

~~FEB 09 2018~~

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

DATE: FRIDAY, OCTOBER 13, 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
James Gomes
Sam Gon was excused

Chris Yuen
Keone Downing
Stanley Roehrig

STAFF

Colin Lau/AG
Russell Tsuji – LAND
Ross Smith -HDOT-Airports
Alan Downer-SHPD
Ed Underwood-DOBOR
Daniel Ornellas-LAND

Sam Lemmo-OCCL
Dana Yoshimura-DOBOR
David Smith-DOFAW
Cal Miyahara-LAND

OTHERS

Colin Lau/AG
Edwin Sniffen/HDOT-Hwy/D9
Craig Hirai/ HHFDC (D-1)
James Manaku (D-1)

Craig Nakamura/J/4
Alani Apio/ D9
Stan Fujimoto/HHFDC/D-1
Rodney Kilborn (D-2)

Chair Case called the meeting order at 9:33. She reviewed the contested case procedures should any members of the audience want to contest any of the items.

Items D-3 and J-3 are withdrawn from the Agenda.

MINUTES

1. Approval of April 28, 2017 minutes.

Board Discussion

The following amendments were made to the April 28 minutes

Top of page 4, under Public Testimony Item K-1:

Dolan Eversole is the person's name. It should read: "Dolan Eversole and Ted Bush spoke in support". Also, Dolan Eversole is called "Bill Eversole" in the second to last sentence on the same page.

Michelle (Matson), spoke in opposition, not in support.

Page 15, top, says "recluse" should be "recuse." In (2) locations on same page. Also, on the same page, under "Board Discussion," Downing noted that he is not a member of the Surfrider Foundation, he is a member of Save Our Surf.

Page numbers need to be fixed.

Page 15, midway through 3rd paragraph. There is a sentence that says, "I could be done" and it should say "it could be done."

J-2. Should add some explanation:

The Board had an extensive discussion on whether to charge a sublease premium for the GKM subleases, the consensus was not to charge a premium because of the nature of GKM's business which was largely to provide space for other businesses to sublease.

J-1 is in two parts. Underwood briefed Board on violation. Was not a real briefing. Replace with "Underwood told the Board that DOBOR was advised to bring these items before the Board as a package." Board did not want to have any real discussion before the attorney arrived.

2. Approval of September 8, 2017 minutes.

Board Discussion

Page 4, Item K-1. Height of tower above canopy is incorrect. Check the submittal for the correct numbers.

Yuen: Asked to defer September 8. There was an extensive discussion on the Country club RP that was not noted. Darlene should have put in changes suggested by Yuen but other board members need to see it. Case noted that the minutes are more summary in nature. However, she noted that Darlene had put in some changes and agreed that all the members should be able see the changes.

3. Approval of September 22, 2017

Board Discussion – No comments or corrections.

Public Testimony- None

Motion

Approve the April 28, 2017 minutes as amended and the September 22, 2017 minutes as submitted (Gomes, Roehrig) unanimous.

September 8, 2017 minutes are deferred.

ITEM D-9 Request for Closure of a Portion of Moanalua Stream from October 23, 2017 to November 17, 2017 pursuant to HAR Section 13-221-4 for Reasons of Safety and Welfare of Persons and Property, State Unencumbered Lands at the Mauka Side of the Nimitz Highway Viaduct, in the vicinity of Moanalua, Honolulu, O`ahu; TMK no. (1) 1-1-064:002.

Russell Tsuji presented for the Land Division. He noted that the closure is being done to assist HDOT with their project to clean under the Nimitz Viaduct. HDOT is asking the Board to close a portion of the surrounding area to prevent people from re-accessing the viaduct via the water. Noted that Ed Sniffen, Deputy Director HDOT-Highways was present.

Board Discussion

Downing clarified that the closure request is to prevent people from going into the DLNR area.

Ed Sniffen approached and noted that no one is in the closure area now, but in the past, people have moved into that area and waited out the enforcement and then moved back into the viaduct area. This allows the State to ensure that the viaduct area can be cleared in its entirety. HDOT is coordinating with the City and HDOT-Harbors as well.

There was a discussion on the cost and viability of continued clean-ups. Board members noted that the main criticism of these clean-ups is that people have nowhere to go, so they just come back after the clean-up is over, resulting in a cycle of costly clean-ups. Sniffen noted; 1) it is also costly to not clean-up these areas and; 2) the Governor's office ensures that there is enough space in shelters, and people are encouraged to take advantage of the shelters.

In response to questions from Gomes, Sniffen noted that there are between 120-180 people under the viaduct. This is not an area that is known to have children. The Humane Society will be there to address any animal control issues.

Roehrig asked for a report back after the operation is done. Gomes would like the report to include suggestions on how we help these people to move forward rather than just returning to their campsites.

Sniffen said that Scott Morishige from the Governor's Office has been working very hard to ensure that Social Services are being offered. HDOT has connected (60) people to services since clean-ups started in July. Oi asked if there is information on how many people are connected to services. Case noted that they do track this, and this is the chipping away part.

