

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

DATE: FRIDAY, July 14, 2017  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

**MEMBERS**

Suzanne Case  
Thomas Oi  
Stanley Roehrig

Chris Yuen  
Keone Downing  
Jimmy Gomes

**STAFF**

Russell Tsuji/LAND  
David Smith/DOFAW  
Ed Underwood/DOBOR  
Ross Smith/DOT-AIRPORTS

Alton Miyasaka/DAR  
Kevin Moore/LAND  
Maria Carnevale/DAR  
Andrew Choy/PARKS

**OTHERS**

Ethan Tomokiyo-DOT-AIR/M12  
Dana Kenny/D2  
Derek Sinia/D5  
James Manaku, Sr./K1  
Dave Stoner/D5

Ben Matsubara/D4  
Karen Winter/D5  
Ed Bushor/D2

The Meeting was called to order by Chair Case at 9:04 am. She read the contested case advisory.

*Items L-1 and M-2 have been withdrawn from the Agenda.*

Ethan Tomokiyo DOT-Airports, Property Manager presented Items M-1, M-3 through M-12.

- ITEM M-1** Amendment to Sublease for Additional Space, State Lease No. DOT-A-07-0001, DFS Group L.P. In-Bond (Duty Free) to Island Shoppers, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-03: Portion of 1.
- ITEM M-3** Issuance of a Revocable Permit for Vehicle Parking, ARIS, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
- ITEM M-4** Issuance of a Revocable Permit for an Area to Support its Air Cargo Operation, Hawaiian Airlines, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
- ITEM M-5** Issuance of a Revocable Permit for Space in the Old Air Cargo Building, Hawaiian Airlines, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
- ITEM M-6** Issuance of a Revocable Permit for Aircraft Parking, Ovick F. Kar, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.
- ITEM M-7** Issuance of a Revocable Permit for an Aircraft Parking, David Blancett-Maddock, Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-8** Issuance of a Revocable Permit, for a parking Area for Aircraft Ground Service Equipment, Hawaiian Airlines, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-9** Issuance of a Revocable Permit for Space for a Podium for Passenger Check-In, Commuter Air Terminal, Schuman Aviation Company, Ltd., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-10** Issuance of a Revocable Permit for Space for a Ticket Counter in the Main Terminal, Schuman Aviation Company, Ltd., Waimea-Kohala Airport, Tax Map Key: (3) 6-7-001: Portion of 08.
- ITEM M-11** Issuance of a Revocable Permit for Warehouse Space for the Maintenance and Repair of Aircraft Ground Service Equipment, Workforce Services, Inc., Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.
- ITEM M-12** Issuance of a Revocable Permit for an Automated Teller Machine, Bank of Hawaii, Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Board Discussion

Member Oi asked if there was an existing ATM now. Tomokiyo replied, yes. It was placed improperly without Board approval; Bank of Hawaii would like to correct that.

Public Testimony-None

Motion

**Approved Items M- 1, and Items M-3 through M-12 as submitted (Gon, Gomes) unanimous.**

**ITEM D-5** Consent to Assign General Lease No. S-5162, Mauna Lani Resort (Operation), Inc. Assignor, to DHL Mahi Opco, LLC, Assignee, Lālāmilo, South Kohala, Hawai‘i, Tax Map Key: (3) 6-9-001:017.

Board Discussion

Member Yuen said the Mauna Lani Resort is being sold, and our lease is a part of that. How are they allocating the value of the lease to the sale? How do we determine there is no premium? We are using some value to determine there is no premium for the assignment of lease. Gordon Heit, Hawaii Island Land Agent, responded that, based on information provided by the lessee, the value of improvements made to the golf course, bathrooms, and paved parking lot at the conception of the lease, they did a standard calculation. Member Roehrig asked if it is worth a lot more. It is integral to the operation of the hotel. It is prime gold coast land. I do not agree with the amount of the lease rent. Take a look another look at this and defer for 30-days. Tsuji said they are following statute. Chair Case asked the AG if we are allowed to charge a premium on a ground lease under the statute? AG Chow read HRS §171-30. In this case, \$173,000 is reasonable <says who?>

Karen Winter, representing Mauna Lani Resort, said that the parties allocated based on the depreciation of the improvements that the parties assigned to the lease. It is one purchase price for the whole resort. Since we had no appraisal for the improvements made to ground lease. Dave Stoner explained the value of the improvements and how it was allocated to the 18-holes of golf. It was allocated by the improvements to each golf course hole. The value is in the 2-holes on the leased land.

Yuen made a motion to consent to the assignment, but bring the question of a premium back to the Board

Public Testimony-None

***Amendment:***

***The Board reserves the right to further evaluate and, if deemed appropriate, assess a premium for the assignment. Staff is directed to bring the matter back to the Board once it has gathered additional information on how the lease assignment should be evaluated and made a determination as to whether or not a premium is owed.***

Motion

**Approved as amended (Yuen, Roehrig) unanimous.**

**ITEM K-1** Conservation District Use Application (CDUA) MA-3788 for the Replacement of a Single-Family Residence & Related Improvements by William E. Engel Located at Honolua, Lāhainā, Maui, Tax Map Keys: (2) 4-2-004:019 & 062.

