Lemmo, OCCL Administrator, briefly summarized the proposal, which involves work at DOFAW’s Makiki baseyard. The staff submittal says that the administration building will be expanded to 5900 square feet. This is a mistake; it should be 8500 square feet. There are other improvements described in the submittal.

Member Gomes asked about the footprint of the entire project. Lemmo replied, that the developed area would be about 3 acres.

Member Yuen mentioned that some of the conditions were copied from other permits and don’t apply. Condition #16 regarding shining lights into the ocean should be mostly deleted. Member Oi mentioned that part of Condition #15 regarding the shoreline should be deleted.

Dan Purcell testified that the proposed structures were un-natural and not what the public would want.

Unanimously approved as amended (Gomes, Oi)

ITEM E-1 Approval to Renew Volunteer Agreement for Hā‘ena State Park, Kaua‘i [Tap Map Key: (4) 5-9-008: 001].

Curt Cottrell, State Parks administrator, explained that the volunteers had done outstanding work in the past, averaging more than 6,000 hours annually.

Presley Wann, President of Hui Maka'ainana o Makana, explained that they have a history of taking care of the Haena area. They gave over 9,000 hours of volunteer work the last year. They work with Stanford University and Peter Vitousek.

Keli'i Alapai, also of Hui Maka'ainana o Makana, gave testimony that they want to perpetuate their project and culture.

Dan Purcell congratulated the Hui and said that if the BLNR had video conferencing for its meetings, they would not have had to fly from Kaua'i to testify.

Member Gomes commented about the lack of video.

Unanimously approved as submitted (Oi, Gomes)

Item E-2 Amendment of General Lease No. SP0125, Robert Miller, Lessee, Waimea Canyon State Park, Lots 42 and 44, Koke'e Camp Site Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-004:004. The Purpose of the Amendment is to Correct the Termination Date to Read December 31, 2028 and to Correct the Rent Reopening Date to Read the end of December 2018; Consent to Assign General Lease No. SP-0125, Robert Miller, Assignor, to Matthew Guard, Assignee, Waimea Canyon State Park, Lots 42 and 44, Koke'e Camp Site Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-004:004.

Curt Cottrell, State Parks Administrator, commented that this cabin was one of the top five historic cabins in Koke'e and is very well maintained.

Unanimously approved as submitted (Oi, Gomes)

10:09 AM RECESS

10:21 AM RECONVENE

ITEM D-9 Grant of Term, Non-Exclusive Easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, for Seawall Encroachment Purposes, Lālāmilo, South Kohala, Hawai'i, Tax Map Key: (3) 6-9-001: portion of 002.

Russell Tsuji, Land Division administrator, presented the item.

Member Roehrig disclosed his friendship with Leon Thevenin.

Member Downing asked what height the wall would be kept at. Tsuji responded it would not go higher.

Member Yuen asked for evidence that the seawall was originally legal when built. This should be part of the analysis for the easement. Knowing the Puako area he thought it likely it was constructed before the shoreline setback law, June 22, 1970, but wanted to hear the factual basis for the submittal saying "it is believed that the wall was built in the 1960's."

Clarence Lyman, representing the applicant, showed old county real property tax field book records stating that makai of the seawall was underwater by 1967. Member Oi noted that at the time of this property tax record, there was already a portion of the private property that was underwater. The wall was built mauka of the metes and bounds property line. These County tax records show that the seawall was already there by 1967. Member Yuen was satisfied by this information that the wall was legal when built.

Dan Purcell urged video conferencing.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-3 Authorize Chairperson to Execute "Landlord Waiver and Consent; Exhibit A" Regarding Lessee's Security Agreement with Access Point Financial, Inc. to Facilitate Financing of Furniture, Fixtures and Equipment at Grand Naniloa Hotel Hilo; General Lease No. S-5844, WHR LLC, Lessee; Waiākea, South Hilo, Hawai'i, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

Member Yuen disclosed that his second cousin had a contract for some work at the Naniloa Hotel. He has no interest in that business nor any other business relationship with his second cousin, so he would be participating as he has in the past.