Yuen said he agreed with Apio (see testimony below). The underlying problem is a lack of affordable housing. Some people cannot afford a place, but some have mental illness and drug issues. The State has vast tracts of land that could be used for affordable housing, but most are ceded lands. Many of our people in earlier generations got their homes because the Territory and State sold house lots. We should reinstate programs like this.

Public Testimony

Alani Apio testified that he and others have formed a group called Hui Aloha. He stated that there are no easy answers, and he is not offering any. However, he believes that sweeps are the start of a vicious cycle because there is no affordable housing for people to transition into. The reality is that people's lives get disrupted and then they are back on the street. He noted that the viaduct area is one of the most hardened areas and asked, "What are we unleashing on the surrounding community when we displace these people again?"

There was a discussion on safe zones that centered around establishing a safe zone at the DAR encampment next to the Waianae Boat Harbor and/or using it as a model. Case noted that the Waianae model has problems because there are serious damages to natural and cultural resources, as well as enormous costs for water on the neighboring boat harbor. Apio disagreed as to the extent of damages to the resources. He argued that the State needs to address the human impact of homelessness.

Amendment:

Under recommendation section, add Condition No. 3, to ask DOT Highways to report back to the Board after the project is completed and share successes or challenges encountered during the implementation of the project.

Motion

Approve as amended (Yuen, Gomes) unanimous.

ITEM D-1 Set Aside to Hawaii Housing Finance and Development Corporation for Affordable Housing and Related Purposes with an Immediate Management Right-of-Entry, Kealakehe, North Kona, Hawai'i, Tax Map Key: (3) 7-4-020:004

Russell Tsuji presented for the Land Division. Noted that Hawaii Housing Finance Development Corporation (HHFDC) has always had development rights on this property, but for various reasons, outlined in the submittal, we are here for a Right- of- Entry.

Board Discussion

Downing asked why is it better for HHFDC to be the lessor to the County, rather than DLNR? Tsuji noted that they have development rights, but Land Division does not. DLNR has been managing the land because HHFDC does not have staff on Hawaii Island. Downing asked what is most beneficial to DLNR. Tsuji said that its more beneficial to give it to HHFDC, and they lease to the County.

Craig Hirai gave a history of La'i 'Opua. It was sold to the Department of Hawaiian Homelands (DHHL). This parcel was not included in the sale because the Board had approved a hospital on it. However, a hospital was not built in time, so HHFDC got the development rights back. Then the Judiciary wanted it, but because of endangered species on the property, gave it up. HHFDC has an agreement with Fish and Wildlife, so it can develop the parcel.

At this time, HHFDC is focusing on Kamakana Villages, where they are developing 170 units of low income housing. So, even though this parcel is available for development, HHFDC wants to give to City for expansion of their homeless operations because they are not in a position to develop it in the immediate future.

Downing asked if HHFDC has development rights, why does it need to come to the Board? HHFDC needs to come to DLNR because there was never a formal transfer of the property due to lack of HHFDC staff.

Roehrig expressed concern because the submittal does not include the County's long-term plans for the property. It only notes that the County wants to establish and emergency homeless encampment. HHFDC responded that they believe it is in the best interest of the State to provide the land to the County to address homelessness, and this management right of entry will help to facilitate the County's ability to do so. Downing asked if HHFDC would give the County more land for their project, if needed? Hirai said yes, but need to finish this initial part first.

Yuen asked if an amendment is needed for the lease to come back before the Board.

Roehrig expressed concern that the County seemed to want to move the homeless onto the property prior to getting a lease, and that DLNR has not been told what kind of services would be provided.

Case said that based on comments on D-9, the Board should want to facilitate the County's plan to address homelessness by agreeing to allow them to use the land. She said that, in general, the Board does not dictate specifics.

Oi said that if we approve this, then the County can get an immediate right of entry and start the project. If we delay it, the County cannot do anything.

In response to Yuen's questions, Tsuji noted that HHFDC would need to develop infrastructure on the property. He believes that DLNR should help HHFDC facilitate this proposal.

Public Testimony

James Manaku testified in opposition. He feels that homeless are not held accountable for their choices, and that many of them are coming from out-of-state. This is not fair to Native Hawaiians, who are being pushed out of their lands. He is concerned that the development of homeless facilities could encourage more migration to the islands. Noted that gang people are migrating to Hawaii.

Motion

Approve D-1 as submitted (Yuen/Downing). Unanimous.

ITEM J-4 Approval of an Offshore Mooring Outside Lāhainā Offshore Mooring Zone, and Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Atlantis Submarines Hawaii, LLC., Island of Maui, Hawai'i . Tax Map Key: (2) 4-6-001:002.

Ed Underwood presented on behalf of DOBOR. This an effort to bring the Atlantis Submarines Hawaii, LLC mooring into compliance. It was installed outside of the designated mooring area to ensure safety of the vessel during storms.

Board Discussion

Yuen asked why we need a new approval if they had a HDOT mooring? Underwood responded that they did not have the Army Corp permit, so with the new mooring they will be in compliance with all regulations.