Sam Lemmo, Administrator, OCCL said this would be a demolish and replace with a new residence.

Board Discussion

Chair Case disclosed that her cousin Steve Case is a major owner of Maui Pineapple. I have no interest so I will not be recusing. Member Gon asked, with climate change, have they considered the rising water. Lemmo said, yes. They should be good for at least 350-years.

Public Testimony

James Manaku, Sr. wanted to be assured that there would be public beach access as the ocean provides native Hawaiian resources.

Gon thanked Manaku and noted that one of the conditions specifically says, the permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of the traditional, cultural, or religious practices of native Hawaiians in the immediate area to the extent the practices are provided for by the Constitution of the State of Hawaii and by Hawaii statutory and case law.

Motion

**Approved as submitted (Gomes, Gon) unanimous.**

9:55 am: 5-minute recess

10:03 am: Back in session

**ITEM D-4** Forfeiture of General Lease No. 5708, Landscape Hawaii, Inc., Lessee, Waimānalo, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-1-027:016.

Russell Tsuji, Land Administrator, summarized the history of this lease and where the State stands. This issue goes back many administrations. We have sat down with Ray Kondo, myself, and Linda Chow (AG) and discussed this lease. The lessee demanded actions to make this right that we just could not do. Waiver of rent, the State never waives rent. Second, they said they asked for lost profits and opportunity costs resulting from an electrical meter box allegedly missing. We disputed that we did not take it. We offered to pay for it, we did not have evidence that it was there and then it disappeared. There other issues that we felt did not merit compensation. Clearly the lease and bid document was an as-is, where-is lease. There was also the mention of a fence. Typically, it is the responsibility of the Lessee to pay for fencing. In this case the State did pay for fencing.

### Board Discussion

Chair Case asked for clarification as to when this lease started. Tsuji said 2006. Chair Case asked what rent have they paid since then? They paid \$36,000, equivalent to one-year rent. Chair Case said, they have been there for 11-years and paid 1-year of rent. Tsuji said yes, he added that this lease, unlike 99%, from day one has been in litigation mode.

Member Gomes, asked Tsuji, we go back to Governor Lingle's first term and it's 11-years later and we are still dealing with this. One thing that was said is the State promised to do certain things, before they took the lease over, but none of that was done? Tsuji said, they incurred over \$150,000 out of pocket, not including Staff time to do those things. Gomes asked what was the issue regarding evicting the lady so they could take over? Tsuji replied, the Staff was ordered to allow her to remain from the Governor's office. Gomes asked what was the reason? Tsuji said at one-time they were asked to find her another site. We did not have anything. She eventually found a site.

Ben Matsubara and Curtis Ko representing Landscape Hawaii, Inc., and Kyle Ushijima, President of Landscape Hawaii are present to testify. Matsubara outlined the events that led up to this submittal. Prior to the bid being submitted, the bidders inspected the property. There were three structures that had electricity. In 2005 when the tenant was finally evicted, the condition of the property was trashed and there was no electricity. It was inhabitable. In 2006 Landscape Hawaii took possession and moved the billing to 2008 so the State could get the property back into the condition it was when it was inspected at time of bid. The tenant started to make improvements to the property. Matsubara asked if they could apply the monies they have spent to fix up the place to get two of the houses habitable. The condition of the houses when they took over is what prompted the dispute. The instructions from some of the staff to not to pay until it was straightened out kept going on and on. We have been through four administrations and changes in staff. The tenant made other efforts to try to resolve this by getting the property back in the condition he thought it should be.

Matsubara proposed the following; the lease payment and term stay the same, no adjustment on the term or rent reduction. What we are asking is to consider for monies that have been put in for improvements to restore the structures be allowed to be used as credit against the past rent. Additional credit to be spent on the third house that needs to be restored. We want to work it out.

Member Gomes asked how much money do you expect to spend for the other structure? Matsubara said, we are asking \$150,000, and the lower house estimate came out to about a \$125,000. Gomes said the total would be \$275,000. Matsubara said they would like it to be considered for credit towards rents owed. The rents owing is \$310,250, interest is another \$150,00, if you could waive some of that it would be helpful. That is some of the numbers we are trying to work with in the proposal.

Chair Case asked when did Landscape Hawaii occupy the property? Matsubara replied, September 2006, though they did have a right of entry 6-months prior. Case asked what has the

property been used for? Matsubara said it is a nursery. Case asked if it has been used as a nursery since March 2006? Matsubara said, right.

