

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

DATE: FRIDAY, JULY 28, 2017
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig

Jimmy Gomes
Keone Downing

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

Shao Lee/M5
Bruce Mundy/F2
Calvert Chun/M6
Randy Teruya/L3

John Leary/D4
Justin Rivera/F2
Laura Kaakia/C2
Mililani Browning/C1

Chair Case called the meeting to order at 9:30 a.m. She read the contested case advisory.

Chair Case announced that Item D-6 will be withdrawn from today's agenda

ITEM A-1 Request approval of Meeting Minutes from March 24, 2017.

Board Discussion- None

Public Testimony – None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM M-5 Approval to Execute a Memorandum of Agreement with The Arc In Hawaii, a Hawai'i a Non-profit Corporation, for the use of a portion (25-parking stalls) of the State of Hawai'i Department of Defense paved parking lot located at the intersection of Diamond Head Road and 22nd Avenue, Honolulu, O'ahu, Tax Map Key: (1) 3-3-042:041.

Shao Lee-DOT Harbors presented the submittal.

Board Discussion- None

Public Testimony – None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM M-4 Issuance of a Revocable Permit for Aircraft Parking, K & S Helicopters, Inc., Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.

David Smith, DOT-Airports, presented the submittal.

Board Discussion

Chair Case said that a **contested** case has been requested. Member Roehrig said he needed to hear enough testimony to make a determination. Chair Case moved to go into executive session. Roehrig second the motion.

11:05 Executive Session

11:45: Back in Session Defer Item M-4 to later in the meeting

ITEM M-6 Issuance of Revocable Permit to Pacific Shipyards International, LLC ("PSI") for Approximately 1,715 sq. ft. of General Office Space plus Tandem Parking for Four Vehicles at the Pier 23 Honolulu Harbor Area, the Address is 711 Nimitz Highway, Honolulu, Hawai'i 96813 and further identified as Tax Map Key: (1) 1-02-025:009.

Board Discussion- None

Public Testimony – None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM L-3 Delegation of Authority to the Chairperson to: (1) Procure, Award and Enter Into Professional Service Consultant Contracts for Capital Improvement Program Projects as Listed in Exhibit 1 or Projects Funded with Operating Funds Appropriated by the Legislature; (2) Declare a Construction Project Exempt from the Preparation of an Environmental Assessment or Approve an Environmental Assessment and Issue a Finding of No Significant Impact, if Appropriate; (3) Approve, Procure and Enter Construction Contracts for Capital Improvement Program Projects as Listed in Exhibit 1 or Projects Funded with Operating Funds Appropriated by the Legislature.

Alyson Yim, Engineering presented the submittal.

Board Discussion

Member Downing asked if this have to go to Budget and Finance? Lim, said no, Budget and Finance reviews before it comes to the Board. Member Roehrig asked, Royal Hawaiian Groin, can the funds be used for a second opinion and hire a 2nd consultant? Yim said yes, we will have them review and make recommendations.

Roehrig asked what is the nature of the project, what is involved for the Wailua State Recreation Center? Yim said it is being considered for funding.

Public Testimony

Arid Youngquist, private citizen asked regarding the delegation of authority, can another agency over rule a particular project?

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM D-4 Authorize the Chairperson to Extend the Cure Period of the Notice of Default for Failure to Keep Rental Payment Current and Entering an Installment Payment Plan for General Lease No. S-5564, Island Demo, Inc., Lessee, Moanalua, Honolulu, O‘ahu, Tax Map Key: (1) 1-1-064:007.

Russell Tsuji explained the reason for extending and working with an installment plan for the Leasee. John Leary, leasee said he has been there for 18 years. He has been impacted by the constant flooding on Ahua Street and the damage to his truck from the flooding. He explained the nature of his business and is requesting approval for an installment plan.

Board Discussion

Member Gon conveyed his concerns for the area and studies are being done. Member Gomes

asked if there was somewhere else he can be relocated. Barry Cheung, Land Division said that we do not have anything suitable

There was a robust discussion about the area and the need to start looking for alternatives especially with climate change and rising sea levels that plague the area. Gomes asked Leary if he has been actively looking for another location going forward? What are you going to do? What is the longevity of the business. How are you going to continue under these conditions?

