

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

DATE: FRIDAY, AUGUST 11, 2017
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chair Case called the meeting to order at 9:31 a.m. and announced that **Item E-8** will be deferred. She preceded to read the contested case advisory.

MEMBERS

Suzanne Chair Case
Thomas Oi
Stanley Roehrig
Sam "Ohu" Gon

James Gomes
Chris Yuen
Keone Downing

STAFF

Russell Tsuji/LAND
Kevin Moore/LAND
Marvin Miyasaka/LAND
Mike Auerback-DOT-LAND

Alton Miyasaka/DAR
Richard Howard/LAND
Maria Carnavaele/DAR

OTHER

David Day, Deputy Attorney General
Ross Smith-DOT/M1-6
Gordon Furutani/D7
Robert Kamphaus/F4
Tina Prettyman/J1
Kanoë Morishige/F2, F3
Andre Kuegler/F6
Casey Revino/M1
Malama Minn/D4
Patti Miyashiro/M3

James Leonard/K1
Wendy Oda/D9
Randolph Coven/J2
Nathan Eagle/F7
Jacob Asher/F5
Kelly Revino/M1
George Noguchi/D2
Kelly Revino/M1
Bill Morrison/D8
Owen Nishioka/D4

Item A-1 Request approval of Meeting Minutes from April 13, 2017

Board Discussion

Minor correction from Member Yuen. Member Roehrig provided changes. **Page 6: substantive change vs substance of change.** Board Secretary Ferreira noted that a new copy has been passed out prior to the meeting with Member Yuen's changes which are highlighted in yellow. Member Yuen: **Page 5: Agency is ATHIS, rather than ATHIUS.** Member Roehrig: **Page 7: Ho'okupu (need to add 'okina).**

Public Testimony- None

Motion

Approved as amended (Yuen, Gomes). Unanimous.

ITEM D-3 Set-Aside to the Water Board of the County of Hawaii for the Waikoloa Reservoir #1 and Grant of Perpetual Non-exclusive Easement to the Water Board of the County of Hawaii for Access and Appurtenant Waterline Purposes; Issuance of the County of Hawai'i, Waimea, South Kohala, Hawai'i; Tax Map Keys: (3) 6-5-001: 020 portion and 047.

Russell Tsuji, Land Division Administrator, presented staff report. Noted the Hawai'i County Representative is here to answer questions.

Board Discussion

Member Yuen ask about the current legal status of the reservoir.

Owen Nishioka said that the reservoir is currently empty. Yuen clarified that he was interested in the legal status of the reservoir. Nishioka answered that the reservoir was a State project but he is unclear how it was turned over to the County. However, DWS has been maintaining the well for all of these years. Tsuji said that the situation was not unusual. Yuen wondered why this was not taken care of years ago. Member Roehrig asked about a set aside. Tsuji, the Executive Order will be the method for the set aside. Chair Case noted that it is Staff Recommendation Number 2.

Public Testimony -None

Motion

Approved as submitted (Roehrig, Yuen). Unanimous.

Ross Smith from HDOT-Airports Division presented the Staff report on Items M-1 through M-6, submittals.

ITEM M-1 Issuance of a Revocable Permit to KCLC Corporation for Office and Warehouse Space to Operate a Stainless-Steel Equipment Refurbishing Business, 3219 Ualena Street, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-14:001: (Portion).

Board Discussion

Member Downing asked why M-1 was originally withdrawn. Chair Case noted that the item was withdrawn to amend the title which was inaccurate.

Downing then asked how rent amounts were arrived at and are they about the same as other places on Ualena St? Smith answered "yes." Downing asked why all of the leases are month to month. Smith answered that all Airport leases except aeronautical are month to month to ensure that if there is need for aeronautical space it can become available within 30-days.

There was an extensive discussion about whether 1) the public has adequate access to information about properties available on Ualena Street and 2) whether the costs are set fairly, 3) loss on investment if a tenant has to make infrastructure improvements and is then asked to leave before getting a return on their investment.

Chair Case asked how does a property like this go to the Airport. Smith answered that this property was purchased years ago for Airport uses. At this point in time, the Airport is [finally] expanding into this area. For example, it may become a bus maintenance facility to support the new car rental center. The Master plan also looks at a closure of Aolele St, between Ualena and the Airport.

Smith, provided some background on Item M-1. There were some soil contamination and staff wants to grant the Lessee access to do the soil contamination treatment which would be quicker than the State.

Regarding Public Access

Smith noted that Airport properties available for lease under a Revocable Permit (RP) are not published. Usually the division waits for someone to contact them and then they get information from the person contacting them to see if the business is compatible and where the best location may be. *Smith-DOT agreed that Airports can put the properties available for lease through an RP on their website.* RPs are normally for one year, and can be cancelled with 30 days' notice.

In the future, the RPs will be brought before Board for renewals to match what is done by the Land Division. Smith raised the question as to whether they should bring their aviation RPs to the Board? He noted that they had once brought all of their RPs before the Board for approval but the process was interrupted. *Chair Case noted that they will follow up with the AG.*

Chair Case asked if RP holders are allowed to sublease? The answer is "no," but sometimes people do it anyway. It is considered a breach of contract and they can be evicted.