Case stated you had possession from 2006, rent starting in 2008, and you have not paid any rent. Matsubara said yes that is correct. Member Downing asked if Landscape Hawaii in business before this? Matsubara said they have been in business for 25-years. Downing asked when all these problems came about why didn't Landscape Hawaii ask to get out of the lease? If I were a business owner, my reaction is, I would want out of this lease because I went to inspect it a second time and it was trashed. Why would I want to pay for something that is not like what I saw? Why did they not go to the State this is not what I signed up for? But instead kept going along. As a businessman, I would be out of the contract, chances are it is going to come back up for public auction again, maybe there be a chance to lower the fee that I bid. The reason I say that by reading this memo the business that was being auctioned was bid really high. Evidently there were a lot of people interested in bidding. Maybe after 2-years the person get buyer's remorse because it went up 8-times more than they expected to get. Even more so because they failed to deliver what they said they would. Why do you keep hanging on when you see all these problems? You have the opportunity to me to get out of the lease because it was not delivered as planned. Matsubara said, that there was the reliance that the State would do what they said they would do to clean it up

Kyle Ushijima, President, Landscape Hawaii, said he has been asking himself and the DLNR agents and had been promised, they said do not worry about it we will fix it, we will get the water, the electricity. He was sorry that he was naïve to think that. I looked at the property, it was a good level property, it was terraced and we could build a good nursery out of it. We had a good business plan to develop the property. I did not know that I could terminate the lease or investigate at that time. I did not think about it, that is my fault. I did not know.

Member Yuen asked, there were allegations that there was electricity to the house on the first level. You have an estimate slightly under \$10,000 for the electrician plus a pole which HECO did not provide an estimate. The Big Island, a pole costs around \$4,000, so we are talking about a \$15,000 job to provide electricity, is that, about right? Ushijima replied, ballpark. Was the electricity put in in September of 2012? Ushijima said yes, he put it in, I got the building permit, the contractor, I called HECO and we got the electricity in. Yuen asked how much did it cost? Ushijima said my cousin is an electrician and I paid him \$5,850 and a van. Yuen asked if he paid for the pole? Ushijima replied, HECO waived the pole, they said they could connect directly to the building. Yuen said what he does not understand is there are various statements about not being able to do business due to lack of electricity to nursery buildings, I do not understand what a meter to house has to do with your ability to put electricity in a shade-cloth in buildings to grow plants. My understanding is that electric companies do not daisy-chain electrical facilities. If you want to put electricity in an ag building next to the house, you would still need to get a meter to the ag building. Ushijima said yes. He would need it to run the clocks, run the green houses, that I was planning to build and run the office with lights, fax machines, computers. Yuen asked why does not having electricity to house prevent you from doing those other things on other buildings?

Cindy Comber, Caretaker, said that in September 2006 the land transferred over. In approximately 2007 they started work on one of the three levels that the dwelling that has no electricity and started to build the nurse in December 2007. Yuen clarified that during the walk-thru they were not able to go through the houses. Ushijima said, yes, there were people living in there. Comber said which implies there was electricity and water. Yuen said he understands what it cost to put electric in.

Yuen continued, the staff report that authorizes the auction back in 2004 said there were three houses, but the recommended it the lease be limited to one, basically the Caretaker's residence. That is in the conditions that the Board's action authorizing this lease. Is that not your understanding that this lease is to have only one residence on it? Ushijima said, actually no, because it had three. Yuen said that this is an agricultural lease and authorizes only one occupant, the caretaker,

Comber said they were intending to just to have one but I do not believe it was a mandatory issue to demolish that. When we went on the walk-thru, Charlene indicated here's the house, but we can't go in it, then there was a clubhouse we were not allowed to approach because of sanitation, it was occupied by cats and on level three there was a third house that had a family living in it and it looked habitable from the outside. Throughout the walk-thru, there was never any indication that the there would not be the two dwellings. When we walked thru in 2005, we walked around Candy Lake's house and the house on level one, there was never any mention of demolition of that house, only of the clubhouse. We should have read the lease again, but we were not given the lease until we signed it. Tsuji said the lease was part of the auction package, there is a provision specifically limiting it to one employee dwelling. There is also a provision that the lessee shall not use it as a primary residence.

Member Roehrig made the disclosure that Mr. Matsubara's father used to be one of his campaigners when he ran for the legislature. I do not think that will affect my judgment. Now it is 2017, each side believes they have legitimate legal claims of some nature. I would like to explore that with counsel because we need to have a realistic discussion here. He explained the processes of the tort claim to injury to land, contract claim and the catch all contract claim statute of limitations. Between 2004 and 2005 we can put in statute of limitations. Whereby, most if not everything the lessee has to claim today, the statute has run, anything between 2006-2012 the statute has run as well. Unless I am missing something. I believe the statute has run on any kind of problems you might have against the State unless you have other circumstances that might mitigate, in other words some kind of estoppel against the State from raising the statute of limitations. Why are we still limping around this? Here we are 2017, different staff, today it is this, today it is that and here we are July 14, 2017.