Chair Case asked Tsuji if it was possible to bring the rent down.

Roehrig said we have the authority to reduce the rent if it is not worth what it should be. He continued, as the landlord we have a responsibility to explore the reduction of rent. What is fair when you are under water? Downing asked how many days in a year are you flooded. Island Demo, approximately 220 days a year. Downing said if it is becoming a health matter it should be closed. Your delinquent in rent.

Member Oi said 2019 is when the rent is to be re-evaluated. Are you willing to agree to the Board submittal? Pursue the county regarding the sewer line that over flows. Downing said it is an unsafe area for a business and as a Board we should close the business there. Chair Case said, we cannot just go and close the business, but we can look into it before the lease comes up in 2019. Member Roehrig made the a motion to approve with the following amendment.

Amendment:

The Board approved the extension of the cure period for the notice of default and an installment payment plan as submitted, but with the condition that Land Division staff, with the assistance of the Department of the Attorney General and the Department of Health, evaluate impacts of sea level rise on lessee's quiet enjoyment of this parcel and any equitable adjustments that may be warranted to the lease structure.

Motion

Approved as amended (Roehrig, Downing) unanimous.

Back to ITEM M-4: Further Board Discussion

Chair Case made the motion that the Board deny the contested case request. On the basis of the State vs SHARMA. The State has authority to make custodial decisions with the respect to management of State property. Therefore, the petitioner does not have a no standing. Concurrence from the Deputy Attorney General.

Member Gomes seconded the motion.

Board Discussion

Roehrig asked Smith if he was aware of the problem with the helicopters noise in east Hawaii? Smith replied yes. Roehrig said you are also aware there is a large group of people on the flight

path. These good people own their homes, they are not trouble makers. How long has this dispute been going on regarding the noise complaints? Smith said that the complaints go to another department and the State has limited input on air space. Roehrig said they come to me by telephone and in person. These helicopters coming out of Hilo airport fly low over Rainbow Falls and upset the operations at nearby Hilo Hospital. Smith said those kind of complaints normally do not come to his department.

Roehrig said the people of Hilo are furious and cannot stay the way it is, it has to change. DOT-Airports are contributing to the helicopter noise problem. He said they need to be part of the solution. Roehrig made it known that this could shut down the helicopters should these Hilo residents want to take it to court. People are losing sleep over this because of the noise. Roehrig said he gets complaints from the legislators asking him what is he doing about this. Maybe we have to move these helicopters to private property, somewhere near the volcanos. You need to work on a solution, we are contributing to the problem indirectly. Smith said he would bring it to Director Ford's attention. Roehrig asked Smith to engage the Airport Manager in Hilo in this process and sit down with the Representative and Senator from Hilo along with you and these operators and get started on a solution promptly.

Motion

Approved as submitted (Oi, Gomes) Roehrig Opposed.

ITEM M-1 Consent to Sublease of State Lease No. DOT-A-91-0021, ALPS Aircraft Leasing LLC to Hawaii Pacific Aviation Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-72: 51.

ITEM M-2 Consent to Sublease of State Lease No. DOT-A-91-0021, ALPS Aircraft Leasing LLC to Hawaii Industrial Structures, Inc., Daniel K. Inouye International Airport, Tax Map Key:(1) 1-1-72: 51.

ITEM M-3 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, James Sundin, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.

Ross Smith, DOT, Airports presented items M-1 through M-3.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Roehrig, Gon) unanimous.

ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Bruce Mundy, NOAA, Pacific Islands Fishery Science Center, for Access to State Waters to Conduct Research Activities to Characterize Hawaiian Jack Species.

Maria Carnevale summarized the request and made one spelling correction to the submittal; Meyer in lieu of Mundy.

Board Discussion- None

Public Testimony-None

Motion

Approved as submitted (Gomes, Gon) unanimous.