Russell Tsuji presented this agenda item. Land Division added information about the status of construction at the Grand Naniloa. The Lessee has done a lot of construction but has not met the deadlines set earlier by the Board when the Estoppel Certificate for the \$20 million mortgage was approved. Kilauea Tower has not been completed, and the restaurant has not been completed. We had negotiated a lease provision that if the conditions of the Estoppel Certificate had not been met, it could be considered a lease default. They have drawn down \$15.6 million of the loan according to the last set of documents given to us. The actual loan maximum is \$18.5 million. They do not plan to complete the Kilohana Room or Polynesian Room because of lack of demand for event space. Per Hawai'i County, all proper permits for Kilauea Tower have been taken out, the remaining violations involve issues at the golf course, and the violations are being resolved.

The submittal also discusses mechanics' liens that have been filed.

Land Division believes that D-3 should be granted as a reasonable request under the circumstances.

Member Downing asked why it would be good business practice to give up our lien. Tsuji responded that it was because they had put in improvements beyond the dollar amount required by the lease, and that the furniture would belong to the Lessee at the end of the term in any event.

Michael Lam, representing WHR, said that the State would not own the FF&E at the end of the lease. If there was a default on the lease, the mortgage lender would take over the property. The mortgage lender and proposed FF&E lender have worked out their rights if that happened.

Chair Case asked what happens if there is a default on the lease. Lam replied, it depends when the default occurs. If it happens after the three-year financing term, as far as the FF&E, it doesn't matter.

Member Roehrig commented that in May 2015, when the Board considered the Naniloa consent to mortgage previously, all towers were supposed to be completed by Dec. 31, 2016, and this hasn't happened. He believes this is a breach, referring to par. 9 of the lease. Tsuji disagreed with the interpretation of par. 9 and doesn't believe the non-completion by the deadline is a breach of the lease itself.

Member Roehrig commented that the Kilohana and Polynesian Rooms are important to the community. He also expressed concerns about the Mechanic's Lien applications, including one from Lincoln Builders for more than \$700,000. He noted that in the proposed Estoppel Certificate the Lessor says it does not know of any current default under the lease.

In response, Lam said that even if the Mechanic's Lien allegations were correct, there is no concern to the State because there is adequate protection for the State under the \$1.5 million general bond, and the construction work itself is bonded and would be covered by those bonds. The Lien applicants are going to dismiss the State. And ultimately, even if the claimed amounts were not paid, any lien would attach only to the leasehold, not the State's interest.

Member Roehrig wanted a competent Lessor's counsel used to dealing in amounts in the millions of dollars to review this document to see if the State's interests were protected.

Tsuji said that the deadlines were in the consent to Mortgage/Estoppel Certificate, not the lease itself, which cannot be amended. He said that the courts abhor a forfeiture. Member Roehrig replied he was not talking about a forfeiture, he wanted an equitable remedy.

Ed Bushor, Managing Partner and owner of the Grand Naniloa, clarified the reasons for construction delays. To get Hilton's approval, he needed to do \$2 million in additional improvements to make the hotel nicer; he needed to focus on Hilton's requests. They will be a few months late for some of the improvements, but we have put \$25 million into improvements rather than the \$5 million required by the lease. They are bringing people to Hilo. There were some changes to the Kilauea and restaurant building permits that caused delays. Only fixtures purchased with Access Point's funds will be covered by the FF&E financing agreement. He hopes

to be done completely in 3-5 months, but here are things that can happen like new requests from inspectors.

In response to Chair Case's question, Bushor stated that Naniloa has 320 rooms open, with 80% occupancy. He says that it's a misunderstanding that Kilohana and Polynesian Rooms are not completed. He says that they are just not in use. Fire sprinkler systems for these rooms are complete. He doesn't want to do too much at once. He anticipates by the end of the year he will have events at Kilohana and Polynesian Rooms. He will complete all rooms in Kilauea Tower in a 5-month period, subject to county permits. He gives a December 31, 2017 date for Kilohana and Polynesian Rooms, but it depends upon demand for the spaces.

In response to Member Roehrig's question regarding the Mechanic's Lien, Bushor stated that the general contractor, Tower Construction, which he doesn't own but which operates under the same name, has told him that those claims are not fair. He said that people think it is me that isn't paying the other contractors but it's not my responsibility.

Member Roehrig commented: you said you were going to hire the local guys. Bushor said, he made the General Contractor hire Lincoln. Chair Case suggested that we shouldn't discuss the merits of the Mechanic's Liens.

In response to Member Downing's question, Bushor said the average room rate is \$125/night. Member Gomes said that recent visitors have complimented the improvements.

