

FEB 23 2018

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

DATE: FRIDAY, JANUARY 12, 2018
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig
Samuel Gon

Chris Yuen
Keone Downing
James Gomes

STAFF

Russell Tsuji/LAND
Kevin Moore /LAND
David Smith/DOFAW
Ed Underwood /DOBOR

Ross Smith/DOT Airports
Ian Hirokawa /LAND
Keiki Kipapa/DOBOR

OTHERS

David Day-AG
Michelle Matson/NAI
Scott Nakamina/D10
Sam Monet/NAI
Rob Johnson/NAI
Mai T. Way/NAI
Anu Hittle /NAI
Lyle Holden/NAI
James Manaku-NAI
Chipper Wichman

Charles Carroll/NAI
Mark Roy/D10
Janet Mandrel/NAI
Randy Cates/K2
Mitchell Morgan/NAI
Alana Rask/NAI
Nancy Mueting/NAI
Bruce Lenkit/NAI

*NAI-NON-ACTION ITEM

Chair Case called the meeting to order at 9:33 AM. She announced that Items A-1, D-9, I-1, J-2 through J-6, AND J-9, are withdrawn and will not be heard today.

Case read the standard contested case hearing statement.

A. MINUTES

ITEM A-1 Request approval of June 9, 2017 meeting minutes.
WITHDRAWN

ITEM A-2 Request approval for June 23, 2017 meeting minutes.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM A-3 Request approval for July 14, 2017 meeting minutes.

Board Discussion

Member Roehrig said page 8 of 19, mid paragraph, the 20-year statute of limitations which the legislature "enacted" rather than "made". Page 9 of 19, last paragraph, should be "are going to take (care) of you", after the word "worried", if after a while they did not take care of you. Page 10 of 19, 3rd line from the top should say "Letters that were previously sent". Page 11 of 19, 2nd paragraph, "anything in black and white". Several lines down, the direction should be "directions".

Member Yuen commented that there are three places with stray comments in brackets should be deleted.

Add Member Gon to the Members that were in attendance.

Public Testimony-None

Motion

Approved as amended (Yuen, Gomes) unanimous.

Further Board Discussion

Member Yuen commented that while reviewing the minutes, he wanted to ask for a follow-up report on Landscape Hawaii. Chair Case said staff can ask for a follow-up and whether the fine on June 9, 2017 was paid.

Member Roehrig would like to ask follow-up questions at the end of the minutes. Chair Case asked the AG if the Board Members could ask follow-up questions after the reading of the minutes. AG said he did not think so, but could follow-up.

Case said if Board Members want to follow-up on items from previous meetings that are in the minutes being reviewed, we can let the staff know and we will find out if there is a straightforward way to address this during the review of the minutes on the agenda.

Yuen said he was fine with that and he wanted to know about:
Pohoiki boat ramp fine (June 9th).
Landscape Hawaii payment plan.

Chair Case said we will follow-up on that and a procedure to address these in the meeting when the minutes come up.

ITEM A-4 Request approval of July 28, 2017 meeting minutes.

Board Discussion

Member Roehrig said, page 5 of 13, 2nd paragraph, where it says Roehrig said the people of Hilo are furious, "it" should be before "cannot".

Member Gon noted that he was present at that meeting.

Public Testimony-None

Motion

Approved as amended (Roehrig, Gon) unanimous.

ITEM A-5 Request approval of August 11, 2017 meeting minutes.

Board Discussion

Member Roehrig, page 7 of 21 paragraph 3, should say HRS 171.36. Page 14 of 21, at the bottom, Member Roehrig asked "who" brought in the gravel. Page 15 of 21 2nd to last paragraph the word should be "recount" the conversations. Page 16 of 21, 1st paragraph, line 4, the Judge as, "equitable", 2nd to last line made by Prettyman, make justifiable the expenditures" (delete "for"). Page 17 of 21, Roehrig asked Kimura, the sentence should say confirm there were 9-acres that were going out for "public auction".

Member Gon was not in attendance at the August 11, 2017 meeting and will recuse from this action.