Public Testimony-None

Motion

Approve as submitted (Gomes, Downing) unanimous

ITEM M-1 Amendment No. 29 to Include Addition of Seating Area, Concession Agreement No. DOT-A-92-0018, Restaurant and Lounge Concession, Host International, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-03: 73 (Portion).

Board Discussion

Smith clarified that additional seating is at the International Terminal when questioned by Gomes.

ITEM M-2 Amendment No. 1 to State Lease No. DOT-A-16-0009, Request to Include Additional Premises to the Lease for a Flight School Operation, Barbers Point Aviation Services, LLC, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32

ITEM M-3 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of an Aircraft, K & S Helicopters, Inc., Ellison Onizuka Kona International Airport at Keāhole, Tax Map Key: (3) 7-3-43: Portion of 40.

Ross Smith presented for Airports and provided a summary of each item.

Public Testimony-None

Motion

Approve Items M-1, M-2 and M-3 as submitted (Gomes, Oi) unanimous

ITEM D-2 Issuance of Right-of-Entry Permit to the Association of Surfing Professionals (ASP) North America LLC dba The World Surf League, for a Women's Professional Tour Surf Event at Līpoa Point, Honolua, Lāhainā, Maui, Tax Map Key: (2) 4-1-001: Portion of 010.

Russel Tsuji presented on behalf of Land Division. He introduced Daniel Ornellas, Maui District Land Manager, who was available to answer questions. Tsuji pointed out that Land Division charges \$45,000 for this event, which goes to the State Parks Management Fund. The money goes specifically to Port-a-Potties. There are (4) Porta-Potties which are serviced three times a week.

There is a clause in the submittal that allows the land agent to recommend additional days without going back to the Board.

Board Discussion

The Board wanted to know how and why the money is transferred to State Parks, rather than to the Special Land Development Fund. Tsuji noted that this land came to DLNR via a Legislative Bill, which provided funds to purchase the land, but no funds to manage it. The land is currently unencumbered. However, since State Parks was the Division that received the funds to purchase the land, they agreed to run the contract for the Porta-Potties. The money from this event is deposited directly into a State Parks fund.

Public Testimony

Rodney Kilborn from the Association of Surfing Professionals/World Surf League runs a Women's Professional Tour Surf Event at Honolua. He noted that they do not have a sponsor for the event and therefore the event is being downgraded. He is asking if they can reduce the acreage from 3.5 acres to 2.5 acres at the same price. He would like to keep the Women's even at Honolua.

There was a discussion over whether 2.5 acres would be enough. Kilborn noted that the area is mostly used for parking, and they have an overflow space in an area not owned by the State, so he feels 2.5 acres should be enough. Downing feels that the parking for the event is a public service, so the State should only charge enough to cover the cost of the Porta-Potties.

Yuen asked if Land Division had any objection to the site being 2.5 vs. 3.5 acres. Noted that technically the use is for 25-days, but Land Division is being flexible by just charging for the days of the event. He also requested a map with the use footprint outlined.

Case noted that the Board could approve 2.5 acres with potential option to expand up to an additional 3.5 acres. Who gets to make decision to increase use? Downing said that on the days the event is run, he wants two pictures of the parking lot and other areas.

Amendment:

The area for the right of entry will be reduced from 3.5 acres to 2.5 acres, and applicant is to pay for the 2.5 acres at the rates in the submittal (\$21,780.00); provided however, if it is later determined more area is needed for parking the applicant may utilize the additional acre and pay the established rates as stated in the submittal (\$8,712).

The applicant will take and send to the Department and Board aerial photographs of the event for both days to allow the Board to determine the amount of people at the surf event for both days.

Motion

Approve as amended (Gomes, Downing) unanimous.

ITEM D-8 Grant of Term, Non-Exclusive Easement to Peter Cushman Lewis, Trustee of the of the Trust Agreement dated October 1, 1982, for Seawall, Steps, and Landscaped Area Purposes; Wai‘anae, O‘ahu, Tax Map Key: (1) 8-7-023: seaward of 044.

Russell Tsuji presented for Land Division. Noted attached Exhibit. This is one where OCCL was not able to support an easement for the encroaching seawall. Neighboring property owners support the easement.

Board Discussion

Yuen pointed out that this is not a situation where a recent shoreline certification has resulted in having property on the shoreline. This property had a metes and bounds survey and the wall was built slightly outside of the established metes and bounds. Exhibit A, which is the tax map, shows that the shoreline is makai of the property and then jogs in. Note where it says, “High water mark as of April 1960.”

The certified shoreline is along the backside of the seawall, so its partially on the property, and partially outside of the property. Yuen wanted to clarify that if this request is granted, then they will not have to come back for an easement for the seawall?

Oi noted that the adjoining property did claim accretion. Yuen’s main concern is that if they grant the easement today, this property will NOT come back for an easement as a result of the shoreline being mauka of the wall.

Public Testimony

Peter Lewis, the property owner said that this parcel was owned by his parents and Aunt, since 1938. Does not know why the jog exists. His wall runs in line with the neighboring property which has an extended shoreline. No one seemed to realize that the property jogged in that area.