In response to a question from Member Yuen, Lam said, that the only lien rights would be on what's listed on "Exhibit 10", items that Access Point has financed. In response to a question about the construction bond, Bushor said, that the construction bond does cover everything, including Kilauea Tower. Construction contracts have been signed for the Kilauea Tower.

Rick Fried, one of the owners of the Hilo Hawaiian, testified that they have worked hard to bring up the room rates at the Hilo Hawaiian, and that the Naniloa is offering rooms at only \$85/night.

Member Roehrig asked what the rate structure was online. Bushor said, I only report what I know; I have a management company that sets the rates. The rates are proprietary. Chair Case and Member Gomes said we should stick to the agenda item before us.

Member Yuen made a motion to go into executive session to consult with counsel about the legal issues related to this agenda item. Member Roehrig seconded. All voted in favor.

11:49 AM EXECUTIVE SESSION
12:46 PM RECONVENE

Member Yuen made a motion to approve, but with the note that the AG's are responsible to monitor the Mechanic's Lien case, and to amend the recommendation with additional conditions as follows:

1. *If a mechanic's lien attaches to the subject property prior to the execution of the Landlord Waiver and Consent; Exhibit A, that document shall be amended to reflect disclosure that such a mechanic's lien has attached to the subject property in favor of a specific entity and dollar amount; and*

2. *Staff and the lessee should come back to the Board in 8 months or so (give or take a month) to provide a status report of the construction of the Hotel.*

In response to a question, Chair Case said, that this condition about amending "Exhibit A" applies only if a Mechanic's Lien attaches prior to the execution of the Landlord Waiver and Consent. It was further discussed that the Staff recommendation already limits the lien to \$2 million and the list of items in "Exhibit 10".

Member Gomes seconded the motion.

Unanimously approved as amended (Yuen, Gomes)

ITEM D-2 Consent to Sublease General Lease No. S-5844, WHR, LLC, Lessee, to Hawaii Performance Partners LLC, and Neighborhood GP LLC, Sub-lessees, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, 46.

Member Yuen made the same disclosure as for D-3.

Russell Tsuji presented the item. Land Division is not recommending participation in the sublease rent because the improvements were not fully depreciated.

Unanimously approved as submitted (Oi, Gomes)

ITEM D-4 Report to the Board of Land and Natural Resources Regarding the Status of Revocable Permit No. S-7879 to Savio HBH Development Company, LLC. The Board Requested Staff to Report Back if There Was Any Interest in Leasing the Property and Assess Whether a Lease of the Property Should be Sold at Public Auction.

Russell Tsuji presented this agenda item. This is the former Uncle Billy's, now being run by Savio on an RP. As far as we know, Mr. Bushor is still interested in the property. The building's useful life is very limited. There are permitting requirements to demolish buildings in the SMA. It will take years and much money to demolish the buildings. We have a contract with R.M. Towill to study the permits and cost of demolition. We estimate it will be millions of dollars, and we would have to secure the buildings if there was a shut-down. As an alternative, the Board could allow a short-term disposition. We were recently told that the new Mayor will allow the county redevelopment agency to go forward, which is good news for us. The redevelopment agency has a conceptual land use plan.

Chair Case: is one option to do a long-term ground lease with the condition that the successful bidder demolish the existing building, then use the property? Tsuji: yes, but we do not know whether this is feasible.

Member Roehrig suggested that the long-term lease, if issued, start after a right-of-entry for demolition.

In response to a question from Member Yuen about interest in Banyan Drive sites from developers, Gordon Heit, Hawai'i Island district land manager, stated that there was an inquiry about the former Orchid Isle years ago, before the recession, but it was not renewed after the recession. Michael Lam, representing Mr. Bushor, said that their written proposal in 2016 did envision the complete redevelopment of the former Uncle Billy's property.

Heit said, that he met recently with Daryn Arai, Deputy Director of the County Planning Department and that they were proceeding under the current conceptual master plan. Member Yuen discussed the map he had been given by Staff of the redevelopment agency's most recent conceptual master plan. After some discussion among Chair Case, Heit, and Member Yuen, it was determined that the current conceptual master plan does show the Uncle Billy's site for resort use; an earlier draft plan did not.

Member Roehrig disclosed that he knows of an injury at this property, it would not affect his judgment.