Regarding fair rents:

Smith noted rents are set by a 3rd party appraisal. Ualena is appraised based on appraisals or valuation of nearby properties. The Airports are ranked, and then rents are discounted from the cost to rent in the primary Airport. There is a published schedule of rents for all properties.

Smith, DOT's Staff manages the property, so land management is not handled by a third party. He

also noted that the schedule of rents will be updated in October.

Member Downing- would like to see how this rent compares to other Ualena leases.

Regarding loss on property improvement investments

Smith said that most tenants do not need to make infrastructure improvements and in general, tenants stay for a long time, and if they need to move out, there is a long lead time because the Airport goes through a planning process before any construction.

Chair Case asked about Airport policy on land disposition for Airport purposes vs. Non-Airport purposes. Smith noted that all leases are for Airport uses. However, for non-aeronautical uses: a) Primary leases are for actual Airport use, b) secondary leases are for aeronautical support c) anything after that can be used for things that generate revenue for the Airport. This is in authorizing legislation.

Public Testimony

Kelly and Casey Revino came before the Board. Casey Revino, daughter of Kelly Revino owns the business. Member Roehrig asked if there are other employees? Casey Revino said there is one long-time employee. All others are family members.

Chair Case asked several questions related to the Board's concerns above. Casey Revino responded that the property is move-in ready and therefore, they would not lose a big investment in equipment if they had to move out. They found out about the place by driving by and calling about the space. They know the other tenant in another part of the building. Casey Revino noted that they have been looking for space for a while. Amy at Airport division is the person Casey Revino spoke to.

Member Downing asked if the rent charge is the same as others in area? The answer was that they did not know, however, they are comfortable with the charge.

Chair Case clarified that there are two elements of fairness: 1) general public access to the opportunity, and 2) pricing. She noted that there seems to be a fair pricing mechanism. Smith-DOT noted that they have in the past posted signs on Ualena St, and that it was not the most efficient way to solicit permittees. They now publish a pricing schedule.

Follow up on M-1:

- *Airports to put the properties available for lease through an RP on their website*
- *Follow up with AG on Aviation RPs.*
- *Provide rent comparisons with other Ualena leases*

ITEM M-2 Issuance of a Revocable Permit for an Office Space for Administration, Briefing, Training and Breakroom for United States of America, General Services Administration for and on Behalf of U.S. Department of Homeland Security, Moloka'i Airport, Tax Map Key: (2) 5-2-04: Portion of 8.

ITEM M-3 Issuance of a Revocable Permit for Additional Storage Space for United States of America, General Services Administration for and on Behalf of U.S. Department of Homeland Security, Moloka'i Airport, Tax Map Key: (2) 5-2-04: Portion of 8.

Board Discussion-None

Public Testimony-None

ITEM M-4 Issuance of a Revocable Permit for Land to Accommodate the Expansion of a Flight School and Tour Office Operation, Hawaii Pacific Aviation, Inc., Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.

Board Discussion

Member Roehrig asked if the Flight School will compete with the Hilo Flight School? Smith noted that there is already a flight school in Kona, and this is an expansion. Roehrig is concerned that Hilo is treated fairly. Will this cause a deferral or cancellation of a Flight School at Hilo Airport? Smith does not know about the flight school in Hilo, as it is being started by UH Hilo.

Smith noted that anyone who has a pilot's license of a certain level can give flight lessons. Smith noted that the UH Flight School is for people who may want to be an airline pilot, which has more requirements than just flying a small airplane or a helicopter.

Chair Case noted that we are supposed to foster competition. Roehrig wondered if the market can bear two schools? Member Gomes noted that this is an expansion, so there must be a need for it out of Kona. Smith said that they have approximately 100 students. Member Yuen clarified that this is strictly a helicopter flight school that is already in operation. He questioned why it is an RP rather than a lease?

Yuen and Gomes did not think item should be deferred. However, Smith should get informed about the Hilo flight school.

Public Testimony-None

ITEM M-5 Issuance of a Revocable Permit for Space in a Cargo Building and Adjacent Ramp Space for an Air Cargo Operation, Aeko Kula, Inc., Līhu'e Airport, Tax Map Key: (4) 3-5-001: 008.

Board Discussion-None

Public Testimony- None

ITEM M-6 Issuance of a Revocable Permit for Land for Equipment Parking Garden Isle Disposal, Inc., Līhu'e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.

Board Discussion

Member Oi question the relationship between garbage disposal and Airports. He asked if this Item is related to Airports because the Airport collects funds for operations through the lease. Smith said yes, and noted that the Company will be monitored to insure they do not exceed their space.

Oi asked why does DHHL not receive funds, since these are Trust Lands? Smith answered that Federal Law requires that all revenue collected from Airport lands must go to Airports, regardless of State classification. Chair Case asked if Harbors operates under the same restrictions. Answer is “no.”

Oi questioned whether this area falls under the Federal prohibition against “congregation of humans or wildlife?” Smith said people are not congregating in that area.