ITEM C-1 Request for Approval of Safe Harbor Agreement and Incidental Take License for Kamehameha Schools Keauhou and Kīlauea Forest Lands, Hawai'i Island, Hawai'i; Tax Map Key nos. (3) 9-9-001:004, (3) 9-9-001:007 por., (3) 9-9-001:024 por., (3) 9-9-001:034 por., (3) 9-9-001:017, (3) 9-9-001:018, (3) 9-9-001:019, (3) 9-9-001:020, (3) 9-9-001:021, (3) 9-9-001:027, and (3) 9-9-001:035

Dave Smith, Administer, DOFAW, briefed the Board on the agreement. Smith said there are some minor changes to the submittal, although there are minor changes, staff recommendations remain the same. Mililani Browning from Kamehameha Schools was present to answer questions

Board Discussion

Member Gomes asked Smith how do they determine the base line like for example, the Hawaiian Hawk, 18,000 acres? Smith replied, it is for their available habitat. Gomes asked not more than that? Smith said in this case they are surveying what is suitable habitat. Member Gon clarified within the 32,000 acres.

Browning said a large part of Keauhou is primarily open lava. Much of the Io (Hawaiian Hawk) habitat we did not find suitable in the baseline determination. Gomes asked if they were in a certain area within the 32,000 acres and you think the 18,000 would be their territory. **Browning** replied, yes. Gomes asked if they had an account of how many they have seen and documented. **Browning** said yes, we have had extensive studies done by biologists who are knowledgeable on the Hawaiian Hawk, that is how we determined the area that is occupied.

Smith provided a handout that reflected minor changes requested by the applicant. Gon asked if this changes to the staff recommendation. Smith said no, just some minor grammatical and numbers in the submittal.

Gon commented that this a very important biological area and it is amazing to see the amount of study that has been done to provide the background information and the status of the different species here. This kind of work takes years to do and I really appreciate having this information in hand and look forward to working with Kamehameha Schools.

Chair Case said the vast acreage covered by this Safe Harbor Agreement is incredibly important to the recovery and perpetuation of these vital birds, bats, and plant species. We are extremely happy to have worked out this agreement with Kamehameha Schools and in the coming decades look forward many great stories of native species success as a result.

Gomes asked why there is a possibility of termination after 5-years? Smith said, to allow for flexibility for others to come in.

Member Roehrig thanked Browning for the Safe Harbor Project. Roehrig said it is a really good project and it is very exciting. Browning replied that the one of the missions of Kamehameha Schools is to teach good stewardship of land and appreciates the support.

Public Testimony- None

Motion

Approved as submitted (Roehrig, Gon) unanimous.

ITEM C-2 Approve grants from available funds in the Land Conservation Fund, as requested in applications to the Legacy Land Conservation Program, for:

- A. The Trust for Public Land and Ala Kahakai Trail Association, \$2,000,000 for the acquisition of 2,209.307 acres at Kāhilipali nui and Kāhilipali‘iki, Island of Hawai‘i (Waikapuna) Tax Map Key no.: (3) 9-5-007:016; and
- B. Hawaiian Islands Land Trust, \$210,000 for the acquisition of a Conservation easement over 6.12 acres at Ke‘anae, Hana, Island of Maui (Kepler Ke‘anae lo‘I easement) Tax Map Key no.: (2) 1-1-003:041.

Dave Smith, DOFAW gave a brief summary of the kinds of work these organizations do. The Trust for Public Land (Waikapuna, Ka‘u Coast) gave a presentation to show the different kinds of work they do. He acknowledged that there is another group who wants to buy this land. Although it was previously approved by the commission, the Board, and the County.

Board Discussion-None

Public Testimony

Laura Kahakua, State Legacy Land Program and Keone Vox, Ala Kahakai Trail Association provide a slide show of the Ka‘ū lands that are being protected.

Howard Arakaki and Kawika Burgess testified that they are in support of the project.

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM D-1 Grant of Perpetual, Non-Exclusive Easement to the County of Kaua‘i, Department of Water, over Lands Encumbered Under Governor’s Executive Order No. 4448 to the Department of Accounting and General Services; Issuance of Immediate Management and Construction Right-of-Entry for Access and Water Pipeline Purposes, Kalapakī, Līhu‘e, Kaua‘i, Tax Map Key: (4) 3-6-005:001.

Kevin Moore, Land Division presented the staff submittal. He added that he was amending recommendation 3 in the submittal.

