

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

DATE: FRIDAY, OCTOBER 27, 2017
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case
Jimmy Gomes
Stanley Roehrig
Keone Downing

Sam Gon
Tommy Oi
Chris Yuen

STAFF

Bill Wynhoff/AG
Russell Tsuji/Land
Sam Lemmo/OCCL
David Smith/DOFAW
Megan Statts/DOBOR
Ed Underwood/DOBOR
Leimana DaMate/Aha Moku

Barry Cheung/Land
Ian Hirokawa/Land
Alan Downer/SHPD
Ross Smith/DOT
Richard Howard/Land

OTHERS

Stewart Vaghti/L3
Keone Fox/I1, K1
Gannett Fleming/L3
Marilyn Teague/C1
Joseph Fagundes/J3
Christine Ohira/D8
Leialoha "Rocky" Kaluhiwa/I1, K1

Dawn Huff/D1
Christine Ohira/D8
Grant Sumile/D9
Willie Nishi/D9
Gregg Kamm/D2
James Hines/D1
Simon Vilaj/I1, K1

Chair Case called the meeting to order at 9:30 am. Recess was called at 9:35 a.m. as several individuals disrupted the meeting. The Board returned from recess at 11:00 a.m. The standard contested case advisory was read by Chair Case.

Chair Case said part of Item D-3, RP 5983 will be withdrawn Syngenta Seeds.

- ITEM M-1** Issuance of a Revocable Permit to Nan, Inc. for Space to Store Construction Materials, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-03: 017 (Portion).
- ITEM M-2** Issuance of a Revocable Permit for Two Automated Teller Machines, Video Vend, Inc. dba ATM Pacific, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: Portion of 65 & 66.
- ITEM M-3** Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of an Aircraft, Clarence K., and Corrine Kanae, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.
- ITEM M-4** Amendment No. 5 to Concession Agreement No. DOT-A-11-0005, Retail Concession, Request for Additional Spaces for Retail Use, DFS Group, L.P., Kahului Airport, Tax Map Key: (2) 3-8-01-19.
WITHDRAWN

Ross Smith, DOT-Airports presented Items M-1 through M-3. Requested to **withdraw Item M-4.**

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted Items M-1, M-2 and M-3 (Gon, Gomes) unanimously.

- ITEM D-1** Issuance of Right-of-Entry Permit to Kaua'i Island Utility Cooperative for the Pu'u Lua Reservoir for Engineering and Study Purposes, Waimea, Kaua'i, Tax Map Key: (4) 1-4-001:002 (por.).

Ian Hirokawa, Land Division explained the reason for the ROE is to prepare an EIS.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Oi, Gon) unanimously.

- ITEM L-3** Approve Issuance of a DLNR Dam Safety Permit and Authorize Removal of Dam from DLNR Regulatory Oversight Permit No. 77- Ukumehame Reservoirs (MA-0140), Dam Removal, Maui, Hawaii 'i.

Carty Chang, Engineering, there is a correction to the submittal, the owner is West Maui Investors. Gannett Fleming is present to answer any questions. On Exhibit 4, Chapter 343 analysis, we incorrectly noted under Triggers, use of historic site designated on the National or Hawaii registers. We consulted with SHPD and they said response was that although there is a historic site on the property, the ditch which is the historic site is not being affected. No impact. Therefore, there is no trigger and need for 343 Exemption.

Board Discussion

Member Oi asked who was going to maintain the historic ditch? Chang replied West Maui Investors will maintain it.

Member Roehrig asked if there were any comments from the down-stream users that might be affected? Chang replied no.

Public Testimony-None

Amendment:

Exhibit 4, under Triggers, delete the checked off item for use of historic site designated.

Motion

Approved as amended (Gomes, Roehrig) unanimously.

- ITEM D-9** Request Approval of Plans for Construction of New Residence, Diamond Head View Lots Unit Two, Increment One, Lot 56; Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048: 065.

Russell Tsuji, Land Division, explained that the existing house has encroachments, and the new house will be built within the boundaries. The Owner Mr. Nishii and his architect, Mr. Sumile are present to answer any questions.