The wall goes to the public park. Makai of the wall is sand. There is continuous beach from the State Park on the Waianae side to the State Park on the ‘Ewa Side. Property and (2) next properties were owned by the Holt family, so the wall may be over 100-years old.

James Manaku testified in opposition. He is concerned about access for fishing and believes they should take the seawall down. He would like his access rights protected, and he noted that he is not there to steal.

Motion

Approve as submitted (Oi, Gomes) unanimous.

ITEM I-1 Approval of A Memorandum of Agreement between The Department of Land and Natural Resources State Historic Preservation Division and 1250 Oceanside LLC, for Maintenance of the Hōkūkano Village Historic Site, Hōkūkano 1st Ahupua‘a, North Kona District, Island of Hawai‘i, Tax Map Key: (3) 7-9-012:003.

Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance Requirements for any Project Activity outside the Scope of the Accepted EIS.

Request for Delegation of Authority to the Chairperson to Negotiate, Approve, Execute, Amend and Extend Memorandum of Agreement, Right -of- Entry and Item Release of Liability Agreements, for the State Historic Preservation Division for the Hōkūkano Village Historic Site.

Alan Downer presented for the State Historic Preservation Division. Mike Vitousek was available to answer questions on behalf of 1250 Oceanside LLC. Downer noted the following amendments to the submittal: Have the terms and conditions of MOA be certified by the Department of the Attorney General; Correct the acreage to 10.38 acres

Roehrig noted Charles Flaherty sent in testimony in opposition. As follow-up to Flaherty's testimony, Roehrig asked if the MOA complies with the reorganization plan approved under the Chapter 11 bankruptcy ruling?

Vitousek noted the Shoreline Park Management and Public Access Plan was approved by the bankruptcy court and established the Parks and Cultural Sites Association (PCSA) for purpose of preserving this area. He provided some history on this project and noted that Carlsmith lawyers have said this is in compliance with the bankruptcy court. Roehrig requested written confirmation from Carlsmith that MOA comports with Judge Ferris' order. Case noted that BLNR would be covered by AG review and did not need a Carlsmith letter.

Public Testimony

Jimmy Medeiros testified in support. He is a recognized descendant to burials found on the Hokulia property and took part in the reburials of the disturbed iwi. The proposed plan will benefit the property by clearing invasive plants, allow families access to burials and to participate in stewardship of the land.

Kaleo Kualii, Cultural Liaison for the Park and cultural sites testified in support.

Roehrig noted that his brother in law as well as friend of his was involved in the litigation. However, he does not feel the relationship will affect his vote, or that the relationships rise to the level of an ethical conflict.

Amendments:

- 1) *Have the terms and conditions of MOA be certified by the Department of the Attorney General*
- 2) *Correct the acreage to 10.38 acres*

Motion

Approve as amended (Roehrig, Yuen) unanimous.

- ITEM C-3** Authorize the Issuance of a Right-of-Entry Permit to the Board of Water Supply to Construct a Reinternment Site at Wai‘auiā, Kailua, O‘ahu, Tax Map Key: (1) 4-2-016:002.

Dave Smith presented for DOFAW. This is a historically significant site at Kawainui marsh. BWS wants to build a reinternment site for local Hawaiian groups to rebury iwi that have been disturbed by construction. DOFAW is working with the Board of Water Supply (BWS) and the Kailua descendants group on this project.

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Roehrig, Gomes) unanimous.

- ITEM J-1** Administrative Enforcement Action for Violations of Hawaii Administrative Rule § 13-244-19: Authorization Required to Hold Regatta, Marine Parade, Boat Race or Exhibition, against Mr. Sean Pagett For Failing To Obtain A Marine Event Permit From The Department of Land And Natural Resources, Division of Boating and Ocean Recreation, for Athletic Events Involving the use of State Ocean Waters; Request the Issuance of a Fine of \$10,000 for two Violations, Pursuant to Hawaii Revised Statutes § 200-14.5(C).

Ed Underwood presented on behalf of DOBOR. This is an enforcement action being brought against Mr. Padgett. The fines are for a failure to apply for a Marine Permit which the State provides on behalf of the United States Coast Guard and are issued for specific categories of marine use, which Underwood listed. Mr. Padgett stopped applying for these permits because of the insurance requirements. Underwood noted that on November 27th, Mr. Padgett held a swim event on the same day that there was a cruise ship at the harbor. DOBOR would not have granted a permit on the same day as a cruise liner was at the pier.

Chair Case asked if there would be request for a contested case. William P. Kenoi, Counsel for Sean Padgett said they would not be asking for a contested case.

Board Discussion

Yuen asked how consistent DOBOR is about issuing swim permits. Yuen listed several swim events, and asked if they are required to have permits, to which Underwood said that all of the events had Marine Event permits. Yuen asked about the Flotilla? Underwood said that since the Flotilla has no sponsor, there is no one to permit.