Board Discussion-None

Public Testimony-None

Amendment:

The Board amended recommendation 3 of the submittal to insert “Department of Water” after County of Kauai to clarify that the right-of-entry is to be issued to the “County of Kauai, Department of Water.” Additionally, the Board amended the Exemption Notification attached as Exhibit B to the submittal to change the phrase “Term, Non-Exclusive Easement” to “Perpetual, Non-Exclusive Easement” wherever the phrase appears.

Motion

Approved as amended (Oi, Roehrig) unanimous.

Maria Carnevale presented the request for permits for Items F-1 & F-3.

ITEM F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Carl Meyer, Hawai‘i Institute of Marine Biology, University of Hawai‘i, for Access to State Waters to Conduct Research Activities in Quantifying the Movements and the Ecology of Top Predators.

Board Discussion

Member Gon asked if this was a continuation of a long-term study. Carnevale replied yes.

Public Testimony

Dr. Carl Meyer, the long-term project is giving us insights on how the sharks use the natural habitat of Hawaii. One of the really interesting things is that the main Hawaiian Islands are an important habitat for all of Hawaii's Tiger Sharks

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Mr. Nainoa Thompson, Polynesian Voyaging Society, for Access to State Waters to Conduct Sails for Navigators Using Non-Instrumental Navigation Activities.

Board Discussion-None

Public Testimony

Heidi, Polynesian Voyaging Society thanked the Board for allowing access.

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM L-1 Appointment of Castle Adolpho to Serve as a Director of the Moloka'i-Lana'i Soil and water Conservation District

ITEM L-2 Appointment of Doug Beaton to Serve as a Director of the Hāmākua Soil and Water Conservation District.

ITEM L-4 Appointment of Tyler Jones and Nathan Miranda to Serve as a Directors of the Windward O'ahu Soil and Water Conservation District.

ITEM L-5 Appointment of John McHugh to Serve as a Director of the West O'ahu Soil and Water Conservation District.

Alyson Yim, Engineering presented Items L-1, L-2, L-3, and L-5. Noted a grammatical error in the agenda title for L-4; strike the (a)

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Oi, Gomes) unanimous.

Kevin Moore, Land Division will answer any questions regarding Items D-2, D-3, D-7, D-8, D-9, and D-10.

ITEM D-2 Reconsideration of Rent under General Lease No. S-5523 to Volcano Art Center, Lessee, for Education, Artistic, and Community Related Activities Purposes located at Ola‘a, Puna, South Hilo, Hawai‘i, Tax Map Key: (3) 1-9-005:009.

Board Discussion

Member Downing asked how someone with a 1. million + budget want to pay only \$480.00/year? Moore said it is explained in paragraph one of the background information in the submittal. Chair Case commented that they have that much in expenses too. Downing said, when they do projects they charge the people too.

Public Testimony-None

ITEM D-3 Amend Prior Board Action of June 25, 1999, Item D-6, *Set Aside of Government Land for the Issuance of an Executive Order to the Department of Transportation, Airports Division, Island of Lāna‘i, Tax Map Key: (2) 4-9-002: Portion 01.*

The purpose of the amendment is to: (i) update the tax map parcel numbers for the Lāna‘i Airport to Tax Map Keys: (2) 4-9-002:041, 055, 056 and 059 (“Lāna‘i Airport Parcels”), (ii) request the cancellation of three existing Executive Orders previously setting aside lands for Lāna‘i Airport (Executive Order Nos. 1248, 1279 and 2211), (iii) authorize the set-aside of all of the Lāna‘i Airport Parcels to the Department of Transportation–Airports Division (“DOT-Airports”) via a new Executive Order, and (iv) authorize the issuance of management right-of-entry permit to DOT-Airports for a portion of Lāna‘i Airport pending the issuance of a new Executive Order.

Board Discussion-None

Oi, said when he was working in survey, they worked on the Lāna‘i, Airport and the Lāna‘i, find Power Plant access road goes right through the airport. Has anyone addressed that problem? Moore said the DOT has reached a resolution with the Land owner to relocate the road. It is not reflected in the land court map but will be addressed in the EO.