Board Discussion

Chair Case thanked the Owner for being compliant.

Public Testimony-None

Motion

Approved as submitted (Roehrig, Oi) unanimously.

- ITEM D-10** Cancellation of Governor's Executive Order No. 3736 and Reset Aside to Department of Accounting and General Services for Kapolei State Office Building Purposes, Authorization to Enter Mutual Cancellation and Termination of Ground Lease, Lease, and Lease Agreement; Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-160:019.

Russell Tsuji, Land Division, explained the reason for the cancellation and new lease agreement.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Oi, Gon) unanimously.

- ITEM I-1** Enforcement Action against Mr. Simon Vilaj for Alteration of Historic Properties during the course of land alteration activities without a Permit. The Historic Punalu'u Wharf, Punalu'u Ahupua'a, Kau, Island of Hawai'i, Tax Map Key: (3) 9 6-001:002.

- ITEM K-1** Conservation District Enforcement HA 17-36 Regarding Alleged Unauthorized Land Uses Located in the Conservation District by Simon Vilaj Located at Punalu'u Wharf, Ka'u, island of Hawai'i, Tax Map Key: (3) 9-6-001:002.

Chair Case said we will take Items I-1 and K-1 together. She asked Mr. Vilaj if he would like to request a contested case? If you want to now, we will stop at this point. Mr. Vilaj declined.

Sam Lemmo, OCCL, said the private land owner is SM Investment Partners and State submerged lands. The unauthorized work in the area of the historic Punalu'u Wharf, damage to historic features. He went over chronologically what was observed and documented. SHPD went out to confirm that there was damage to the historic features. Mr. Vilaj was issued a notice of violation for the work that he had done. We were concerned with the soil that was placed in the shoreline area near the old pier, and possible causing water pollution, damaging marine life. We reached out to Roberts Hawaii (SMS Investment Partners) to go down and clean up the materials. Ultimately it was decided that Mr. Vilaj would go down there under supervision and he would try to remediate and put back the soil, prevent the soil from going into the ocean. Roberts Hawaii revoked the agreement with Mr. Vilaj immediately after hearing about the work that had been done. He also had a Boating and Recreational permit for Punalu'u, that permit has been taken away as well. The recommendation is to fine Mr. Vilaj \$15,000, for grading, disturbance of land, demolition, and alteration of existing structures within the Conservation District without the proper approvals. He asked for a \$2,000 fine for administrative costs associated with the violations

Alan Downer, SHPD, said that in response of notification from DOCARE, SHPD staff went out to look at the situation. In the meantime, we received numerous complaints about this at our Hilo office. He provided a historical background of the Wharf. After examination of the wharf by

SHPD staff, it was noted that there was destruction to a concrete footing/pad, a concrete foundation, an east to west rock retaining wall had been pushed down and scatter along a portion of the impacted area, and damage to a concrete pillar. The nature of the damage showed clearly it was recent. Damage to (4) individual features of the historic property assessed as four separate violations at \$10,000 per individual feature totaling \$40,000. Overall injury and destructive impacts to the integrity of the historic feature as a whole, assessed as separate violation at \$10,000. He asked for an Administrative fee of \$ 2,165.62 connected to the investigation and reporting of the violation.

Board Discussion

Member Roehrig asked if they had any assistance from the AG's office in determining potential individual or legal entities that were also responsible beside Mr. Vilaj? Lemmo, I did not recall having a conversation regarding that. Downer said he only consulted with what was in our report.

Roehrig commented that the land owner has a robust tour company around the State of Hawaii. I am assuming they also have one go to see the lava at Puna. He had concerns regarding the bigger picture of the entity that hired him. He might be an individual contractor, he had to put up 2 million dollars in liability coverage. That is a high amount to be doing just a little clearing at the ocean front. It appears to me that the land owner had full knowledge. Why was the land owner fined as well? They are equally responsible. I am suggesting the AG's office should take a look at it and give a recommendation to SHPD and OCCL whether we should access a fine to the land owner.