Smith provided some additional examples of how this prohibition applies in different areas. He also noted that there is a difference between fixed wing and non-fixed wing aircraft. Fixed wing aircraft need specific approaches to the Airport as opposed the flexibility that helicopters have.

Public Testimony- None

Motion

Approve Items M-1 through M-6 as submitted (Roehrig, Gomes) unanimous.

11:00 am: break

11:15 am: back in session

ITEM D-2 Request for Consent to Mortgage Between Alternative Energy Marketing, Inc., and First Hawaiian Bank, Mortgagee, and Extension of Lease Term Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3875 Alternative Energy Marketing, Inc., Lessee; Amendment of Lease to Include Updated Provisions Relating to Assignments, Subleasing and Phase I Environmental Site Assessment Requirement under General Lease No. S-3875, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-050:093.

Russell Tsuji presented the Staff Submittal. Asked for an amendment on the HRS 343 exemption. Noted representative is here to answer questions.

Board Discussion

Member Roehrig noted Mr. Nogouchi’s opposition to the change in lease terms which requires him to come before the Board whenever he wants to sublease.

George Noguchi approached. He noted that the lease extension is based on State law and the language of the law only addresses extending a lease under certain conditions, but does not address changing the lease terms. Therefore, he believes that the law does not allow for a change in the lease terms. Mr. Nogouchi argued that he has been subleasing for ten years and that there have been no problems. To have to come before the Board for every sublease, many of which are short term dispositions would be a hardship on is small business.

Tsuji noted that Land Division is not coming before the Board for amendments to the lease, but only for the extension of the lease. The amendments are part of the new form lease. Chair Case asked if Land Division can write a provision that allows for short term dispositions? Tsuji said that auction leases do not allow amendments, but the Board can make the allowance in this Board meeting.

Mr. Nogouchi does not believe that his lease terms should be changed at all. He also argued that the Land Board process takes too long.

Roehrig asked what law allowed for a change in the lease terms. AG noted 171-36 (b) provides for the extension of lease terms. AG read pertinent passages. He believes that the law cited allows for changes in the lease terms.

Chair Case noted that she is reluctant to do something that is not consistent with other leases (i.e.—taking out the sublease language). However, she would be willing to put in a condition defining allowable short-term dispositions.

Yuen noted that there are portions of the property that have long-term dispositions. Chair Case suggested deferring the item to review the subleases and bring them to the Board for approval. Yuen noted that the subleases are allowed by his current lease. However, he questioned the purposed for bringing subleases before the Board. Noted that this is a big change based on a ten-year extension. Tsuji noted that they are trying to be consistent across the Board. Chair Case clarified that the Board has already discussed the question of what kind of business is leasing the land. Is it a business of subleasing space?

Mr. Nogouchi had to leave. He noted that he does not believe the law allows for changes to his lease. Tsuji noted that the general standard lease terms have been approved by both the AG and Board. Chair Case suggested that the Board go into executive session over lunch. Chair Case moved to go into executive session over lunch/Yuen. Unanimous.

Maria Carnavale, DAR, presented Items F-2, F-3, F-5, F-6 AND F-7 submittals.

ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Christopher Bird, Texas A&M University – Corpus Christi, and Dr. Robert Toonen, Hawai‘i Institute of Marine Biology, University of Hawai‘i, for Access to State Waters to Conduct Intertidal Biodiversity Survey Activities.

ITEM F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Kanoe’ulalani Morishige, Nā Maka o Papahānaumokuākea and University of Hawai‘i, for Access to State Waters to use Traditional Ecological Knowledge to Examine Intertidal Ecosystems Activities.

Carnavale presented a video on the project. Noted the applicants are available for questions. There was a discussion of the overall project, both in the main Hawaiian Islands and in Papahānaumokuākea.

Board Discussion

Member Oi asked about an area in Haena, kapu for opihi. Are you going to be able to assist the different islands with your expertise and the reproduction of opihi? Kanoë Morishige, UH Manoa, said they have been working with the Haena community to help them implement their rapid assessment in that area. We have been training communities on Hawaii island involving high school students. We run annual camps to try to understand their reproductive seasonality of opihi as well as the purple urchin. This is on going for people to see what is sustainable.

Member Gomes noted that these permits are reviewed annually. Would like to see a presentation on what has happened over the years, similar to the video that was shown, as well as a graphic presentation on what was learned. Asked that future submittals include some information about what has been learned. Both Member Oi and Chair Case noted that the Board has asked for this information in the past. *Carnavale said that they could do that in the fall.*

Roehrig noted that there is a tension between Hawaiian gathering rights and the amount of opihi that can be taken. How can this cycle be broken so that we have opihi in the long term? Morishige noted that the non-profit that she belongs to (Na Maka o Papahānaumokuākea) holds camps to educate families about over-harvesting of resources. *Roehrig asked that Morishige present to the Keaukaha and Panaewa associations.*

Gomes noted that all of the islands have declining resources and concurrent loss of gathering rights. Morishige said they are trying to have smaller workshops across all islands.