Peter Savio came up to answer questions, along with Tyler Street. They said that when they were notified about an issue with student tenants, they terminated those tenants.

In response to Chair Case's question about what to do with the site, Savio said, that he liked the idea of a short-term lease that would convert to a long term, that there would be lots of interest and competition. He is not interested in this site himself on a long-term lease; he has bought another potential hotel site in Hilo. He doesn't like the Uncle Billy's site because it is long and skinny. Parking would be a big problem. There might be two parties interested in a short-term; a short-term that converts to a long-term might attract four or more interested parties. This can be done as a business proposition; he doesn't know whether it can be done under DLNR rules. Savio is interested in continuing his current operation; not interested in a four or five year lease. Parking is a problem for Hilo Hawaiian and Naniloa too, but not as bad.

Member Yuen stated that the zoning code in Hawaii County only requires one space for every four hotel rooms because it was written when they thought most people would come on packaged tours and ride a bus. Zoning would allow a hotel with fewer parking spaces than the practical business requirements today. Member Roehrig commented that the parking situation was bad now.

Savio stated that Uncle Billy's will need to be torn down pretty soon. He would be interested in operating it for two or three years, as long as he is not losing his shirt. The roof needs to be fixed. If he had a two or three year lease it might pay to amortize this kind of improvement; not with a month-to-month.

State Senator Kaiali'i Kahele, who represents Senate District 1, quoted online information critical of the condition of Uncle Billy's. He said he had a conversation a few days ago with the Mayor and was told that the county would not move ahead with the redevelopment agency. Chair Case mentioned that the recent DLNR discussion with the County recently indicated differently.

In Senator Kahele's opinion, the current lease at \$2984/mo. was not reasonable. He doesn't believe Mr. Savio is losing money on the current operation. He suggests that the long-term solution is to put the property up for a 55 or 65-year lease. He is hesitant to close the current operation because there is a need for hotel rooms in Hilo. There needs to be competition for a short-term lease. The new operator needs to improve the current operation. He mentions that Hilton had written a letter Feb. 10, 2016, expressing interest in redeveloping the property. Senator Kahele also mentioned the leases to UH-Hilo students, which exceeded the terms of the revocable permit.

Chair Case asked if the Legislature would appropriate funds for a tear-down. Senator Kahele said possibly, but we should also look at whether a developer would do that. As far as leaving it vacant, that could present more problems with possibly homeless people moving in. A short-term lease by public auction for 2-3 years might be the best short-term solution.

In response, Savio said that when he took over the property, he told everyone it was in bad shape. He has lost \$15,000 on his operation. Uncle Billy's had previously rented to students. The problems with the roof, termites, dirt, etc., existed when he got the property. The roof leaks. Roof ceiling shingles will drop off after it rains. Hilo will have problems building more hotels because there is not enough demand.

Ed Bushor testified that his experience on Kuhio St. in Waikīkī in developing the Marriot Courtyard was similar to Hilo's. You don't want to lay off people but sometimes you have to shut down an area to build something better. He wants to do Uncle Billy's if no one else steps up. He wants to help Hilo, and so does Mr. Savio. Bushor is interested in a short-term lease for Uncle Billy's. Condition 1, of the lease should be how much the developer would chip in to demolish the building. Condition 2, would be the time frame to commence a new hotel. Since he opened Grand Naniloa two different competitor groups have been to the hotel who are interested in developing. His bid will say that he will pay for the demolition. His plan would be a lower budget hotel. He would volunteer to help the DLNR write the bid specifications for a long term lease and not bid, if that would help.

In response to a question, Bushor said that he would be willing to give up part of the golf course for improvements on Banyan Drive, such as parking, but not just hand it over. In response to a question from Chair Case, Bushor said that he would be interested in operating the property as a budget hotel for a short term, but he thought it would take much less time to do the demolition than people have been talking about. There are parts of the current structure that can be saved. The regulatory two-year process can be six months. He is not promising this, but he thinks it could be done.

Member Roehrig stated that he is cautious about meeting with people on Land Board matters.

Member Gomes asked about rates if the site was a Hampton. Bushor answered that the rate would be about \$20/night lower than a Hilton.

Bushor proposed that the Board offer the property on a month-to-month with an optional proposal for a longer term.