Downer replied that the lease does not allow for any work to be done. Roehrig replied that he had permission to use a portion of the property to launch his boat.

Public Testimony

Mr. Simon Vilaj said the reason why I was in Punalu'u on private land that has a ramp not known by DLNR. He admits he was there with a backhoe, but denies he ever touched the pilings. The backhoe was there to make my land safe where I was working and make my people safe. I have been there when people have been hurt, there are metal objects sticking up and I have removed them. Nothing was done illegally. The "locals" were upset, I went and apologized. They took my license away and now I am not working and getting fined \$80,000. Army Corps of Engineers came out with (5) guys and tried to fine me just like these two guys. They could not fine me because nothing was done illegally. Here is the State trying to put this little guy down as far as they can. What is the point here? I paid \$500/day so I can work. I never hurt anything, I am not hurting anyone, not hurting the State. I am just trying to work, I do not understand it. I had to clean it up to get my insurance. My policy requires it. Why cannot I do that on my own property. What I am asking is for you to drop this case so I can move on with my life. That is all I ask.

Member Downing asked Vilaj, you said \$10,000 per piling is ridiculous, what is a fair price? Vilaj said none because he never touched it, why should I pay for something I did not touch? Downing said that was not what he asked, he repeated his question. Vilaj said he does not know what it is worth.

Member Roehrig said he watched Vilaj on T.V., it was big news on Big Island. I was watching you work your backhoe. Before you started doing the work there what discussions did you have

with the land owner? Vilaj said he told Jean Fujimura exactly what he wanted to do. Roehrig asked what her position in the company was. Vilaj said she is the person that gave me the lease, I emailed back and forth with. Roehrig asked if there was any discussion with the land owner about who was going to go on your vessel for lava tours? How did you come to the conclusion that the people on the bus would go your vessel in the future? Vilaj said they have a concierge service where you go into their office and say you want to go on a lava tour and they pay they have a contract with people like me and send them my way. How do you know that Robert's would use you? You said you have not had a discussion with Roberts. My business plan was built around them. Vilaj said they use his friend.

Member Yuen asked did you have any discussions with SMS or Jean Fujimura about the work you were going to do before you, did it? Vilaj replied, yes, I did, not in detail, but they knew I was going to bring a machine there to clean the parking area up and they know that I cannot bring people there if it was not cleaned up. It looked like a dump. I cleaned tons of dump out of there all kinds of stuff to make representable. I am a 5-star company out of Kona, I am a professional, I am a hard-working guy, I am not a spokesman. I am here to tell you how it is and you can take it any way you like it. But by my hard work I want to make sure my customers have a path from the parking lot to my boat and not trip on rubbish. I did tell them I was going to use a small backhoe.

Yuen said you have a license to use the boat ramp which is a little south of the wharf. Yuen asked if he was trying to make another boat ramp? Vilaj said no, I was just going to clean so I would have more access to park. I only cleaned out the (4) rusted metal. Vilaj said he knows that the locals, media, and the County are over and the State is all it, because the DLNR only gives out (4) permits, these guys are making millions, they have a monopoly. Why can't I have the 5th permit? Yuen asked if he ever launched his boat from the ramp and Vilaj said no because of all the rubbish he would not be able to get his boat down there. I was trying to make a path where I can take my truck in and turn around. Yuen asked how big was his boat? Vilaj said it is 34-feet and 10-feet wide.

Chair Case asked how wide was the boat ramp? Vilaj said it was 15-feet. Case asked is there any problem loading people on it? Vilaj said, no. Yuen said other people use the ramp, how do they go down there. Vilaj said it was easy for them, they have smaller boats, kayaks, no license, no insurance, no permits.

Roehrig asked if he Vilaj knew that the County had issued a violation to SMS and the fine is \$15,000? Vilaj said yes, but they took it off. Roehrig said it was in appeal. Vilaj said he does not know anything about it. Vilaj said let this go, nothing has been damaged, nothing has been ruined, the place is the way it was, I am not doing any business let me go on with my life.