Follow up items:

- *Provide information on how many boats are going to Papahānaumokuākea.*
- *In the fall, do a presentation on what has been learned over the years by scientists who are accessing Papahānaumokuākea.*
- *Scientists to a presentation to the Keaukaha and Panaewa Hawaiian Homestead Associations about preserving declining ocean resources.*

Public Testimony- None

Amendment:

That the Board declare that the actions which are anticipated to be undertaken under this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Motion

Approve Items F-2 and F-3 as amended (Gomes, Oi) unanimous.

ITEM F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Kurt Dreflak, National Oceanic and Atmospheric Administration (NOAA) Ship Ruben (Lasker), for Access to State Waters to Conduct Shipboard Support Activities.

Board Discussion-None

Public Testimony-None

Amendment:

That the Board declare that the actions which are anticipated to be undertaken under this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Motion

Approve as amended (Gomes, Oi) unanimous.

ITEM F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Michelle Heupel, Australian Institute of Marine Science, for Access to State Waters to Conduct Research Activities to Characterize Elasmobranch Species Richness

Board Discussion-None

Public Testimony-None

Amendment:

That the Board declare that the actions which are anticipated to be undertaken under this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Motion

Approve as amended (Roehrig, Gomes) unanimous.

ITEM F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Anke Kuegler, University of Hawai‘i, for Access to State Waters to Characterize Humpback Whale Use and Population Status.

Board Discussion-None

Public Testimony-None

Amendment:

That the Board declare that the actions which are anticipated to be undertaken under this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Motion

Approve as amended (Gomes, Oi) unanimous.

ITEM F-7 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Mr. Nathan Eagle, Honolulu Civil Beat, for Access to State Waters to Provide Online Content Related to PMNM.

Carnavale presented the staff recommendation

Board Discussion

Member Yuen noted that media access to Papahānaumokuākea should not depend on whether or not the article will be positive. There is processes to follow and as long as its followed the slant of the article should not matter for the approval. Yuen was concerned that the submittal noted that the purpose was to highlight positive accomplishments. Also clarified that DLNR does not get a preview of the story (in reference to a clause in submittal).

Carnavale clarified that the clause was put in after a discussion with member Member Downing to ensure the research is shared. She also noted that photos can be used for management purposes. Yuen noted that he had some first amendment concerns as to how this applied to news coverage. However, he does not believe this is the intent of the clauses. Carnavale concurred.

Public Testimony-None

Motion

Approved as submitted (Oi, Gomes) unanimous.

ITEM K-1 Conservation District Use Application (CDUA) HA-3793 to Construct a Single-Family Residence and Associated Improvements by William Meurer Located at ‘Opihikao, Puna, Island of Hawai‘i, Tax Map Key: (3) 1-3-004:008.

Kimberly (Tiger) Mills, OCCL, presented the staff report.

Board Discussion

Member Yuen asked if there or is there is not a trail either on or adjacent to the property? Also, how to address public access on the property. He noted that there is a 1929 map with trail leading from mauka to the sea, but is not sure where the property is in relation to the trail. He noted that the 1929 map is not a part of the submittal. The EIS shows a mauka-makai trail on Kalapana side of property. Also shows a canoe landing on Kalapana side of property. Violet Makuakane said in the Cultural Impact Assessment (CIA) there was a trail to the canoe landing, but she located it on the northeast (Pohoiki) side of the property near the stone walls. Canoe landing no longer exists

Yuen said, he is not sure he agrees with Na Ala Hele's conclusion that because they cannot find a map earlier than 1929, they cannot say this is a government trail. He believes if the trail was to the canoe landing it is likely to predate the 1890 cutoff date even if there is no map earlier than 1929.

Noted that the public accesses tidepools by going through other public properties. Frontage along property does not seem to be as popular. Concerned that if informal access is terminated there may need to be a public access put in on this property. Thinks that this needs to be discussed with the landowner because he is concerned that access issues need to be identified and clarified prior to the approval of this submittal.

Member Roehrig noted that some of the conditions need to run with the land in perpetuity. I.e. – numbers 22, 23, 25, 27, 29. Member Yuen noted that condition 5 requires that the permit be recorded. After that, subsequent landowners are tied to the conditions of the permit. Tiger confirmed that the permit is recorded and the permit runs with the land (not with the owner).

Mr. James Leonard (agent) and Mr. William Meurer were called before the Board. Yuen asked what they thought about the trail to the canoe landing. Leonard noted that Ms. Makuakane describes the trail to the canoe landing in various ways throughout her testimony in the CIA. It is not clear from her statements where the canoe landing trail is, or if its connected to the mauka-makai trail. Leonard noted that the canoe landing was used as recently as modern times when people would back their trucks up to the canoe landing. There was just enough room to do that.

Meurer presented a flood map that showed where it was more likely for canoes to land. Roehrig clarified that Meurer is suggesting that the canoe landing was on the flat land on Meurer property and beyond. Yuen asked if the owners would be okay with the following two conditions:

- 1. State is not waiving any claim that there might be a trail on the property by granting the permit.*
- 2. State could bring back permit for an amendment that could impose a public pedestrian access across southwest boundary of property.*

Leonard noted that the current public access allows for vehicular access. It is a level area that allows for cars to park. Such access is not available on Meurer's property.