Roehrig asked Matsubara to explain why you are entitled to any type of settlement of any nature whatsoever against the State on any rent claims that have not been paid since day one, whenever that day was until today? Matsubara replied, you are correct. The statute of limitations has run. What we are looking at in regard to the claim we made and the provision in the lease that requires the Board to enforce the lease. We are saying, here is the lease, it was signed. These

were the understandings, please enforce the lease in regard to whether you are going to provide the premises that was supposed to be provided, we are entitled to that. Roehrig asked, you want specific performance or quiet title. Matsubara said we want you to enforce the lease, not only against the lessees, but the lessor too. Roehrig asked if that was specific performance of the leasehold terms? Matsubara replied, you can say that, but with the Board's discretion to administer, enforce its rules and regulations and the leases that they issue. We are not interested in litigating this or run through a contested case. We would like to sit down and see if we can resolve it if there is a way the Department in administrating the lease. Roehrig asked what statute do we use for specific performance if there is one? Specific performance of the lease is an equitable claim. Is there are statute of limitations or does it run parallel with a possession lease statute? Possession is a twenty-year statute. You go into the property, you want to possess the property, you have up to twenty-years to get in or get out. I do not know how it fits in there. I have never found a statute for specific performance. Roehrig referred to old cases from 1904 and 1911 regarding possession and the 20-year statute of limitations which the legislature made 1973. Because it is equitable in nature, generally equity follows something in the law that runs with it. In the big picture, what I am hearing is you want to be in possession and the State is saying we want to be in possession and we want to enforce the terms of the lease. You are in default of your rent. You are saying no we are not, we want you to properly put us into possession, we have been there and that is why we can still stay there because we are under a longer statute than the 2-year, 4-year, or 6-year. I am not sure which statute you are under, whether or not your claim, what the value of it is if there is any claim, whether you are entitled to any deduction at all.

Matsubara cited §171-7.5 of the HRS, provides the BLNR through the Chairperson shall enforce contracts, leases, and other dispositions of the lands. In the general lease that we signed, paragraph 40 talks about the Chairperson shall enforce the terms of the lease and should govern it. We are looking at the lease itself to provide the relief we wanted through discussions whether or not the Board would be willing to enforce provisions against the fact that the land was not in the same condition when they bid on it. Enforcement works both ways. We did not look at it as enforcement against the lease. We thought they would administer the lease and look at both sides. We are looking to see if it can be resolved within the four corners of the lease.

Chair Case said she did not understand, you have been in possession for 11-years, you have had the benefit of the property, but you have paid no rent. I do not know how you have any equitable claim here, when you have just not paid any rent for all of this period. Ushijima said they paid \$18,250 at the time of the bid. Chair Case asked what was the annual rent? Ushijima replied, \$36,000 and I thought maybe, going back to Member Downing's question, maybe the State could have given back the money because they cannot do this bid. Chair Case said then you would have said I do not want the property. Instead you used the property for 11-years. Ushijima replied, yes, we used part of it. Comber said going back to three levels again. The second level and bottom level are nursery levels that I could watch over. He could build on the second level because that was flat field. The third level that had the house which was understood to be repaired to the condition we saw in 2004. We met with Peter Young directly in March of 2007 and he told us do not pay the rent until this was resolved. It was not just in the room, there

were 4-5 of us. A month and a half later the land agent Charlene Unoki met with us again, the same group, saying she knew the files and the letters and discussion and again she said do not pay the rent until it is resolved, this was in 2007. Each time Ushijima was receiving a notice from the fiscal office saying you owe rent. Ushijima called Unoki and each time she said do not pay the rent until this is fixed. Ushijima said okay that is fine can you tell fiscal? Eventually there was a break for a while, but for years we were told do not pay the rent until this is fixed. We kept waiting and waiting, and waiting. Then we decided to go ahead and at least put in the electricity on that level so we could have some kind of security, and add lights, unfortunately someone stole the lights on the door that we were trying to use as an office, So we could not actually build on that level, because again we were try to build the caretaker's house so I could live there which was costing around \$189,000 so monies were going into that and putting up the shade cloth house which cost another \$160,000, resources were stretched so we could not actually build. Initially, if we had the house on the top level, I would have moved in within the 60-days of the lease. He could have developed the second level and the third level he could have had his office. The business plan was almost turn-key. But two years later you cannot use the office and you cannot even move into the caretaker's house, the prior tenant (Candy Lake) locked the animals in the house when she vacated. The Humane Society was reluctant to come out because the conditions were so bad (ticks, fleas, etc.), they did not want to take the animals back to the Humane Society. When we finally got the house, it was trashed and had to be gutted, there was only the frame and the shell.

Chair Case said she can understand working those things out in the first couple of years. What she did not understand then for another 9-years, occupying it and not paying any rent. Comber said they were told not to pay until it was resolved. Chair Case said then you started getting the notices that you had to pay the rent. Comber said they called Unoki and we told until 2012 not to pay until there was a resolution. Chair Case said it has been 5-years later you still have not paid the rent. Yuen recalled back in 2012 that they came before the Board and were told to start paying the rent. We met with them and wanted to negotiate, we wanted to start fresh, call it even with all the improvements we made. Yuen said your offer in 2012 was to waive 5-1/2-years of rent. Comber said yes. Chair Case stated that it was declined. Comber said they said we gave you this, this and this, a fence which she did not understand where the fence came in. Chair Case said they did not have an agreement on that.