Dan Purcell testified that there should be video conferencing; it would make people more accountable for their statements.

Savio stated he owned the furniture in Uncle Billy's, bought it for \$150,000, would sell it to a new operator for \$100,000. It would be very expensive to re-furnish it. He repeated that the opening of the Naniloa had caused a decline in occupancy and room rates in Hilo; you have to wait for the market to catch up. He advised that to promote Hilo, we needed a solid visitor attraction, besides the Volcano.

Bushor said Hilo is missing a minimum number of rooms necessary for some conventions.

Member Yuen made some comments, to start a discussion. Member Yuen stated that the possibilities were to shut down Uncle Billy's soon, and wait for the redevelopment agency plan; or to have a short-term lease for perhaps three years; or to have a longer term lease with the developer being obligated to demolish the building; or to somehow merge a short lease into a longer lease.

Member Roehrig supported the concept of a longer-term lease, but giving our staff time to further prepare. Member Gomes agreed with Savio that some visitor attractions were needed. Member Roehrig said that community discussions had focused on a hula facility. Chair Case indicated that developing a visitor attraction was not a Land Division charge.

Member Yuen suggested a recommendation. He didn't want to shut the operation down right away because of the employees and need for rooms. He didn't like having it on an RP because a hotel operator must book people more than a month in advance. He wanted a short-term lease by public auction, like three years, but that there should be minimal repairs required in the lease. At the end of the three years, we would go to a long-term lease. The bidder on the long-term lease would be obligated to tear down the building. This could also incorporate the right-of-entry first so that the permitting and demolition time would not count against the maximum lease term. The paperwork for a demolition would take time. The hotel is in the special management area; demolition, if in excess of \$500,000, would need a special management area major permit.

Russell Tsuji stated that there was a problem with requiring certain repairs on a short-term lease that they had discussed with their architect. There are many issues with the property; a permit for some repairs will trigger the need for other permits. If Land Division puts out a bid package for public auction, they will give the bidders the reports we have that discuss the condition of the property. The bidders will make a business decision about what they will repair.

On the longer term, it was Tsuji's understanding that having the redevelopment agency might make some permitting easier.

Member Yuen stated that under current law, having the property under the redevelopment agency would not change the need for an SMA permit. The current zoning is OK for a hotel, but you will need an SMA major permit for demolition and reconstruction. If the property were put under the HCDA, you would still need an SMA major permit, but HCDA would make the decision, not the county planning commission.

Savio came forward on request, and said that the one major thing that needed to be repaired for the next two or three years would be the leaky roof. The front of the building is shot. The county said it would be condemned but allowed it to stay because they are not using it. He said he had put \$40,000-\$50,000 in, mostly in plumbing. He had bought materials to fix the roof, but they couldn't because of the hurricane warnings, then, the remaining terms on the RP was too short to justify the investment. The hotel will last two or three years. It will be a budget hotel.

Member Yuen withdrew portion of the recommendation re minimal required repairs because of Land Division's concerns. After some discussion, the Board made the following recommendations:

1. *Land Division will prepare a submittal seeking Board approval to auction a short-term lease of 3 years for the subject property;*
2. *For the longer term, Land Division will evaluate the feasibility of an auction for a long term 65-year ground lease, possibly with a right of entry giving the winning bidder additional time to go through the permitting and demolition of the existing hotel.*

The Board voted unanimously in favor of this recommendation. (Yuen, Roehrig)

2:48 PM RECESS
2:58 PM RECONVENE

ITEM C-2 Request Approval of the Keauhou Bird Conservation Center Discovery Forest Restoration Project Forest Stewardship Management Plan and Forest Stewardship Agreement with Zoological Society of San Diego DBA San Diego Zoo Global, TMK (3) 9-9-001:004, Kā'ū, Island of Hawai'i.

And

Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance Requirements for the Project.

Dave Smith, DOFAW Administrator, added that they did consult with several agencies about the Chapter 343 exemption.

Dan Purcell supported the recovery of the 'Alalā.

Unanimously approve as submitted (Downing, Gomes)

ITEM C-3 Authorize the Issuance of a Right-of-Entry Permit to the Kohala Center, Inc., to conduct fence construction, native tree and shrub planting, invasive species removal, and monitoring in the Pu‘u O ‘Umi Natural Area Reserve and Unencumbered State Land on the Island of Hawai‘i, Tax Map Keys: 4-9-13:01,6-1-01:01, 6-2-01:02, 6-2-01:03 (por),6-3-01:02, 6-3-01:04, 6-3-01:05,6-3-01:07

And

Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance Requirements for the Project.