Chair Case expressed concern that the second condition is problematic. Seems to go beyond a normal permit requirement and is a large condition to attach at the last minute.

Meurer explained that there is a part of his property that they have maintained as walkway. However, people are pulling off the road and going down to the tidepools (Pohoiki Kai) across a different private property. (perhaps we need a map to be included with these minutes). There was a discussion of where a trail was while looking at a map.

Yuen would be okay with this submittal if condition 1 is included. Roehrig suggested there be a security person on the road while the property is under construction. Yuen suggested an amendment: By approving this permit the State does not waive any claim that there may be a trail across the property. Meurer acknowledged the condition and is okay with it.

Public Testimony- None

Amendment:

The State does not waive any claim that there may be a trail across the property.

Motion

Approved as amended (Yuen, Roehrig) unanimous.

ITEM D-7 Grant of Two (2) Perpetual, Non-Exclusive Easements to Hawaiian Electric Company, Inc. and Oceanic Time Warner Cable LLC for Utility Purposes, Issuance of Right-of-Entry Permit; Moanalua, Honolulu, O‘ahu, Tax Map Key: (1) 1-1-003: portions of 003, 205, and 212, and (1) 1-2-021: portions of 035, 036, and 037, and portion of Kalihi Stream.

Russell Tsuji, Land Division, presented the staff submittal

Board Discussion

Member Roehrig asked to whom the cost is passed? A HECO rep said HECO will pass the \$500 cost to Mr. Kurisu, who is the developer.

Public Testimony-None

Motion

Approved as submitted (Roehrig, Oi) unanimous.

ITEM D-9 Rescind Prior Board Actions of April 15, 1966, Item F-41, Request for Immediate Right-of-Entry and Related Perpetual Non-Exclusive Easements for Pole Lines and for Petition to Land Court for Designation of Easements, Hālawā, O‘ahu; and June 16, 1967, Item F-27, Request to Amend Previous Board Action Covering Application of Hawaiian Electric Company, Inc., Island of O‘ahu.

Russell Tsuji presented the staff submittal.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Roehrig, Oi) unanimous.

1:19 pm Lunch break

2:15 pm. Back in Session

Item D-2 Follow up with clarification after Executive Session

Member Yuen made a motion to approve with an amendment. There is a clause in there to update the lease to the most current form. Amend the section regarding provisions for subleasing. This individual had an unusual lease that permitted engaging in subletting at the very outset of the lease and has made that is business, I do not think it is appropriate in the context of a lease extension which he is otherwise entitled by law by virtue of making these investments to work what would be a basic change to the nature of his business by prohibiting that without Board consent.

Public Testimony-None

Amendment:

The Board amended the recommendation section by amending recommendation no. 3 by deleting or disapproving any update to the existing subleasing provision. The Board also added a new recommendation no. 4 to read:

4. Declare that, after considering the potential effects of the proposed extension of lease in accordance with Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and therefore exempt from preparation of an environmental assessment.

Motion

Approved as amended (Yuen, Roehrig) unanimous.

ITEM J-1 Authorize Public Auction of a Lease for a Boat/Trailer Storage Facility and Parking Purposes. Situated at Honokōhau Small Boat Harbor, North Kona, Island of Hawai'i, Hawai'i, Tax Map Key: (3) 7-4- 008:003 (Portion).

Dana Yoshimura, DOBOR, presented the staff submittal.

Board Discussion

Member Oi noted that when you go out for public auction you have a copy of the lease document you have to have a map. Who is going to provide the map? Yoshimura said they will do some preliminary planning hire a consultant and they will prepare a preliminary subdivision map that needs to be approved by DAG's survey.

Member Roehrig said in a letter from Kona Marine, the first paragraph states that when GKM purchased the assets from Gentry properties, the Boat Park was included, is that statement correct? Yoshimura replied he does not know what the transaction entailed. The transfer of the lease from Gentry to GKM was approved by the Board in 2003. Roehrig said in the letter, they stated that they were assured by the DLNR department head at the time, that we would be able to get a long-term lease of the vessel storage parking area known as the Boat Park. Is there any kind of memo in the file from the department head that says they would be allowed to get a long-term lease for the vessel parking area? Yoshimura said, personally he has not seen a document that makes that commitment. Roehrig asked if Yoshimura read the file. He said yes.

Yoshimura said, it was the intent and hoped to offer a long-term disposition. But, the department head is not authorized to make that commitment in writing, it has to come from the Board. We consulted with the AG concerning the possibility to do so. The AG's office advised that a direct negotiation was not appropriate in this particular case. Roehrig said, the next paragraph in the letter says GKM, Inc. continued to develop the business at its own expense. They built the Boat Park because of public demand for storage of larger boats on trailers. After operating the stack storage it became clear the boaters wanted to store and launch larger vessels. It goes on to describe that. Finally, they say that they have over \$300,000, in receivables that they will not be able to collect if GKM, Inc. loses control of the boat park. Based on what I see here, someone from DOBOR gave GKM assurances of some nature to GKM and in reliance of that, they have expanded the business.