Roehrig went over the administrative record. Noted that nothing in the file shows what Judge Masunaga did with the DOCARE complaint. West Hawaii today says that the criminal complaint was dismissed with prejudice because the rules do not apply to this swimming event. Because Masunaga's ruling was not appealed, it seems that the rules do not apply to this swimming event.

Case asked if he is referring to a Civil or Criminal complaint. Roehrig said it was a Criminal complaint. Case noted that the proceeding today is a civil proceeding. Roehrig believes the Land Board does not have jurisdiction to interfere with Judge Masunaga's decision, and so should not go further on this item.

Handed out copies of the following news articles:

March 14—On Monday, Deputy Prosecutor, Corey Weinburger moved to dismiss with prejudice.

July 29, 2017—Peaman case not over yet.

Oct 10, 2017—Peaman faces \$10,000 fine. Also, editorial critical of DLNR.

Public Testimony

William Kenoi on behalf of Jason Braswell, Attorney for Mr. Sean Padgett (also known as Peaman) noted that the Administrative Rule is inapplicable. HAR 13-244-19 contemplates overseeing marine regattas and parades. Additionally, the enabling Statute does not reference swimming.

Case asked if he was suggesting that swimming events should not be regulated. Kenoi said that is not what he is suggesting. Rather, DOBOR needs to go to the Legislature and ask for legislation regulating swimming events and then issue permits.

There was a vigorous discussion on whether a permit should be required for this type of race. Kenoi argued that 1) the race was held inside a designated swim course, 2) the HARs do not apply; and 3) this race is not comparable to many other permitted swim events.

Kenoi requested that the matter be dismissed, and if dismissed he will sit down with Padgett and DLNR and get insurance and get into compliance, including scheduling race events 12 months in advance. He will come back in 30-60 days with insurance, a permit application, and a schedule. Case noted that DLNR offered to negotiate this before it was brought to the board.

Roehrig believes the Coast Guard rules do apply, although the state rules do not apply.

Case suggested that this item be continued and then Kenoi can come back with the insurance, the permit and a schedule. Kenoi would like the matter to be dismissed rather than continued.

Downing does not believe that there are unusual hazard or safety issues because the race takes place with an established swim zone. Underwood said that the unusual hazard is on the part of the tenders, because they are Cruise Staff and not Captains.

Case noted that the concern is to ensure that there are no boat and swimmer interactions. Noted that it's hard to control the situation when there are lots of people and tenders in the water. Kenoi clarified that the numbers of people in the water are relatively small.

Yuen said that he would agree to dismiss as long as Peaman applied for a permit in the future, including providing insurance. Yuen believes DOBOR has the discretion and power to require a permit for this type of small event.

Downing noted that Peaman is someone who once got permits for this event, and then chose not to get permits. Downing takes offense at Peaman for 1) flouting the rules and 2) for refusing to negotiate when DOBOR offered. This item did not have to come before the board. Therefore, he expects Kenoi to take care of it. Because he believes Peaman's actions show disrespect to the Board.

Deputy Attorney General Colin Lau, noted that Kenoi is stand-in council. Kenoi said that he has full authority to make representations on behalf of the client.

Underwood asked if item 1 in the submittal could be kept. Roehrig thinks that this should be discussed at another time. Case and Yuen said that the finding that DOBOR rules cover swimming events should be approved. Yuen felt that DOBOR should make the decision on whether or not a swimming event needs a permit.

Motion:

- **Approve Recommendation 1 in (Yuen, Roehrig) unanimous.**
- **Dismiss Recommendations 2-3 with the understanding that Mr. Kenoi will appear before the Board within 60-days with a valid Marine Activities permit for a Swimming Event meeting DOBOR requirements (Yuen, Roehrig) unanimous.**
- **Item 4 was not applicable as there was no request for a contested case.**

ITEM K-1 Conservation District Use Application (CDUA) HA-3797 for a Single-Family Residence; Agricultural Use and Management Plan; After-The-Fact Landscaping; and Associated Improvements by Garrett B. Dearing Located at Keonepoko Iki, Puna, Island of Hawai'i, Tax Map Key: (3) 1- 5-009:055.

Sam Lemmo presented for OCCL. He gave some background on the conservation land parcel, which is located between two subdivisions. A management plan was prepared to protect water quality and to ensure no harm to threatened or endangered flora or fauna. OCCL recommends approval subject to conditions. For example, any barn structure cannot be used for rentals or transient accommodations. Agricultural uses cannot be for commercial purposes. There is to be no shoreline hardening. OCCL is not asking for an annual report to the Board. James Leonard, representing the landowner is here.

Board Discussion

Downing asked how much fruit will go to waste if there is no commercial use. Garrett Dearing, owner of the property approached the Board. Noted that majority of property is invasive species and weeds, so the part in cultivation is relatively small. If they ever decided to do commercial use they will come back to the Board.

In response to a question from Gomes, Dearing clarified that although there was no structure on the property, there was a driveway. The Civil Resource violation was because the Dearing's cleared plants along the driveway without a permit. Part of the authorization in this submittal is to allow them to continue clearing.

Public Testimony-None

Motion

Approve as submitted (Gomes, Roehrig) unanimous.