Oi asked if the Corp of Engineers found anything when they visited. Vilaj said no. Oi asked if he had anything in writing that states that. Vilaj said he had an electronic email. Oi said the email from the Corp of Engineers said to remove all the soil so that is no problem for them. They did not say anything about all the other unauthorized work that was done in that area. Vilaj said they are there to see if I did anything to the coast line.

Case said it also says there is a violation of Section 404, but it says you removed the material. Vilaj said he shop-vacuumed the dirt out of the area and the area but cleaner it is the same as it was before. He said it is bigger than it should have been.

Case asked Downer to clarify where the pilings are in the pictures. The pictures are DOCARE's. Gomes clarified that the pilings are pillars. Case said from DOCARE's pictures there are remains of a pillar. Case said there are historic photos showing (4) pillars. So, it would have taken heavy machinery to knock that down? Downer said yes. Case asked Vilaj, you are saying you did not touch the pillars. Vilaj said he did not.

Case asked Vilaj if he understands the laws that he have been violated. Vilaj said, yes to a limit, but what the whole picture is, I do not understand. Case said we have (2) sets of laws in the Conservation District, that require permits to do any action in the Conservation District, such as grading; and another set of laws that prohibits harm to historic properties. Do you understand? Vilaj said now he does. Vilaj said, he was never told it was a sacred, conservation and historical place, he thought it was just private property rented to him. Case said now you know there are laws intended to protect conservation and historic lands, do you understand now? Vilaj said yes, if he did he would never have been there, obviously without the right permits and paper work. Case said the purpose of it is to prevent harm to coastal areas and historical places.

He said that he just moved the (4) pins to make it safe and they are way in and he is guilty of that and he said they are worth \$5.00 apiece. Gomes asked Vilaj to clarify what kind of truck he owned. Vilaj replied a his pick-up is a 450-4. The back-hole is a 420 with an extended hoe. Gomes asked your saying this bake-hoe is smaller than your truck. Vilaj said he did not consider the back-hoe to be heavy equipment. Gomes said it is somewhat considered heavy equipment.

Roehrig addressed Downer and Lemmo and asked if they had any discussions with the County? How come the County fined the land owner and you fined Vilaj? Downer said Chapter 6E-42 puts the notice on the permit holder applying to do the work are held accountable. The person doing the work is the one who should have applied for the County and CDUAP permits. Lemmo said the evidence points to Mr. Vilaj as conducting the work, that is why we focused our attention on the alleged violator. You seek to prosecute the person who has committed the violation. I had not seen any evidence at the time that shows the landowner knew what Mr. Vilaj did.

Public Testimony

Leialoha "Rocky:" Kaluhiwa, testifying for the Aha Moku Advisory Committee, strongly supports the recommendation to Administrative fine. Mr. Vilaj, after being advised by distraught community members and Native Hawaiian cultural practitioners that his actions in excavating the site in Punaluu was disrespectful and against the wishes of the people, continued to dig and forever change this important cultural site that has been used for generations by the communities of Ka'u. To the families of Ka'u and Punalu'u, the Punalu'u Wharf is a historic site. Mr. Vilaj believed that he was entitled to grade, excavate, and create an area, by back-hoe that would accommodate his planned tours of the ocean areas of Volcano National Park and lava flow areas. He did not have a permit to do this.

Many families lost their pohaku hekau and their makia that was used to tie their ropes when they went swimming, fishing, and diving so that they would not get swept out to sea. Each family placed their own pohaku hekau and makia in the area that Mr. Vilaj destroyed. Many families went in search of these items and could not find them.

Leimana Damate, there is a shed cave where Iwi Kupuna lay, and were said to have funeral artifacts that were never disturbed, the families say they are not there anymore and they say probably because of the damage, Mr. Vilaj caused.

Case asked to clarify the location of the pohaku hekau. Damate said they were attached to the pillars.