Public Testimony

Tina Prettyman, General Manager, GKM Inc. in opposition of a public auction for the lease and the boat trailer park. GKM has been diligent in paying their bills and being good tenants. We have been there a long time, we developed the business. We purchased the assets from Gentry Properties, including the boat park. The boat park was raw land and put out to bid on a 5-year lease in 1994. We asked multiple times for an extension of that existing lease, but were on able to get a RP. The boat park was never intended to compete with GKM, it was meant to work in conjunction with the haul out facility. There are numerous uses, if it was to go forward it would become a competing facility.

There are over 250 boats in the harbor and only 50% use the facility for haul-out. That is not enough to support the facility. In 2012, we were able to obtain an additional 3-acres for more storage on an RP. We invested time and resources in an EA, botany, archeology, and boundary survey, in trying to get through the State and County permitting. In the end, we were only able to utilize just under an acre as it became unreasonable to spend more time and resources on a 30-day permit.

Prettyman went on to say that GKM, they don't know if any other operator can operate and pay the rents that they do. If DOBOR thinks they can operate on 50%, they should take it back and operate it. Maybe we can avoid a "Honeybee" type situation.

The submittal as written includes improvements not owned by DLNR-DOBOR, and upon termination or revocation of our RP. Chair Case asked what types of improvements? Prettyman replied, fences, gates, poles, gravel. Chair Case said that they are fixtures that are fixed to the land. Prettyman referred to the RP, #5 in the permit. It says the permittee is required to remove any improvement in item #6. Roehrig asked how much is the value of the improvements. Prettyman said, she did not have that information in front of her. Roehrig asked for a reasonable estimate, Prettyman said, close to half-a-million dollars over the course of 15-years, just on the boat park. Chair Case asked if it was paved? Prettyman said we brought in gravel to level it so trailers do not pop their tires and other safety concerns.

Member Gomes asked brought in the gravel. Prettyman said they hired a contractor. Gomes then asked, could bid on this when it comes out to public auction? Prettyman replied, we could. But not the way it is written we probably would not. We would not be able to operate it, with only

50% of our gross revenue. We could not pay for security, administrative costs of handling the boats going in and out, it is too great to bear. Roehrig asked what would be reasonable? Prettyman said 15%. Chair Case asked if that what an auction does to set the market price? Prettyman asked if there was an appraisal that the process went through? I noticed in January, they submitted an appraisal but our RP was not included, there are 4-others in the area that were included. There is no idea what fair market value would be. I called the appraiser to find out why we were left off, especially since this is going out to bid.

Member Yuen, said your security, administrative costs are high and would include 50% of gross revenues. Then you suggested 15%. You are currently paying \$7,300/RP, if that represents 15% of your gross revenues, that would imply your gross revenues to be about \$50,000/month. Prettyman said it is a little less than that. You have a site that is fenced/graveled, my understanding is that there is no one at the gate full-time. Prettyman said, the gate requires a lot of maintenance and electricity, we have a security guard at night and 2 people who monitor the boat park, besides the other things they do in between. There are people who do maintenance in the park, clearing the weeds, repairing the poles that people hit. Yuen said if somebody continued this business and grossed close to \$50,000/month, bid the upset 50% and let us say it turns out to be more than the appraised fair market value, that would leave \$25,000/month. Would you say your operating expenses were more than \$25,000/month? Prettyman said it is very significant administratively. Yuen said you have \$300,000 in receivables that you said you would not be able to collect if you could not continue to have tenure on the boat facility. Prettyman felt that once the public learns that it could potentially go out to bid and GKM might not win the bid, their mind-set might be why pay?

Chair Case said the term receivable means they owe it now, since it is an RP that means it is for rent already accrued. Prettyman said, accrued on some of the stuff that has be there for a little bit, that people have not paid on. We have judgements against boats but that does not remove the boat from our facility. We have legal costs associated as well trying to remove the boat from our facility. Yuen, asked about liens on the boats. Prettyman said they used to be able to do it through DLNR, but they no longer do that.

Roehrig asked what kind of assurances were you given about getting this lease. Prettyman said it was explained to her that there were several conversations between Gary Lambert and Mason Young initially who was an interim department head at the time. The intention was always to extend the original lease as we had put investment in. Prettyman said she could not elaborate more because she was not there. If Gary Lambert was here, I am sure he could recant the conversations.

Yuen said the lease ran from 1994 to 1998, it was issued under a public auction. I don't believe there was any law at the time that said you could not extend the lease. To be re-issued as a lease it would have to be put out to public auction unless it qualified as a negotiated direct lease. The AG's office looked at it and said we do not see how this negotiated lease furthers competition. Listening to the testimony I do not see that it reinforces the idea of why giving a negotiated lease to an existing business that has an RP, how that would further competition in the area. We have a choice of a RP or a lease. We do not want to keep it on a RP forever.