ITEM K-2 Conservation District Enforcement File OA-18-06 Regarding Alleged Unauthorized Land Uses in the Conservation District by James O'Shea and Denise O'Shea, Trustees of the James and Denise O'Shea Trust Located at Pūpūkea, Ko'olauloa, Island of O'ahu, Seaward of Tax Map Key: (1) 5-9-002:025.

Case noted that the O'Shea's can ask for a contested case. Greg Kugle, Attorney for the O'Shea's noted that they would like to make a proposal, but if the item is not resolved they will ask for a contested case.

Sam Lemmo presented for OCCL. This is an enforcement case. The area from Sunset Beach to Rocky Point is mostly a wide natural, unarmored beach. To the north of the O'Shea's there are (2) or (3) properties with seawalls. Also, several properties to the south had bulkheads. Lemmo reviewed the timeline, which is in the submittal.

OCCL is seeking fines for disregard of the Order to stop grading the beach, a fine for the work itself and administrative costs, around \$75,000. They are also asking that all debris in front of beach be removed. The O'Shea's have completely rebuilt the seawall with no government consent on one of the most beautiful beaches in the world. Hawaii faces losing our beaches if we allow this practice to continue. The Attorney General filed and was granted a Temporary Restraining Order against the O'Shea's to stop all construction activities on the Seawall through October 2, 2017. This is part of Civil No. 17-1-1549-09 JPC.

Board Discussion

Gomes asked what prompted the OCCL site inspections that took place on August 24th and 28th, which was before the seawall collapsed. Lemmo noted that they go out there all the time. Those were just normal site inspections.

Kugle, Attorney for O'Shea's noted that the O'Shea's and two daughters are present. There are five or six houses that share a contiguous seawall built on State land, rather than on private land. Therefore, he believes that this wall was built by the State. Kugle noted that this case is unique. There was a legal seawall that collapsed and now there is an emergency situation because the house is threatened. He proposed that DLNR not go forward on this enforcement because its duplicative of the civil case that is already in court. If the Board goes forward with the enforcement then they would ask for a contested case.

Case asked about the debris on the beach. Kugle said it was his understanding that all of the debris had been pulled back onto private land. Case noted that she and other DLNR staff went out last Friday (October 6th) and there were boulders and dirt in the area. Kugle said that he believes that the boulders were already there and not construction debris. Kugle noted that there is a TRO in place that prohibits any action so his clients cleaned up what they could before the TRO.

Gomes asked why Kugle thought the wall was built in the 60s? Kugle responded that there are letters from DLNR. Shoreline surveys were done in 1988 and 1989. Gomes asked Kugle what his clients did after the first notice of violation? Kugle was unclear as to what work was occurring, but he believes they started to pull the debris off the beach.

Yuen noted the original seawall was outside of the private property and did not always abut the private property. Does the new wall run along the property line?

Kugle responded that the new stonewall fronts the O'Shea's property. He noted that they have to be careful because the State and his clients are in a lawsuit. Roehrig said we should be cautious about doing discovery.

Yuen noted that until the Attorney decides to stop answering questions, he would proceed. Yuen established that the sand berm in front of the concrete retaining wall is caused by wave action, which reaches all the way to the berm.

Lemmo noted that the vegetation is from the landscaping above the berm, and not a part of the berm. Yuen concluded that the rocks at the base of the beach were brought in by the O'Shea's and there was no emergency permit application.

Roehrig restated Kugle's point that the Civil Case is similar to the Administrative Case before the Board today. Amanda Weston, Deputy Attorney General noted that the TRO which stopped further construction is good for ten (10) days. Some of the claims in the court case parallel the submittal, but the court remedy was to stop work. The administrative remedy is a fine, so she believes the Board can go forward with this submittal. She noted that the State has not done anything further on the Civil Case because the remedy they were seeking was the TRO.

Kugle reiterated his proposal to stay the Administrative submittal until the court case is finalized. He believes his clients have a reasonable chance at success in court because the State has a requirement to allow landowners to protect their property. By not allowing the O'Shea's to rebuild the wall, the State has denied the O'Shea's the opportunity to protect their property.

There was a brief discussion on the relevance of the Diamond seawall case to this situation. Kugle noted that he will argue that the State has a duty of lateral support in favor of the land owners. Further, he will claim that the work cited was not on his client's property, but rather the neighbors were doing the work.

Case again asked Kugle is he wanted to ask for a contested case because as they go through the submittal process before them, he may be giving them evidence for the contested case. A discussion about the process followed.

Yuen asked 1) if the O'Shea's will claim that some of the work was done on their neighbor's property, and 2) if the O'Shea's contracted for the excavator during the work. Kugle said those questions will be answered at a contested case. Case pointed out that he had not asked for a contested case, so the Board was processing an enforcement case.

Kugle again asked for a deferral until the Civil Case is complete.

Yuen noted that he was not inclined to defer but would prefer to determine if there is a violation, and if so, the appropriate fines. Case and Roehrig agreed.

Kugle then requested a contested case and noted he will follow up in writing in ten (10) days.