Roehrig said in order for him to decide what was fair he would want to look at their tax returns to see if they made money or they did not. If you were taking a beating on this property, that would be something I would consider as a landlord as an equitable matter that we should take into account. If it shows you were doing well, it sheds another light on what is fair.

Ushijima asked if he was wrong to listen to the land agents? Roehrig said he did not know the answer to that. One question I would ask you in response to your question is if somebody is going to tell you they are going to take of you, no worry, after a while they do not take care of you, you start scratching your head whether or not it is true. After 2012, did you bring it up to Tsuji and his staff that you were still waiting for an answer? Matsubara said they sent letters and got no response from prior counsel following the 2012 meeting. Roehrig asked what happened

between that letter and the State's counter- offer? The State's letter nullified what you said about "do not pay"? Did you send a letter asking for a meeting that did not get answered? Ko said, yes. Roehrig said the letters refer to letters were previously sent in 2015 stating their position. Ko said it was a matter of sitting down and seeing if they could work out something. Roehrig asked Matsubara from the time you got involved in 2015 till today, is it your understanding that you are still in "withhold lease payment mode", until the State sits down to talk to you? Matsubara replied, we were transitioning between what one counsel had done and what counsel was assuming. I thought the transition would resolve itself around what we are asking, not for the payment of money, we are not asking for money. The idea was to see whether we could work it within the numbers on the lease itself, how much we owed, how much we had not paid, how much we had to spend to get it up there. Let us sit down and talk about that. Under the circumstances, I thought at that time to wait until we could talk and see whether or not we could do it. He wants to use more of the land there and I told him until you resolve this, I do not think you should be building anymore hot houses. Under the circumstances the status of your lease is in question. Only a portion of the property is being used. Roehrig asked how many acres? Matsubara replied 19 acres. Comber said they are using about 10 acres.

Chair Case asked if they were growing any plants for your landscaping business? Ushijima said he uses it for his plant rental side division. Chair asked if this was the source for his plant rentals? Ushijima said it is part of it. Chair Case said, so you have other sources for plants. Ushijima said they buy from my other nurseries. Chair Case wanted to note that these fourteen letters go back to March 2015, basically they all say the same thing we received your invoice and please refer to my prior letters regarding our position **and we want to meet to discuss our position and renew our offer**. Clearly there was no meeting of the minds on your rent proposal. You were receiving letters saying rent was due. And you did not pay any rent. Comber clarified that they were statements not letters. Chair Case said it was not like you did not know rent was due. You just did not pay it, because you wanted to stick to your position, but you still occupied the premises.

Member Oi said, it is hard to comprehend, you are utilizing the property already for how many years. In 2012, the subject of a 20% reduction came up at the Board meeting, it was denied, then it was deferred. You keep receiving bills to pay the rent. You are utilizing the property and probably making money off the property. I cannot see just because you have issues you feel you do not have pay your rent. To me a good faith effort would be to pay my rent until the issue was resolved.

Ushijima said he thought if he paid any of the rent, he would be wrong already. If I go back to the last Board meeting, I was asked if I was to rent a place, and I put down a deposit and had these things in place, two years later I come back and known of that is there would that be good faith? I do not think so. Oi said with all these issues you are having since day one, I would say let us give up already. The Board submittal says they want to terminate the lease. Why not give up? Seems you want to utilize the property. That is an issue too, you want to utilize the property. You feel the property is an advantage to your business.

Ushijima said he put some effort in it and its quite a bit of money. I felt the property was worth quite a bit. I just want to say in 2004 when we bid on the property, land agent Deedee Mamiya said if I get the property to sue the State and I said how can I sue the State they are going to be my landlord. But I did not listen, so we are here today. A year later after Mamiya left, I met with Unoki many times, and only her and Cecil Santos kept telling me not to pay the bill. We will get the electricity, we will get all this done, we will clean up the property. Every time I got the bill, I asked her to revise the bill. She said do not worry about it, I asked her how to come she could not revise it. She said the department does not talk to Fiscal.

Member Gomes asked if he had anything in writing, Ushijima said Mr. Kondo prepared a chronological history. Ushijima said, I should have known something was wrong because I did not have anything in back in writing and everything was verbal, on the telephone, in their conference room behind closed doors. I am sorry, I was naive at the time, I was trying to run the business. I just tried my best. I would not be in this position if I did not listen to the land agent. I did not know who I was supposed to take direction from during that period of time. I know both land agents left the department, that's why I am here with Mr. Matsubara. Ushijima apologized to the Board