Dave Smith, DOFAW administrator, explained that this project had gone on for several years but they now needed a right-of-entry to get federal funds. They consulted with several agencies about the Chapter 343 exemption.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM C-4 Request for Approval for Selection of a Competitive Sealed Process for a Carbon Forestry Project in Pu‘u Mali Restoration Area, Mauna Kea Forest Reserve, Hāmākua, Hawai‘i County, Tax Map Key: (3) 4-3-010:009 Portion.

Dave Smith explained the project. Philipp Lahela-Walter has been working on it for DOFAW. In response to Member Oi’s question about who was buying carbon credits, Smith replied that it was a voluntary market at present; hotels and airlines were among the buyers.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-5 Grant of Perpetual, Non-Exclusive Easement to Harold I. and Jane F. Uyeno for Access Purposes, Kaia‘ākea, North Hilo, Hawai‘i, Tax Map Key: (3) 3-4-003:011.

Russell Tsuji presented this agenda item.

Unanimously approved as submitted (Roehrig, Gomes)

ITEM D-1 Issuance of Right-of-Entry Permit to Keauhou Volleyball Association for Dinosaur Beach Volleyball Tournament at Kalapakī Beach, Lihu‘e, Kaua‘i, Tax Map Key: (4) 3-5-02: seaward of 2.

Member Downing asked why this was gratis rental when the teams were paying \$120 to be in the tournament. Deputy AG Linda Chow stated that they were not charging admission to spectators. Chair Case commented that staff was discussing when to give a rental break to non-profit type activities. There were questions from Board members about whether the event should qualify for decreased or gratis rent. The event was scheduled for mid-March. Member Downing made a motion to defer. Member Roehrig seconded. All voted in favor.

Deferred (Downing, Roehrig)

ITEM D-8 Issuance of Right-of-Entry Permit to Island Energy Systems, LLC, Onto Unencumbered State Lands at Lālāmilo, South Kohala, Hawai‘i, Tax Map Key: (3) 6-6-003:006.

Unanimously approved as submitted (Roehrig, Oi)

ITEM D-10 Issuance of a Right-of-Entry Permit to MC&A Inc. for One-day Boat Building and Race Event, Wailea Beach, Maui, Tax Map Key:(2) 2-1-008: seaward of 109.

Unanimously approved as submitted (Yuen, Gomes)

ITEM D-12 Issuance of Right-of-Entry Permit to the United States to Perform Remedial Investigation/Feasibility Studies on Unencumbered Government Lands in Waimea, District of South Kohala, Island of Hawai‘i, at Pu‘u Kawaiwai, Pānolu‘ukia, and Kapia, Tax Map Key: (3) 6-2-001:015 (por.), and at ‘Ōuli, Tax Map Key: (3) 6-2-005:022.

Dan Purcell said he was concerned the submittal didn't say what US agency would use this.

Russell Tsuji replied that it was the U.S. Army Corps of Engineers.

Unanimously approved as submitted (Yuen, Gomes)

ITEM J-1 Continuation of Revocable Permits at Honokōhau Small Boat Harbor, North Kona, Island of Hawai‘i, Hawai‘i, Tax Map Key: (3) 7-4-008: 003 Portion (see attached Exhibit A).

Dana Yoshimura Planning and Development Coordinator with the Division of Boating and Ocean Recreation presented item J-1. Yoshimura clarified that on the first page he omitted DLNR Division of Aquatic Resources because he thought it might cause some confusion, however on the Exhibit and on the number of revocable permits recommendation the Exhibit does list DLNR and the number for revocable permits requested as correct. Yoshimura apologized.

Yoshimura gave some background that in August of 2016 the Board approved the division to continue all the RPs under its jurisdiction for 1 year except for the ones at Honokōhau which was only extended for 6 months. This submission was just to bring all the RPs in line.

Chair Case noted that public testimony was submitted from one of the permittees and these are implementing the new rates based on the statewide appraisal. Yoshimura confirmed.