End of discussion for Item K-2.

ITEM J-2 Continuation of a Revocable Permit to HBM, LLC, located at the Ala Wai Small Boat Harbor, Kālia, Honolulu, Island of O'ahu, Hawai'i. Tax Map Key: (1) 2-3-037: 020.

Dana Yoshimura presented for DOBOR. He noted there is a typo in the agenda. The location should say Kālia rather than Kāia. This is a former fuel dock site at Ala Wai Boat Harbor. Recommendation is to agree to extension of HTM lease. It is the former Honey Bee parcel.

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Gomes, Downing) unanimous.

ITEM D-4 Annual Renewal of Revocable Permits in the County of Maui. See Exhibit 2 for list of Revocable Permits.

Russell Tsuji presented for the Land Division. This is the list of Maui Revocable Permits (RP) for approval. Daniel Ornellas, Maui Land Manager is also available to answer questions. The Ulupalakua renewal is an RP for a pipeline. The file shows that there is a 1901 judicial decree that says that Ulupalakua has a right to 2% (of the water). Land Division had the AG's look at the case and they found that Ulupalakua had a term license to take the water. AG is looking further into this.

Board Discussion

Roehrig referred Tsuji to the Hanapepe Water Agreement. He noted that there is a very good discussion on riparian water rights in that decision. Gomes said that he will recuse himself from this particular item.

Gomes commented on the following RPs:

RP 6121; noted that this was originally to Kahakuloa Community Association and Kahakuloa Church. The Church is no longer in service. They are trying to rebuild it. Would like rent reduced to a \$1 a year to help them keep the church going since it is a historic Hawaiian church.

Onellas noted that (4) taro patches are in the process of forming a non-profit to manage this area. So, there will be a community center and the taro patches for cultural education and advancement.

The church is more of a historic building because the congregation may not be active. Once the 501(c)(3) is established, staff plan to cancel this RP as well as **RP 5171** and issue a lease to the new non-profit.

RP 7485, 7487, and 7571 to Nobrega. Mr. Nobrega is paying a lease for cliffs. Can the carrying capacity of this area be reviewed? Onellas noted that Nobrega has (3) leases and he may use only 25% of the property. One of the parcels is next to the DOFAW bird sanctuary. The Nobrega's actively pasture next to their own private property. If they are required to install sensors for the birds along the perimeter, then they may just let the properties go.

RP 7783 to Weinburg. How can these frontage properties be standardized? How can we get a shoreline certification of all of these properties and make it stick? Roehrig suggested that where ever you can group properties, try to make the shoreline a one-size fits all for the whole group.

Yuen asked what happens when sea-level rises. Onellas, noted that for three of the frontage properties there are leases. Between the leases, there are either RPs or nothing at all. DLNR may need legislation allowing it to address climate change on a regional basis. Roehrig said we need to address this issue in a coordinated way across Divisions.

RP 7208, 7209, 7787. Yuen questioned why these might go to public auction. Tsuji said he pointed those out to staff. Statute says that utility facilities are eligible for a direct lease or easement. He does not think it is fair for whoever put up the tower to have it leased out from under them.

RP 7618. This is to the Stable Road Beach Foundation. The RP is supposed to be cancelled and converted to an easement. The easement is a beach nourishment project overseen by OCCL. The beach nourishment seems to be working. Land will do an appraisal so they know how much to charge in the future.

RP 6199 to US government at gratis. Recommend cancelling because they do not use the site. It is just below the Haleakala telescope area.

Land division was directed to EO the three Nobrega parcels to DOFAW, because they have asked for them. DOFAW can do a pasture agreement with Nobrega. That way the RP can be taken off the books.

Public Testimony-None

Amendments:

- 1. Reduce rent on RP 6121 to \$1.00 per year.***
- 2. Pursue an EO of the land in RPs 7485, 7487, and 7571 to DOFAW.***
- 3. Address sea level rise along frontage properties in a regional manner.***

Motions (2)

- 1. Approve as amended, except for RP 7581 to Ulupalakua Ranch, Inc (Gomes, Downing) unanimous.**
- 2. Approve RP 7581 to Ulupalakua Ranch as submitted (Yuen, Roehrig). All voted Aye except Gomes, who recused himself from this item.**

ITEM C-1 Request Approval to Enter into a Memorandum of Understanding between the U.S. Department of Agriculture, Natural Resources Conservation Service and the Department of Land and Natural Resources, Division of Forestry and Wildlife for \$1,063,000 in Federal Funds as part of the Regional Conservation Partnerships Program for fiscal year 2017.

David Smith presented for DOFAW. This is for an MOU with the NRCS. DOFAW is a part of the partnership.

The number of the MOU has changed. The new number is A9251-18-001.

Board Discussion-None

Public Testimony-None

Amendment:

Correct the Number of the MOU to A9251-18-001.

Motion

Approve Item C-1 as amended (Gomes, Roehrig) unanimous.

ITEM C-2 Request for Approval of a Forest Reserve Management Plan for Pūpūkea Forest Reserve, Tax Map Keys (1) 5-9-006:026 and (1) 5-9-006:006, Pūpūkea, Koʻolaupia, Oʻahu.