Keone Fox said his mother's family is from Ka'u. He went to visit the area when he heard there were violations that were damaging the area. He went to visit the area to personally evaluate the damage. When he noticed that there was work being done by the boat ramp it was obvious Mr. Vilaj was going to build another boat ramp to accommodate his 34-foot commercial 24 passenger boat. Mr. Vilaj knew he what he was doing was wrong, when he saw the people were angry, he tried to keep them quiet, by offering them free boat rides. He claims ignorance. He is here to support the staff submittal.

Downing asked DOBOR on issuing the permit for this size boat was there anything that suggested he could not use the boat ramp that existed.

Ed Underwood, Administrator, DOBOR the permit that was issued was commercial use of State waters and before it is issued we ask how they are planning to get into the water. This person provided staff with an agreement to use private property, it did not include the launch ramp or anything like that. The permit is specifically for the use of the water.

Yuen clarified that this was not DOBOR's ramp. So, the question is did you check the suitability of the ramp for this particular vessel? Underwood said he did not think so.

Motion

Approve Items J-1 and K-1 as submitted (Yuen/Oi) unanimous.

Mr. Vilaj verbally requested a contested case.

Chair Case reminded Mr. Vilaj he needs to follow-up in writing within 10-days.

1:25 pm Recess

1:38 pm Reconvene

ITEM J-3 Denial of Request for Contested Case Hearing By GKM, Inc. Regarding August 11, 2017 Decision to Authorize Public Auction of a Lease for Boat/Trailer Storage Facility and Parking at Honokohau Small Boat Harbor, North Kona, Hawai'i Island; Tax Map Key: (3) 7-4-008:003.

Ed Underwood, DOBOR, said that at the time of the meeting, GKM did not request a contested case and follow-up in writing. We did reach out to them to let them know we were coming before the Board and therefore believe that we gave adequate notice. The request for contested case was not received on time.

Board Discussion

Roehrig said that in the petitioner's request for contested case signed by counsel for GKM, Inc., dated August 22, 2017, to summarize, it said that GKM Inc., throughout their occupancy was assured by DOBOR staff that a long-term lease was probable. In relying on those representations GKM continued to build the boat/storage facility as integral portion of the haul out business. He asked Underwood if he was part of those conversations.

Underwood replied prior to him there were discussions. In speaking with them, it was said the idea was to take the additional nine acres and hopefully roll it into their existing lease. When we went to get advice from the Attorney General's office, we were told we could not do that because it was an auction lease, to do a direct lease we would have to show it promoted competition in the market place and we could not show that, so we were advised to go out to public auction.

Roehrig clarified that Underwood did not have a role in those discussions as it was before his time. Underwood said yes. Roehrig asked if he had a role in the additional 3 acres. Underwood said yes, GKM wanted more room for parking.

Public Testimony

Joseph Fagundes, representing GKM, with respect to notice, said we were not adequately notified. Tina Prettyman found out that on August 7th that it was going to come before the Board on August 11th, 2017. No one from DOBOR sent GKM notice. Fagundes asked the Board to waive the 10-day period. GKM has put in improvements. DLNR has used GKM to store impounded boats We never billed DLNR. The boat owners owe that money. The way GKM go into this, your District Manager came to us and said we have these boats that we need to impound, and would you set-up a boat storage yard, we will give you a five-year lease and then we will give you a long-term lease after you set it up. He said a contested matter would allow a reasonable opportunity to inform this Board of the entire facts and matters and whether this should go to public auction. Our focus today is whether you will give us a contested case

Yuen said a person who has an RP and is told that you were assured a long-term lease was probable, cannot use that as a right to have a contested case hearing if the RP goes out to public auction. The Harbor Master or whoever cannot promise that someone is going to get a negotiated long-term lease. That has to come before the Board.

Fagundes, said, what we are talking about is what your Land Manager and the DOT Land Manager promised prior to DLNR having jurisdiction over this, and those are the witness we would bring in if a contested case is granted. GKM is owed thousands of dollars. There is no provisions that would reimburse for the improvement made. We have property rights to the improvements we put in.