Roehrig said his concern is that if DLNR staff, whoever it was, rightly or wrongly, gave assurances to GKM, about the future of their leasehold relationship with us and their reliance on that they did certain things and spent a certain amount of money. If we went to court, the issue raised before the Judge as an equitable remedy whether or not the Leasee is entitled to equitable damages or rescission, or reformation of the relationship as a consequence of those assurances. I am not sure whether or not GKM's statements made by Prettyman justifiable for the expenditures that they made after January 2003 till today.

Yuen said GKM has been under an RP for 14-years and felt it should be enough time to recover any investments made. People say things and hear things. The most a director under the law could do is they said will bring this to the Board for a direct lease. The director cannot say you are going to get a direct lease. Apparently, that was the intention at the time. But they have been advised not to. Prettyman said in 2012, they were offered 3-acres, we were extended on RP to facilitate the needs to accommodate more vessels on trailers. We had to spend a significant amount of resources. We went from 6-acres to 9-acres.

Roehrig asked Yoshimura to confirm it was 9-acres that are going out to public acres. Yoshimura said yes. Roehrig asked Prettyman if she was ever present when Mr. Underwood or anybody else, specifically said we are going to bring a negotiated lease to the Board? She replied she never heard that. Roehrig then asked what reasonable basis do you have to believe you were going to get the lease? Prettyman said other conversations that Gary had prior with department heads. Roehrig asked did Gary tell that to you? She said yes. Roehrig asked if anyone from DOBOR or Harbors tell you that? She replied, no.

Member Oi, regarding the old lease did it stipulate who would get all the improvements? Prettyman said she would have to go back and look. I just looked at the RP. Oi asked Yoshimura did he know? He said he did not know that lease specifically. Oi said, when he was at land division, all improvements belonged to the State. How was the lease written? Yoshimura said he would have to go back and look

Roehrig asked under the RP, you are required to remove all the improvements, how much is that going to cost who is going to pay for it? Yuen said, the State can waive that cost to the extent the State wants it. There is this law regarding fixtures, the general rule, anything affixed to the ground the tenant does not have the right to remove. Prettyman said in the RP states that they have to remove it. It needs to be reviewed.

Oi said under a RP the tenant can remove improvements, under a lease it stays with the State.

Yuen noted that the boat park was not reappraised because DOBOR had other plans for it and continued it under an RP. GKM is paying \$7,300/month, the per foot lease rent is 40% of what you are paying under GKM lease re-opening in 2016. If you applied the same to the boat park facility it would be \$18,000/month. Prettyman said the uses are different. Yuen said RP's in the area are paying way more.

Yuen said this is not in keeping with our policy of converting RP's to leases for fair access issue and fair market value issue. GKM can bid on the auction if nobody bids on it, DOBOR will bring it back to the Board, or they can overbid.

Roehrig commented that Prettyman should get a lawyer to assist in this process.

Yuen made a motion to approve staff recommendation with two amendments. First, that DLNR-DOBOR cooperate with the holder of the current RP to the extent permitted by law for the collection of rent in the event they are not the successful party obtaining the long-term lease. By providing information that can be released to them. The second, relates to the improvements per the RP; any major improvements including but not limited to buildings and fences erected on the premises by the permittee, shall remain the property of permittee and permittee shall have the right prior to the termination or revocation of this permit or within an additional period the Board's in its discretion may allow removal of the improvements from the premises, provided the permittee fails to remove the improvements, the Board may elect to retain the improvements.

Chair Case clarified that to the extent the fence was there including repairs to it, the fence that was constructed under the terms lease belongs to the State. To the extent under the RP, the additional fence you have a right to retain it up the term of the RP.

Mediation between Member Downing and Member Roehrig. Chair Case suggested to wait until there is a dispute about ownership to require mitigation, because the submittal is to put the property out to public auction.

Chair Case called the motion and noted that the suggestion to go to mediation is a good one, at the right time. Member Yuen requested that an amendment be added that requires DOBOR and GKM meet face to face to discuss how to treat them fairly if they do not win the lease at public auction.

Member Oi opposed. All else voted Aye. Member Oi noted that GKM has some time to communicate their position to DOBOR if they lose the lease.

Amendment:

DOBOR and GKM meet face to face to discuss how to treat them fairly if they do not win the lease at public auction.

Motion

Approved as amended (Chair Case, Gomes) Roehrig opposed. All others voted Aye.

Item J-2 Repair of Existing Loading Platform Structure; Reimburse Applicant for Costs to Repair Existing Loading Platform Structure; And Declare Project Exempt from Requirements of Chapter 343, HRS, And Title 11, Chapter 200, Hawaii Administrative Rules for Maka Kai Charters, Inc., Slip No. 99, Mā'alaea Small Boat Harbor, Island of Maui, Hawai'i.

Ed Underwood, DOBOR, presented the staff submittal.

Board Discussion

Member Gomes asked who made the moorings and how long ago? Gomes noted that the pipe is corroded and he had noted that to DOBOR. In response DOBOR had put a sleeve around it, however Gomes still questions the integrity of the concrete within the sleeves. He also asked about cost of repairs. Underwood said the quote was \$35,000. Gomes believes the quote is too low, and he believes that the Coons should be required to get a performance bond so the state is not required to pay if they cannot finish the job.