#### Public Testimony

##### ***Amendment:***

- (1) Within 15 calendar days of July 14th, the Department shall propose a payment plan (i.e., installment plan) to the Lessee for all back rent, interest to date of the July 14<sup>th</sup> Board meeting date, and late fees. The Department may utilize its standard term and prevailing interest rate in calculating the installments.***
- (2) Within 30 calendar days of July 14<sup>th</sup>, the Lessee shall pay one year's rent in its entirety at the rate established under the lease by auction (\$36,500 per year).***
- (3) Lessee shall cooperate with the Department in the 2016 scheduled rent reopening under the lease.***
- (4) Lessee's acceptance of a payment plan in accordance with the foregoing terms shall be deemed a settlement of any claims the Lessee may have against the Department or the State as of the date of acceptance.***
- (5) If the parties do not come to an agreement on the terms and conditions of the Special Installment Agreement and execute the same within 60 calendar days of July 14<sup>th</sup>, 2017, then the Department is authorized to terminate the lease in accordance with the recommendation section of the staff submittal.***

#### Motion

**Approved as amended (Yuen, Gomes) unanimous. Chair oppose? <I think Chair did oppose>**

**ITEM C-1** Request Approval to terminate memorandum of agreement between the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program and Haleakala Ranch Company for access to Haleakala Bridle Trail, Dated May 11, 2012.

David Smith, Administrator, Division of Forestry, and Wildlife, explained the reasons for termination.

Board Discussion

Member Roehrig disclosed he represented a party in litigation adverse to Haleakala Ranch at one time.

Public Testimony - None

Motion

**Approved submitted (Gomes, Gon) unanimous.**

**ITEM C-5** Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contracts for the Implementation of Watershed Management Plans and Projects that Support Native Ecosystem Protection and Management for Fiscal Years 2018-2019.

David Smith, DOFAW, requested to start the process of competitive sealed proposals.

Board Discussion

Member Yuen disclosed that his daughter is on the committee that evaluates this item.

Public Testimony- None

Motion

**Approved submitted (Gomes, Downing) unanimous.**

**ITEM L-2** Appointment of Jose “Pepe” Miranda to Serve as a Director of the Kona Soil and Water Conservation District.

Carty Chang, Administrator, Engineering, requested the appointment.

Board Discussion-None

Public Testimony- None

Motion

**Approved submitted (Roehrig, Gomes) unanimous.**

**ITEM D-1** Grant of Perpetual, Non-Exclusive Easement to the State of Hawaii, Department of Transportation, Highways Division (HDOT), for Scour Countermeasure (Rip Rap) Purposes Relating to the Hanapēpē Bridge Replacement Project; Issuance of Management and Construction Right-of-Entry to HDOT for Hanapēpē Bridge Replacement Project Purposes, Hanapēpē, Waimea, Kaua‘i, Tax Map Key: (4) 1-9-007:013, 1-9-010:014 & 046 portions.

Russell Tsuji presented the submittal.

Board Discussion - None

Public Testimony - None

Motion

**Approved as submitted (Oi, Gon) unanimous.**

**ITEM D-3** Issuance of a Right-of-Entry Permit to O‘ahu Hawaiian Canoe Racing Association Hawai‘i for the Duke Kahanamoku Long Distance Canoe Race Event to be held on August 20, 2017, at Waikīkī, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037: portions of 021

Russell Tsuji presented the submittal.

Board Discussion - None

Public Testimony - None

Motion

**Approved as submitted (Gomes, Gon) unanimous.**

**12:20 pm: Lunch**

**1:15 pm: Back in Session**

**ITEM D-2** Cancellation of Revocable Permit No. S-7879, Savio HBH Development Company LLC, Permittee; Issuance of a Revocable Permit and Immediate Right-of-Entry to Tower Development, Inc. for Security, and Property Management Purposes, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-1-005: 033,034,035,045.

Tsuji relayed the reason for cancellation of the permit. Dana Kenny from Savio HBH Development Company LLC, (permittee) requested a time extension to finish moving everything out so they can leave the property with a clean slate. Ed Bushor, Tower Development, supports Savio's request.

#### Board Discussion

Member Yuen had questions regarding the rent for the RP to Tower which Tsuji clarified and Bushor is fine with that. The discussion moved on to what was going to happen to the store. The Kimi family want to continue running the store. Yuen asked if this went through Tower would work directly with Kimi Family as a sublessee.

Kenny commented that the store's electrical and plumbing is tied into the hotel and they have tried to find a way to separate it. The County will need to get involved for permitting. Tsuji said that Tower will have that decision as RP holder. Staff is not taking a position on it. So, if it becomes impractical for Mr. Bushor to continue to operate it for other reasons, whether it is County requirements, our position is it is up to him to do what is appropriate if he needs to terminate.

Member Roehrig said he has a concern about that. If there is truly a problem with the plumbing and electric and it is all coming in from the hotel, somebody has to go in and redo the plumbing. The County may not agree to any of these conditions. They have been in there and they may say we do not want any kind of use of the plumbing going into just this one place that forces us to keep the rest of the building open. The County made it clear they want the whole place closed down. The Kimi's are a third party and they are not here today to speak for themselves. I have concerns about making final disposition of the ice cream place.

Bushor said he has had meeting with the Kimi's (Kemoo) this week and told him we were not going to take any negative action to shut down anybody. He is free to stay open subject to him doing whatever needs to happen with the County to stay open. He has agreed to process the paperwork and to see how it goes. He is very happy that they have a neighbor who is not going to shut them down. It is his obligation if he wants to stay open.