Yuen said the improvements were done during the term of the original 5-year lease. And the additional fencing for the 3-acres was done under the RP. The Lessee had a 5-year lease to have a boat storage area, put in a lot of money fencing it and got their 5-year lease. I do not see the promise of something greater. No matter who is making those promises. Nobody can promise that. Reliance on a promise by someone who has no authority to give such a promise is not reasonable.

Fagundes disagrees. When you have a Property Manager who makes recommendations to the Board and who presumably has his pulse on the workings of the Board, I think it is not unreasonable to rely on representation made by the Agent of the department. Whether or not that rises to the level of a binding agreement. I agree you. All I am asking for today is an opportunity.

Yuen said we want to do what is best for the public. We all agree that the right thing for the State to do is to not keep this particular property on an RP. There are only 2-options, an auction, or a direct lease. Another Board Member and I have been making very strong inquiries of DOT whenever they came to the Board and requested a direct lease under this provision of encouraging competition and our question always have been, how does this encourage competition. Sometimes there was a good answer and sometimes there was not. So, what is your answer?

Fagundes, the department has a lot of undeveloped property around Honokohau Harbor, there have been numerous inquiries that I have been involved with besides GKM to provide services to the public or business. Right now, the land is not being used for its highest and best use. GKM desire to have a long-term lease on this property would encourage more competition for the maritime community by expanding and giving people some opportunity to come in and offer services with some expectation of developing the property and creating more services, creating more jobs, and creating more maritime activities.

There was a robust discussion regarding revenues and how a direct lease to GKM or a public auction would benefit the State. Yuen explained that we are not permitted to say, GKM has been a goof tenant and therefore we are going to directly negotiate a lease for them. The only grounds we can directly negotiate a lease with anybody for this property is that it furthers competition. Member Roehrig pointed out several cases that dealt with summary disposition to Fagundes dealing with late submittal. Fagundes said what he is asking for is an opportunity to show that how he can put on testimony and evidence to demonstrate to the State that we have reasonable expectation and we relied upon that and that we can perform in creating competition on that would be beneficial to the State.

Chair Case felt that to go out to public auction is that remedy. If you think there is some reliance or something. The simple decision to stop a revocable permit and go out to public auction is not a property right. Fagundes, clarified that the rights would be to the improvement made to the property.

Yuen made the motion to approve staff recommendation to deny the contested case. Chair Case seconded the motion.

Roehrig said there is good cause to waive the 10-day violation by reason of fact that there was no direct notice to GKM for notice of the hearing, second, there is basis for a contested case under the circumstances, in addition to having property rights in the land, and the adjacent land is entitled to have a contested case, the petitioner has a lease in the abutting property. Roehrig referred to several case laws to come to the decision to vote "no".

Chair Case asked for some input from the AG. William Wynhoft, AG, said in regard to HRS 13-1-31, the issue is who is party to a contested case once a contested case has been determined to be applicable. It is not applicable to this situation because these people are not entitled to a contested case. What happened here is the allegation, if people on the staff told this guy he is going to get a lease, the fact of the matter, as a matter of law, they cannot rely on that. Only the Board can give a lease and can only be done by public auction. The remedy is to sue the State.

Motion

Approved as submitted (Yuen, Case) 6-Aye 1-No (Roehrig). Passes

2:30 pm Recess

2:45 pm Reconvene

ITEM C-1 Determination that a Supplemental Environmental Impact Statement is required prior to major amendment to the Auwahi Wind Energy Habitat Conservation Plan and Incidental Take License; Ahupua'a of Auwahi, District of Kahikinui, Island of Maui, Hawai'i, Tax Map Key: (2) 1-9-001:006 and;

Delegation of Authority to the Chairperson to determine whether Supplemental Environmental Impact Statements are required for future amendments to Habitat Conservation Plans and Incidental Take Licenses for Wind Energy Projects.

David Smith, DOFAW, there has been a change in scope. They did an EIS, they are allowed to take a certain number of bats and what they are finding out is that some of these wind farms are taking a significant amount more than originally permitted. We consider it a significant number of bats being taken. Environmental impacts are increasing. That is the reason for a supplemental EIS.