Public Testimony-None

ITEM D-7 Amend Prior Board Action of July 15, 2003, Agenda Item D-12; *Grant of 55-year Term, Non-Exclusive Easement to Cho Gilger for Seawall Purposes; Haleaha, Koolauloa, O‘ahu, Tax Map Key: (1) 5-3-006: seaward of 021.*

The Amendment is to Change the Applicant from Cho Gilger to Phillip T. Spencer and Lisa T. Spencer, Co-Trustees of Phillip T. Spencer Revocable Trust dated September 3, 2009 and Lisa T. Spencer Revocable Trust dated September 3, 2009.

Board Discussion-None

Public Testimony-None

ITEM D-8 Set Aside to Department of Accounting and General Services for Cemetery Purposes, Wai‘anae-Kai, Wai‘anae, O‘ahu, Tax Map Key: (1) 8-5-001:002 and (1) 8-5-013:012.

Board Discussion-None

Public Testimony-None

ITEM D-9 Amend Prior Board Action of October 26, 2007, Item D-8, as amended *Quitclaim of State’s Interests, if any, in the Proposed Kuakini Street Extension Road and Adjacent Lands to the City and County of Honolulu and Hawaii Health Systems Corporation; Acceptance of Quitclaim Deed from the City and County of Honolulu, and Set Aside to Hawaii Public Housing Authority for Stonewall Encroachment, Kapalama, Honolulu, O‘ahu; TMK (1) 1-6-9:1 and Proposed Kuakini Street Extension Road*

The Amendments include (1) Stipulating to Restrictive Covenants for At-Grade Parking and No Improvements Except Security Fencing for the Parcel to be Conveyed to Hawaii Health Systems Corporation, (2) Issuance of an Immediate Right-of-Entry Permit to Hawaii Health Systems Corporation, (3) Rescinding the Approvals Regarding Any Quitclaims Deed To and From the City and County of Honolulu over Portions of Road, and (4) Rescinding the Approval for Setting Aside to Hawaii Public Housing Authority.

Board Discussion-None

Public Testimony-None

ITEM D-10 Consent to Assignment of Fifty Percent (50%) Interest in Ficker & Hunt, a Hawaii Partnership, also known as Ficker & Hunt Partnership, Lessee under General Lease No. S-4649, from Albert Ficker, Assignor, to Chester Hunt, Assignee; Acknowledgment that Lessee under General Lease No. S-4649 Will Thereby Become Chester Hunt, as Tenant in Severalty; Kekaha, Waimea, Kaua‘i, Tax Map Key: (4) 1-3-008:003.

Board Discussion-None

Public Testimony-None

Motion

Approved Items D-2, D-3, D-7, D-8, D-9, and D-10 as submitted (Roehrig, Gomes) unanimous.

ITEM D-5 Amend Grant of Non-Exclusive Easement No. S-5986 for Seawall and Steps Purposes by Increasing Easement Area; R&I Hawaii Inc., Grantee; Kāhala, Honolulu, O‘ahu; Tax Map Key: (1) 3-5-001: seaward of 004.

Board Discussion

Member Roehrig expressed concern about the State requiring landowners to pay for easements over lands that were once within their record boundaries, and questioned what the State’s basis was for doing so. Staff mentioned recent attempts to pass legislation that would allow the Board to charge less than fair market value in such situations.

There was a robust discussion regarding shoreline certification. Roehrig requested staff to obtain a written opinion from the Department of the Attorney General with reasonable dispatch on whether the State’s practice is lawful. Additionally, Member Downing alerted staff to possible conservation district violations occurring at the subject property. He showed pictures of the property and documentation. Chair Case advised that she had forwarded Downing’s concerns to the Office of Conservation and Coastal Lands.

Public Testimony-None

Motion

Approved as submitted (Downing, Gomes) unanimous.

ITEM J-2 Request for Consent to Sublease Harbor Lease No. H-83-2, Kona Marine Holdings LLC., A Delaware Limited Liability Company, Lessee, to The Charter Desk, LLC. A Hawaii Limited Liability Company, Honokohau Small Boat Harbor, Kailua-Kona, Hawai‘i, Tax Map Key No.: (3) 7-4-008:040 (Portion).

Dana Yoshimura, DOBOR, presented the staff submittal.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Roehrig, Gomes) unanimous.

Motion to adjourn (Roehrig, Gomes) unanimous.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 3:10 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:

Suzanne D. Case
Chairperson
Department of Land & Natural Resources