Request for Approval of a Forest Reserve Management Plan for Kula Forest Reserve and the Papa'anui Tract of Kahikinui Forest Reserve, Tax Map Keys (2) 2-2-007:001 (Portion) and 003, Kula, Makawao, Maui.

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for Applicable Management Activities Described in the Management Plans for Pūpūkea Forest Reserve, and Kula Forest Reserve and the Papa'anui Tract of Kahikinui Forest Reserve

David Smith presented for DOFAW. We are seeking Chapter 343 Exemptions at the plan level. They did consultation on all of the plans, in which effects to endangered species, road work, animal control and other possible effects were addressed (See Exhibit C). BWS on Oahu had no objections, but Board of Water Supply on Maui had some issues. They objected to having an exemption at the plan level. But the exemption is just for routine activities. There are things that would require a separate exemption considerations or an EA. MBWS thinks that cumulative management actions may pose a significant impact on the environment. DOFAW disagrees. Also brought up harvesting of timber and hunting. These are not routine actions and would require separate exemptions or EA analysis. Staff recommends the exemption.

Board Discussion

Gomes noted that you cannot do commercial tours at Kahakuloa.

Public Testimony-None

Motion

Approve Item C-2 as submitted (Gomes/Roehrig). Unanimous.

ITEM D-5 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on November 7, 25, 29 and 30, and December 7 and 11, 2017, Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 (Portion).

Russell Tsuji presented for the Land Division.

Board Discussion

Downing noted that from November 3rd thru December 11th, there are (13) fireworks shows. When will there be a stop to the volume of fireworks shows? He believes they need to start limiting the number of fireworks shows in the lagoon.

Roehrig thought the number of fireworks shows should be based on reasonable environmental controls. Suggested UH or Board of Health should do the studies.

Cal Miyahara from the Land division said he had talked to the State toxicologist, Roger Brewer who believes that the amount of toxins from the fireworks is minute. Brewer prepared tables for the EPA and said that fireworks are negligible in the ocean.

Downing noted that they are doing four a week in the Hilton Pond, not the ocean. Miyahara noted that the pond is drained daily and that the vendors are cleaning up after all the shows.

Downing still believes that there should be some control of and limit to the shows. He also questioned why it takes more time to do a shorter show? Miyahara answered that the set-up may take longer because they use the canoe. Also, they may do some clean-up in the afternoon before the show.

Roehrig noted that sometimes we think things are harmless, but they are actually more toxic than we think. He believes we should be pro-active on the ocean. Miyahara agreed but said they clean-up after the shows and drain and refill the lagoon every night. There was a disagreement over what type of fish live in the pond, as that would be another indicator of water quality.

Downing asked if Land Division was okay with having fireworks 365-days a year. Tsuji noted that this is a request that they are presenting to the Board, not a policy statement. Roehrig said he will never agree to unlimited fireworks. He believes that there will be a cumulative effect.

Miyahara noted that heavy metals are stored and accumulate in the body. He does not take his kids swimming right after the show.

Downing wants to know what limits Land Division is willing to impose.

Public Testimony-None

Motion

Approve as submitted (Downing, Gomes) unanimous.

ITEM D-6 Amend Prior Board Action of November 17, 2000, item D-16, *Request for Authorization to Acquire one (1) House lot, Together with Improvements Thereon, and Subsequent Set Aside to the Department of Land Natural Resources, Division of Forestry and Wildlife, Waiomao, Pālolo, Tax Map Key (1) 3-4-15:27* (after subdivision new *Tax Map Key (1)-3-4-15:34*).

The purpose of the amendment is to (1) seek Board approval for Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) to conduct a public hearing in accordance with §183-11 to 13, HRS, on the Island of Oahu regarding the proposed addition of the parcel to the Honolulu Water Shed Forest Reserve, and (2) authorize the immediate issuance of management right-of entry permit to DOFAW pending the issuance of an Executive Order

Russell Tsuji presented for the Land division. This is the second part of a condemnation due to a rockfall situation. The property was set aside to DOFAW without a public hearing. DOFAW rules require a public hearing on lands to be set aside for them.

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Roehrig, Yuen) unanimous.

ITEM D-7 Grant of Term, Non-Exclusive Easement to United States of America Department of Navy for Communication Facility Purposes; Kamananui, Waiālua, O'ahu, Tax Map Key: (1) 6-7-003: portion of 025.

Russell Tsuji presented for the Land division

Board Discussion- None

Public Testimony-None

Motion

Approve as submitted (Roehrig, Yuen) unanimous.

Motion to adjourn the meeting. (Roehrig, Yuen) unanimous.

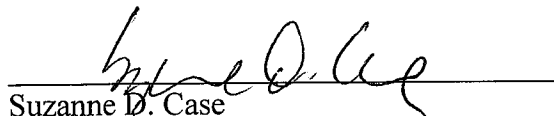
There being no further business, Chair Case adjourned the meeting at 4:23 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Darlene Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land and Natural Resources