Member Yuen asked if Maka Kai Charters has to pay prevailing wage? AG asked if he could have time to look up response. Yuen noted that there are Broad laws regarding prevailing wage if construction is done on State property. In addition, there may be laws requiring using licensed contractors, bonding and other requirements. This may drive up cost of project.

Member Roehrig raised the issue of whether DOBOR can use non-union labor to fix the pier, even if it is the current lessees doing the work? Underwood noted that 200-19 HRS that discusses private financing of harbor improvements. Chair Case suggested that this item be deferred so that this issue can be discussed with AG.

Roehrig noted that it needs to be clear that the pier is State land and even if the lessee makes improvements, the pier does not belong to them.

Public Testimony-None

Motion

Defer (Yuen, Oi) Unanimous.

ITEM F-1 Minor Repairs and Improvements to an Existing Boat Slip and Platform Structure; and Declare the Project Exempt from the Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for NOAA Office of National Marine Sanctuaries at Mā'alaea Small Boat Harbor, Maui, Hawai'i.

Alton Miyasaka, DAR, presented the staff submittal.

Board Discussion

Member Gomes asked if they were going to fix the beams? Miyasaka said they were only improving the top. Gomes thought they should fix the beams. Miyasaka said there is not enough money. Gomes asked if the lighting and cameras would be repaired. Answer is yes.

Member Roehrig asked if they were going to sublease the stall? He wanted to be clear that the State owns the stall. Miyasaka confirmed that the State owns the stall.

Public Testimony-None

Motion

Approved as submitted (Downing, Gomes)

ITEM D-1 Issuance of Right-of-Entry Permit to Julian Miller for the Hawaii Sand Festival for a Sand Castle/Sand Art Contest at Hanalei Bay Beach, Hanalei (Makai), Hanalei, Kaua‘i, Tax Map Key: (4) 5-5-001: seaward of 011, 012, & 013.

Russell Tsuji presented the staff report. Recommendation is to provide ROE gratis.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Downing, Gomes) unanimous.

ITEM D-4 Set Aside to County of Maui for Community Center Purposes, Kaupō, Hāna, Maui, Tax Map Key: (2) 1-7-002:015.

Russell Tsuji presented to staff report.

Board Discussion

Member Gomes asked if the teachers cottage would be fixed or town down? Malama Minn said that nothing will be torn down because the entire property is on the National Register of Historic Places. Right now, there is not enough funds to address the teachers cottage. The community group is only maintaining the landscaping.

Gomes asked if they would remove derelict cars, and if they were going to redo the boundaries? Minn said that the transfer is subject to a boundary survey which is currently under review by DAGS.

Public Testimony-None

Motion

Approved as submitted (Gomes, Oi) unanimous.

ITEM D-5 Issuance of Right-of-Entry Permit to Save Honolua Coalition for Hōkūlea’s Worldwide Voyage to Mālama Honua Event Parking Purposes, Līpoa Point, Honolua, Maui, Tax Map Key: (2) 4-1-001:010.

Russell Tsuji presented the staff report.

Board Discussion

Gomes noted that he went out to look out at the site. They need to mow one section. He especially likes that they will plant about 2,000 Native Trees on the mountain, on Maui Land and Pine land.

Public Testimony-None

Motion

Approved as submitted (Gomes, Roehrig) unanimous.

ITEM D-6 Amend Prior Board Action of April 27, 2001, Item D-1, Resubmittal - Set Aside to the Department of Transportation, Airports Division for Airport Purposes, Kahana and Māhinahina 1,2, and 3, Lāhainā, Maui, Tax Map Key: 4-3-01: 68 and Por. 31. The purpose of the amendment is to authorize the issuance of a management right-of-entry permit to Department of Transportation - Airports Division pending the issuance of an executive order effecting the set-aside and to update the Tax Map Key numbers of the subject lands; Kahana and Māhinahina 1, 2, and 3, Lāhainā, Maui, Tax Map Keys: (2) 4-3-001:031, 068, 073, 074 and 075.

Russell Tsuji presented the staff report.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gomes, Roehrig) unanimous.

ITEM D-10 Issuance of Right-of-Entry Permit to Association of Apartment Owners of Kahana Sunset, for Emergency Repair of Undermined Seawall; Temporary Installation of Sandbags; ‘Alaeloa, Ka‘anapali, Maui, Tax Map Key: (2) 4-3-003 seaward of 015.

Russell Tsuji presented report.

Board Discussion

Member Yuen wanted to know if the wall leaked originally. He noted that Kahana Sunset continually has to come in for repairs. The last time he was on the Board, about ten years ago, they approved repairs. Gomes noted that it came in two years ago as well.

Motion

Approved as submitted (Gomes, Roehrig) unanimous.

Move to adjourn (Gomes, Downing)

There being no further business, Chairperson Suzanne Case adjourned the meeting at 5:30 p.m. 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

DRAFT