Chair Case commented that she is looking at the letters from the County, the new Revocable Permit, has to have conditions. Have you addressed them already regarding the SMA guidelines, shoreline set-backs for the fence, proper inspection of the convenience store structure to make sure it is safe for continued occupancy? Yuen said I think what the County is saying, if you are going to put a fence in a Special Management Area, they expect you to file a 2-page SMA assessment form. The one thing may be a little tricky is how close to the 40-foot shoreline set back will they allow the fence to come. Chair Case said, that address the Planning Department, the Fire Department wants to make sure the fence is secured, so you do not have unauthorized occupancy, fire protection is maintained. Chair Case said she wanted to be clear that they were aware of this. Under the Revocable Permit you are responsible for compliance with the law and

working out with the store whether it can or cannot be there. Your supportive of it, but it needs to be worked out with the Fire Department.

Roehrig told Bushor that he is getting the RP and to talk to the Fire Department and inform the Kimi's what the situation is.

Public Testimony- None

**Motion**

Member Yuen made a motion to approve with amendments for Savio to continue their RP until August 4, 2017. No occupancy for hotel purposes. Right-of-Entry to Tower beginning today, July 14, 2017 until August 4, 2017, to work on fencing and securing the property pending required permits before the work can begin. Revocable Permit to Tower begins August 4, 2017. The conditions of the RP are amended to include Tower's letter to us dated July 4, 2017, with the exceptions of 1d which refers to the bid package for demolition and remediation and items number 4 and 5. Fire protection systems as required by law. The Fire Department has requested that all windows and doors be locked, entry to be by authorized personnel as necessary. Member Roehrig second the motion with amendments.

Member Gon asked if item 3b of the staff recommendation which refers to rental? Yuen said yes, it is superseded by the Tower letter which is \$1,000 a month. Gon said similarly for 4c.

***Amendment:***

- (1) Replaced recommendation 3b and 4c with "The monthly rent shall be set at \$1,000 per month."***
- (2) Revocable Permit No. 7839 issued to Savio HBH Development Company, LLC ("Savio") was allowed to be continued until August 4, 2017 to allow Savio to sell off and remove personal property such as furniture, trade fixtures and equipment only and no occupancy is allowed. Except during times of authorized entry, all windows and doors and entry ways shall be secured and locked.***
- (3) Approved a Right of Entry to Tower Development, Inc. for purposes of preparing to secure the site and prepare to install the fencing around the hotel structure.***
- (4) Issuance of a Revocable Permit to Tower Development, Inc. in accordance with paragraph 3 in the recommendations section of the staff submittal, together with those terms and concepts in Tower's memorandum dated July 14, 2017 as amended, a copy of which is attached hereto as Exhibit A. Except during times of authorized entry, all windows and doors and entry ways shall be secured and locked. The Revocable Permit shall be effective no earlier than August 5, 2017.***

**Approved as amended (Yuen, Roehrig) unanimous.**

**Item C-2** Request for Delegation of Authority to the Administrator of the Division of Forestry and Wildlife to temporarily close or restrict public use in Natural Area Reserves for periods of up to ninety (90) days for the protection of the Natural, Geological, or Cultural Resources of the area or the safety and welfare of persons or property.

David Smith, DOFAW summarized that this would only be in effect in case of emergency. OHA's recommendation is for 60-day. We agree to that.

Board Discussion

Chair Case asked Smith to clarify that he is not asking for broad scale or long-term closures. Smith said no. Just the Natural Area Reserves. It's for a very short-term. We are full advocates for public access. Roehrig asked if this was State wide. Smith said it is State wide for Natural Area Reserves, it is a limited area of land. It's basically for public safety. It's a warning, we are not going to put a DOCARE officer out there. If the public wants to go out in hurricane force winds that is their choice. Member Yuen said he would go with the 90-days rather than 60-days, Yuen said the reason why is that you would have to go beyond that you have to get on the agenda for both the NARS Commission and the Land Board.

Member Downing commented that Smith said they may not even use one-week, he said 30-days is plenty for him. The 60-days is plenty. Smith said the only time you may need longer than 30-days is if you are going to go back to the Board to ask for a longer-term closure.

Public Testimony

James Manaku, Sr. said going to the forest is like going into the church and 90-days is too long to close the forest. I enjoy my freedom and I go there to gather food as well. I cannot accept this closure.

***Amendment:***

***Change from 90-days to 60 days***

Motion

**Approved as amended (Gomes, Gon) unanimous.**

**ITEM C-3** Request for Delegation of Authority to the Administrator of the Division of Forestry and Wildlife to issue permits listed in Exhibit 1 for Hawaii Administrative Rules Chapter 13-209, Rules Regulating Natural Area Reserves

And

Authorize the Administrator to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) Environmental Compliance Requirements, including approval of Declarations of Exemptions, as applicable, for those permits listed in

Exhibit 1 issued under Hawaii Administrative Rules Chapter 13-209, Rules  
Regulating Natural Area Reserves

David Smith, DOFAW presented the staff submittal.