Board Discussion

Member Gomes asked to be recused. This particular windfarm is on the ranch he works for. Gon said the supplemental EIS, dealing with the particulars of reassessing baseline takes. The population of bats seems to be larger than we anticipated. Those kind of studies for a region are applicable for any other proposals for conservation plans for that region.

Smith said that different projects in different areas are taking different amounts of bats, we are learning as we go along.

Yuen said you gave us a projected figure of the number of bats being taken, do you have an actual figure of bat carcasses found? Smith said there were (8) observed. We do not know how many

bats we have out there. Yuen asked if all the wind projects are under EIS or are some under EA? Smith said he was not sure. Gon said he was pretty sure they all are under EIS.

Downing asked how many is going to be enough? I call it how many bats per hour. Smith said they are negotiating a new level based on the current take. Going back to see what is the best science that determines how much a species can tolerate. Downing asked did not they do that already? Smith replied, it was originally based on a certain level of take, they did not calculate the upper limit. What also has come to light is we know a lot more than we did when we started.

Public Testimony

Marilyn Teague, Auwahi Wind, supports the staff submittal; and if an EIS is needed we are ready to go. We are looking for some guidance and clarify the scope is limited to the staff amendment.

Yuen said they will not put any additional conditions to the submittal. Gon said that for the record the rules do specify the option of citation of previous portions of the EIS unchanged.

Motion

Approved as submitted (Yuen, Gon) unanimous.

Item D-8 Renewal of Revocable Permit No. 7566 for Pier Purposes; Hilton Hawaiian Village, LLC, Permittee. Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008: 029.

Tsuji, Land Division, the way it is written now is to renew the existing permit. Christine Ohira, representing Hilton Hawaiian Village, is present to ask questions.

Board Discussion

Downing asked when the last increase? Tsuji said it was January 2017, there was a 1.5% increase. Downing asked if there is a separation on the passenger count? The separation of the different vehicles (Atlantis, Catamaran, etc.). Barry Cheung, Land, said they provide a monthly report. They give a grand total of headcount.

Yuan asked if the office of the Attorney General advised the Land Board in writing regarding who owns the pier? Tsuji said they have not. Yuen felt that it is a legal question, not a policy question, we would rely on the Department of the Attorney General to review the facts and give us their best opinion; often it is not clear, but it seems to me that we should have a written opinion on this.

Chair Case asked Wynhoff (AG) to clarify. Wynhoff said from his point of view it is such a close call that he did not think they could weigh in on it. Myself, I just do not feel comfortable to say I think this, I think that. Unless it is summary judgment based on the RP itself, is unambiguous, which I do not agree with. You would have to go back into dozens of years of history and it is a matter of who said what to whom, and to be honest he does not think it would advance the ball. In my opinion, it is not a fruitful area for the AG's to give an answer.

Chair Case added based on that and our review and discussions today, my view is that it is in the best interest to continue this is in the best interest of the public.

There was a vigorous discussion on who owns the pier and Roehrig mentioned allowing others to have an RP to use the pier. Tsuji said, staff mentioned no one else has approached them to use the pier. Yuen and Roehrig mentioned that they have reviewed past agreements regarding the pier.

Public Testimony

Christine Ohira, said that they rebutted OHA's letter regarding the pier.

Motion

Approved as submitted (Downing, Oi) unanimous.

Item D-3 Annual Renewal of Revocable Permits on the Island of Kaua'i. See Exhibit 2 for list of Revocable Permits.

Tsuji, Land, noted that OCCL comments were given to the Land Board Secretary to distribute to the Land Board members. He received testimony from OHA, as far as the Trust Land status, all the lands are ceded lands and they get their 20%. We try to address their issues as best as we can. Richard Howard from Land Division will help answer questions

RP 5983 was withdrawn.

Board Discussion

Gomes asked if any of the pasturage lands go to DOA under Act 90? Howard, said he previously took out the Act 90 from the list we have that DOA agreed to take. Gomes asked if DOA was picking and choosing what they wanted to take? Case said, yes, and the Statute allows them to.