Member Yuen said, "Nogouchi", (Item D-2) thinks it should be Noguchi, check spelling throughout. Case asked if Board Members could send typos in rather than use Board meeting time.

Member Yuen said on page 10, of Item K-1, should reference it as an EA not an EIS and the cut-off date should be “1892”. He commented that he had follow up questions regarding, Items M-1, Ualena St., and Item J-2, that were deferred and would like a follow-up report.

Member Gon noted he would not be voting on this particular item as he was not present.

Public Testimony-None

Motion

Approved as amended (Gomes, Roehrig) unanimous.

ITEM A-6 Request approval for December 8, 2017 meeting minutes.

Board Discussion

Chair Case asked for them to send in any typos. Member Roehrig, page 9 of 28, where it refers to “Olson” it should be “Olson Trust”. On the same page, two paragraphs later, Roehrig said he represented Hawaiians against should be “against Kau sugar”. He “released” his clients in that area. Delete 1st notice of vote because it is taken up again on the next page. Page 10 of 28. After A&B, Condition No. 2, agreed on. Wants to add a “C” condition. Yuen noted that B is the same as 2, although worded slightly differently. Roehrig thinks that paragraph 2 on prior page is more definite. Roehrig withdrew C.

Page 16 of 28 halfway down. Follow-up questions to KIUC regarding exemption from EA. Disagrees with Attorney’s statement. Read the case and Case noted that is a comment, but is not an adjustment to the minutes. Case noted that substantive comments are not on the agenda. We cannot change what happened at the meeting in the minutes.

Notes that vote was 4/3. It was not unanimous on the KIUC docket. Roehrig, Downing and Gomes opposed. Yuen noted that the vote was correctly stated further down. Page 19 of 28, page 5, last sentence. Kohala task force should say “was created by Governor’s Ariyoshi Administration.”

Gon will give his changes to the secretary.

Public Testimony-None

Motion

Approved as amended (Roehrig, Gon) Unanimous.

ITEM C-2 Approve two dispositions of land that was acquired with a grant from the Land Conservation Fund by the National Tropical Botanical Garden at Hāna, Maui, Tax Map Key Number (2) 1-3-002:001, Including Waiver of Revenue Sharing Provisions:

- (1) Decoite Agricultural Lease with A. Decoite Ranch LLC, and
- (2) Lease Agreement with Ma Ka Hana Ka 'Ike

David Smith, Administrator, DOFAW, requested the Board to approve two different leases (noted above). Staff did a site visit and noted that the leases are consistent with the purposes of the program. Grazing is for a land management purpose. Other lease is to manage Sam Mahale Farm, a volunteer farm that feeds about 80 families. Waive revenue sharing for the purposes of this lease. Chipper Wichman, National Tropical Botanical Garden, is present to answer any questions.

Board Discussion

Roehrig noted that his father was the architect for the Wichmans, but he does not think that is a conflict. Case noted that she is a long-time family of the Wichmans. It would not influence my vote.

Gon thanked Smith for pointing out that the leases were for land management and enhancement programs. He thinks this is a good use of Legacy Lands. To actually implement the agriculture lands that are made with these acquisitions for the benefit of the community is exactly what you want for the use of Legacy Lands.

Member Gomes said it is a great program and asked on the ranch side, for the 94-acres for Decoite, 5-years and the 9-acres for Ma Ka Hana Ka 'Ike, 6-years, why aren't the leases for the same amount of time?

Chipper Wichman responded. He noted that David Smith and his staff have been doing a wonderful job. Also thanked DLNR for the original Legacy Land Grant. Noted that cattle are an effective way of managing guinea grass. Ma Ka Hana Ka Ike went in for an OHA grant to support their work. Requested a 6-year lease as part of the OHA grant. Ultimately, they thought it was cleaner to run the two leases together. On the other hand, for DeCoite, they need a long-term lease to be able to get loans for their fencing.

Mahele Farm uses plants from the botanical gardens. For example, maia (bananas) that you cannot find in the store are grown there.

Gomes asked who maintains the heiau. Wichman noted that their staff maintains the heiau. Hawaiian community advises them on use and access.