Board Discussion

Member Gon said when he did his research on Happy Faced Spiders they were considered invertebrates, and not insects, on Exhibit 1, it lists, plants, birds, mammals, insects, and aquatic organisms. It leaves out invertebrate is like snails, spiders and all those kinds of organisms that are invertebrates but not insects. So, I would change it and add item 3-L. I would like to modify it to add invertebrates.

AG Chow explained under the statute although the Commission is advisory to the Board on many incidences, on the issuance of permits, the Commission has to act first. So, if you are saying these kind of permits to the when it comes to permits to the Administrator to do, you could do that but the NARS commission would have to have a vote. <I am not sure what this sentence means. Did she say that the NARS Commission would have to approve the change suggested by Gon?>

Chair Case asked if we approved this and we add this language regarding the invertebrates, but the applicability to invertebrates, subject to the NARS commission's approval and it does not have to come back to the Board for approval. AG Chow said, yes, we can do that.

Chair Case made a motion to approve the submittal with the language extending it to invertebrates in 3a and 3l, in Exhibit 1 provided this delegation is not applicable to invertebrates unless and until the NARS commission approves it.

Public Testimony- None

Motion

**Approve as amended (Case, Gon) unanimous.**

**ITEM C-4** Request for Approval of a Memorandum of Understanding and Implementation Agreement between Hawaii Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW); United States Fish and Wildlife Service (USFWS); United States Coast Guard USCG; Island Conservation (IC); National Tropical Botanical Gardens (NTBG); and the owners of Ni'ihau regarding the Lehua Island Ecosystem Restoration Project involving restoration activities and the eradication of rats on Lehua Island.

David Smith, DOFAW presented the staff submittal. Smith said they have the eradication compliance in process for approval. The owners of Ni'ihau support this project and have offered to let us operate off the island. They want to have this MOA to protect them.

### Board Discussion

Member Oi, asked what do you mean by work off Ni‘ihau? Smith said, they will be doing aerial drops, so they will have a staging area. The last time this was done the people of Ni‘ihau were very upset that we did not properly advise and get their consent. It is really a break-through to have their cooperation.

Member Gon commented that because this is an inter-governmental, Federal, State, and private land owners and the like, to have them all working together and everyone in agreement, is really important.

The AG asked to have the operational plan emailed over to their office it was not attached to the MOA in the submittal. Smith wanted to recognize Patrick Chee and Josh Atwood put an incredible amount of work in this, it is a very complicated and important project on a short-time line. Gon said considering the huge potential benefit if we get a good method for rat eradication in natural areas and the fact there is no small amount of potential controversy in something like this it is really good to make sure everything is done the right way,

Member Gomes asked, in any of your studies, the rats swam over to Ni‘ihau? Chee replied that they can swim but not that far. It is  $\frac{3}{4}$  of a mile. Smith added it is pretty high-energy water. Gomes asked if anyone goes to the island to do any cultural practices? If they go over with their boats can the rats get onto the boat and comeback to Ni‘ihau? Smith said, some go to gather and pick opihi. Oi said some fishermen park their boats overnight

Chair Case said that you have to have protocols in place to eliminate re-introduction. Smith said it has happened on islands we have eradicated and we know this because they were a different species. Nothing is guaranteed. Chair Case said there will be monitoring.

### Public Testimony-None

### Motion

**Approved as submitted (Oi, Gon) unanimous.**

**ITEM C-6** Request Approval to Issue a Request for Information for Implementation and Long term Management of a Predator-Free Fence Enclosure and Seabird Social Attraction (SAS) for the Kauai Seabird Habitat Conservation Plan (KSHCP) on Kauai

And

Request Approval for a Competitive Sealed Proposal Process subsequent to and informed by the Request for Information, and Authorize the Chairperson to Award and Executive a Contract with successful responders, if any.

Smith presented the last submittal. Referencing, the agenda title, it was changed from what the submittal title was per AG Chow. It is not referenced properly in the submittal. Delete the second paragraph until an EA is done per the AG's office. Delete 2, 3 and 4 from recommendations, and amend recommendation 1 to match the agenda title

Board Discussion

Member Yuen asked what is a seabird social attraction site? Smith said seabirds on the ground call out to attract other birds to come. Gon mentioned that you can put albatross models that have sound coming out to attract other birds to join the colony to nest. It is known to be in a flight path of a known colony.

Public Testimony

James Manaku, Sr. I support this project. The problem is humans.

***Amendment***

- 1. Amend recommendation number to match the agenda***
- 2. Delete recommendations 2, 3 and 4***

Motion

**Approved as amended (Oi, Gon) unanimous.**

**Motion to adjourn (Gomes, Gon) unanimous**

There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:51 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,

Darlene S. Ferreira  
Land Board Secretary

Approved for submittal:

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Suzanne D. Case  
Chairperson  
Department of Land & Natural Resources