Member Roehrig said that the Hawaii Isle Paddle Sport Association were the one-man paddlers at Honokōhau small boat harbor. They have a small halau there and they store their canoes; he said these are all volunteers and believed this was a 501(c)(3). Member Roehrig said he couldn't see anywhere in the submittal where it was designated which if any or all of these RPs were 501(c)(3)'s. Member Roehrig understood that this one was and he was not enthusiastic about tripling their rent. Member Roehrig asked if the President or the Board Chair of each of these entities have been contacted and give them an opportunity to come in and testify, and if so when did they get notified.

Yoshimura explained that all the permittees that were affected by these appraisals were notified on January 5th. He did believe that Hawaii Isle Paddle Sport Association was a 501(c)(3), so was Hawaii Big Game Fishing Club, the Kona Sailing Club, and the USDOJ and DLNR are government agencies.

Member Roehrig asked if there has ever been any prior policy on what DLNR's charged rent versus the retail rate for a 501(c)(3) was. Yoshimura said no, DOBOR wasn't able to verify. There was a policy on how they apply any kind of reduction in rent or discount, so in order to be equitable for any application in rents and fair treatment DOBOR will look to the Board for guidance on that.

Chair Case noted that there was a statute that says DLNR may offer at a nominal rent to charitable organizations.

Member Roehrig felt that the charitable organizations are community groups and we should proceed by charging them all the same reduced rent. He didn't feel they should be charged the same rate as a regular commercial entity because 501(c)(3)'s get special real property tax treatment to encourage the activities of these 501(c)(3)'s. He was okay with deferring those so DOBOR could speak with the leaders of these groups to figure out what they think would be fair, then set an equitable rate.

Member Oi asked, if any one commented about the new rents. Yoshimura said, Kona Sailing Club responded, their testimony was submitted.

Member Oi asked if any of the 501(c)(3)'s sent anything in.

Yoshimura said, the YMCA called, concerned, and DOBOR advised them to put in a response in writing.

Yoshimura appreciated the Board's concern for the nonprofits, but there were about a dozen as well as the other divisions have 501(c)(3) nonprofits that they serve. Example, Waikiki Yacht Club is a 501(c)(3).

Member Roehrig was concerned because he knows the leaders and they are all volunteers and they have a robust program for kids and he was not in favor of charging them more. He suggested instead of having the paddle guys on an RP, make them a long-term lease because they are a 501(c)(3). He had no problems with the commercial ones, but not the 501(c)(3)'s.

Member Yuen commented that generally he was super in favor of helping the nonprofits. He wanted to look at the Kona Sailing Club because the bulk of the property is used to store people's very nice sailboats. Member Yuen said that was fine, but you have to pay money to store your sailboat next to the harbor. You can make a nonprofit and get an RP or a lease on State Land but he felt that the department ought to charge a commercial rate applicable to storing boats for that area.

Chair Case added that their testimony says that they don't derive income from renting out their clubhouse or any other space to any other organizations, but Chair Case presumed that they were making their space available to their members. The Kona Sailing Club's testimony said, this was unlike Hawaii Big Game Fishing which they're implying is making money from renting space. Chair Case understood that the Paddle Sports does the same thing; they are renting out lockers and spaces for their members.

Chair Case agreed with Member Yuen that they needed to be careful of what the public purpose was. These are basically benefiting the users. Example, should we not charge rent to Waikiki Yacht Club? She said, what the Board was trying to do was come up with a fair policy that can be applied consistently. There are always going to be considerations, but if the benefit is primarily the user group even though it's a nonprofit, it doesn't fall into the category of fulfilling the public purpose that the department would be supporting by giving them a rent break.

Member Roehrig explained, that the one man paddling place has a whole group of kid paddlers and they have competitive races and the kids are in the halau so if one of the purposes of the 501(c) ((3) is to bring the kids along, that's what they are doing there. He wasn't sure about the others. He opposed charging the paddlers a higher rate.

Member Downing asked, if there were any halaus on State property that the department charges. Yoshimura said there was a specific statute that applies to storing of 6 man canoe halaus that are part of the association.

Member Downing understood were Member Roehrig was coming from on the cultural side, but Member Downing's issue was, has the department looked at what a storage sailboat is charged in the area. He said everything got appraised off a commercial business center, if its business and they are conducting business to make money, to him that's one thing but to charge someone to just pay the rent to him was different. Member Downing suggested looking at the entity closer, are they for a profit, is their goal to raise money, then it's fair to charge them.