Case asked Howard to clarify if the RP's to be transferred and about to expire were on the list. Howard replied, yes, they will be renewed until they are transferred to DOA. Gon had a request in regard to the map of RP's. He would like to see a centrum dot in the tax map key map showing the location of the RP. Tsuji replied it would be very time-consuming. Gon said nonetheless, if there were pasture land near the conservation district, you could have some that have very strong biological resources and it is difficult to see what the locations are and what their situation is.

Case added that there are on-going discussions, there are pasture RP holders that want to be transferred to DOA, we want to review them very carefully as they may be more appropriate for DOFAW under cooperative relationship with the rancher. Case said what we are doing is checking with DOFAW before any proposed transfers.

RP-7739 Lance Laney, Oi said they were cited for a violation a couple years ago, they were supposed to remove some illegal structures on state land, can you do an inspection to see if they have complied? Tsuji said yes.

Roehrig asked about the following; RP-7712 came up 3.798 looks ready to out for auction. RP-7790, 7805,7833, without getting into details would it be feasible to hire temporary staff to help Wes Matsunaga bring this up to a point for public lease? Tsuji said he could not. Roehrig was looking for ways to help. Case said she will work with Tsuji to see if she can find a way to assist.

Public Testimony-None

Amendment:
Withdraw RP 5983.

Motion
Approved as amended (Oi, Downing) unanimous.

Item J-1 Request Approval to Accept a Donation by NBC Universal Media LCC, For A Camera Security System for The Heeia Kea Small Boat Harbor, (1) 4-6-006:064 and 067.

Megan Statts, DOBOR, NBC wanted to give back to the community for their use of the harbor and the inconvenience the caused while filming.

Board Discussion

Gon said to send them our appreciation. Downing asked, if we have the right to use the money that is earned by the pier for a certain pier or does it go into the General Fund? Statts said it would go in the Boating Special Fund.

Public Testimony-None

Motion
Approved as submitted (Gon, Gomes) unanimous.

4:50 pm Recess
5:05 pm Reconvene

- ITEM D-4** Issuance of Right-of-Entry Permit to Division of Forestry and Wildlife for the Purpose of Detection and Treatment of Rapid Ohia Death on All Unencumbered State Lands on Hawai'i Island.
- ITEM D-5** Issuance of Right-of-Entry permit to Hawaii Explosives & Pyrotechnics, Inc. for Set Up, Firing, and All Other Pre-Display and Post-Display Activities for a Special Corporate Event Hosted by Mauna Kea Beach Resort on November 9, 2017, on Unencumbered State Lands, Ouli, South Kohala, Hawaii, Tax Map Key: (3) 6-2-002: seaward of parcel 004.
- ITEM D-7** Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. for Beach Event Purposes to be held on December 10 and 11, 2017, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: Portions of 021.
- ITEM D-11** Issuance of a Right-of-Entry Permit to the United States to Conduct Defense Environmental Restoration Program Activities on State Lands Including

Submerged Lands on the Islands of Oahu, Maui, and Hawai'i. See Exhibit A for List of Subject Properties.

Tsuji, Land Division provided a summary of the remaining staff submittals.

Board Discussion- None

Public Testimony-None

Motion

Approved Items D-4, D-5, D-7 and D-11 as submitted (Gomes, Gon) unanimous.

ITEM L-1 Appointment of Dan Clegg and Darren Strand to Serve as Directors of the Central Maui Soil and Water Conservation District.

ITEM L-2 Appointment of James J. Nobriga to Serve as Director of West Maui Soil and Water Conservation District

Tsuji, Land Division presented the submittals Carty Chang, Engineering.

Board Discussion- None

Public Testimony-None

Motion

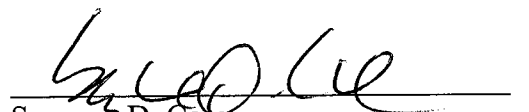
Approved as submitted (Gomes, Gon) unanimous.

There being no further business, Chair Case adjourned the meeting at 5:20 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