Member Roehrig added, that this was part of PASH rights, he said that many of the people that DOBOR wants to raise the money on are part Hawaiian.

Chair Case said, didn't think it was fair to say "you want to raise the rent on". She explained that they are charged and the Department wants to be sure to charge them fair market rates. DOBOR went out for a statewide appraisal so now the challenge is to come up with a consistent policy on charging discounts off fair market rent.

Yoshimura stated that the statute pursuant to giving discounts off the rent says that the nonprofits have to follow a certain charter, then that charter has to be what their activities are.

Chair Case suggested passing this based on these assessed rates and say that if you're a nonprofit and you think you are providing a public benefit to the extent that it's a public benefit available to the general public then come back and argue your case.

Member Roehrig suggested saying that this would be intended to go into effect in 3 months, and give them 90 days to come before the Board, produce your charter and give a description of what services you provide in the community.

Chair Case said she would rather implement it now.

Member Oi pointed out that the RP is for January 1st, so if they are given 3 months, they are not on an RP, they are supposed to be off the property.

Chair Case said then make it retroactive to January 1.

Member Yuen said there were 3 that were maybe some aspect of nonprofit. The Big Game Fishing Club didn't say anything, the Kona Sailing Club sent something, they have a 320ft building where the conduct educational activities, he suggested knocking off for that building, maybe 5%. For the Paddle Sport Association, to try for a consensus today, Member Yuen suggested leaving them for 3 months as is then in 3 months they come back and tell the Board why they should not go up to market. Member Roehrig agreed.

Member Yuen said, give them a permit then send them a letter and say the Board is going to come back and look at your rent and with the recommendation that it go up to the market and tell them it's up to them to show the Board their public benefit to get a discount.

Yoshimura said he didn't see a request from Hawaii Isle Paddle Sports, so without submission the department was arbitrarily picking one club out of the dozen they have.

Chair Case wanted to go with her recommendation.

Member Roehrig said to do what they want, he was going to vote no.

Dan Purcell, member of the public testified that when he arrived in Hawaii in 2013 from the coast of southern California where he paddled for many years he landed in Hilo and was very familiar with the facilities Member Roehrig was talking about in Hilo. He said when he went to west Hawaii from Hilo, he went to the harbor there and saw the facility that Member Roehrig was talking about. The storage was just personal boats, he inquired about getting a boat and the number led him to a woman who has a commercial operation in the Costco area and the woman didn't want anything to do with him except to sell him a new boat and it seemed the boat storage was a quid pro quo, basically to buy a boat from her. He didn't see any children or anything. It seems she had the keys to the storage.

Member Roehrig disagreed with those comments, he knows these people and they are very community minded.

Chair Case went back to her suggestion to implement the rent as is but offer them an opportunity to come back and present their case about why part of what they're doing is a public benefit and the rent should be discounted.

Member Downing asked if there was a form for them to fill out. Yoshimura said DOBOR would create one that was pursuant to the law or follow what land division does.

Member Downing commented that if they were passionate about it then they would fill it out.

Member Roehrig asked how long they were going to get to come back.

Chair Case said they could have 3 months to come back and if they Board was convinced, then they could make it retroactive.

Member Roehrig said that was fair.

Chair Case asked to make that apply to all of them.

Member Yuen repeated the motion to approve as submitted but the motion for the three 501(c)(3)'s is that the Board institute the market rent for the staff recommendation and send them a letter, leave it up to staff to set up a meeting date and say that they have the opportunity to justify a lower rent. For others, not on this agenda, in the future, we should tell them when the letter goes out increasing the rent that they can come to the Board and try to justify a reduced rate.

AG Linda Chow commented that for an RP, the issue of rent for charitable groups is covered by H.R.S. §171-65, which says the Board can charge rent which best serves the interests of the state.

AG Linda Chow suggested having them submit a written document by a certain date and if they do submit then set up a meeting date.

Chair Case added that the written documents should include the nonprofit status, their charter, and a statement of a benefit to the broader public, and an income statement.

Member Yuen added as opposed to a benefit to their own members. Just being a nonprofit is not enough.

Member Gomes seconded.

Unanimously approved as amended(Yuen, Gomes)

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

There being no further business, Chair Case adjourned the meeting at 3:56 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,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land and Natural Resources