Public Testimony- None

Motion

Approved as submitted (Gomes, Gon) unanimous.

ITEM D-11 Issuance of Right-of-Entry Permit for Due Diligence to Hawaiian Electric Company, Inc. on Lands Encumbered by Executive Order No. 3947 for Harbor Purposes, and Executive Order No. 4075 for Government Services Purposes, Mokauea, Kalihi and Kapālama, Honolulu, O‘ahu, Tax Map Key: (1) 1-2-025: Various (see project boundary on Exhibit A).

Russell Tsuji, Administrator, Land Division presented the submittal. HECO staff available for questions.

Board Discussion- None

Public Testimony- None

Motion

Approved as submitted (Roehrig, Gon) unanimous.

ITEM D-16 Approval of a Letter from the Members of the Board of Land and Natural Resources to the Legislature in Support of House Bill 1120 and Senate Bill 986, Relating to Special Shoreline Encroachment Easements.

Russell Tsuji presented for the Land Division. We are bringing to the Board a request to consider executing a letter to the Legislature regarding a bill that is still in play. Would like to get a hearing. It is related to structures authorized to be built on private land, but now with rising sea level, these structures are now on State Land.

Many of these structures are potentially dangerous. From the State’s perspective, we would like liability insurance and indemnity from the homeowner to let them maintain their property (walls).

We have come up with a bill that allows the Board if certain conditions are met, to charge less than fair market value for the encroachment. They have not received a hearing because there are people who believe that people should not be living on the shore.

Asking for Board support to send a statement from the Board asking the Legislature to hear this bill. Chair Case noted that they are bringing this in response to concerns that the Board has expressed about this situation.

Board Discussion

Member Roehrig is in favor of the letter. However, does not support the two bills that attached as they are currently worded. HB1120/SB986 objects to provision on page 3, lines 3-6, “the granting of an easement . . . shall not be construed as State ownership of the shoreline encroachment.” I believe that language is an attempt to isolate the State from public liability for lands within State jurisdiction. Because it is below the high-wash of the waves, the consequence is that the State has tort liability for people who get injured there. By putting this provision into the bill, we are trying who are trying to isolate the State from public liability. It also, would like the bill to be backdated.

In summary, I am in favor of a letter, but will not support language that attempts to isolate the State from public liability because I feel it is not in the public's interest.

Case noted that the purpose is to ensure that the landowner remains liable for the wall.

Oi said you only have to note that the structure will still be maintained by the landowner, and the State will not have liability for it. State still owns the land.

Yuen agreed that the encroachment is a structure, and not the land. Agreed that the State does not want to be liable for the structure, even if they own the land underneath. Agrees with Tommy's change.

Roehrig said it is not just wall it is anything makai of the wash of the wave. Gon noted that why the word is "structures." Roehrig continued the argue that it is not in the public interest to support isolating the State from liability.

Case noted that there are different opinions of "the public interest." Her opinion differs from that of Roehrig.

Yuen opined that it is only a poison pill for a plaintiff's attorney. Noted that a normal clause of an easement is to maintain insurance to cover State liability. Believes this is reasonable. Tsuji noted that the State has taken the position in litigation that the State owns the land, but not the structure.

Gomes clarified that the Board can also charge less than fair market value. How does the Board get to that number? Case noted that the option would be to waive any fee. However, if there is any reason between fair market and zero would be assessed at the time.

Yuen thought the bill was meant to apply more broadly than currently written: to structures that were legal when built, not just those "authorized" by government. Many old legal seawalls did not have any formal authorization, like a building permit. Ian Hirokawa responded that Land Division looks at structures as either permitted or non-conforming. Yuen suggested using "legally constructed", rather than "authorized" because some seawalls are legal even though they do not have permits. Tsuji said they will discuss with Deputy AG. He was trying to follow HARS 171-33 (submerged lands).

The 2nd issue, removal of structures that become uninhabitable because of sea level rise will become a huge issue for the State. The State will need to require the owner to remove these structures. Case noted that she agreed, but that this bill for structures where the State agrees that they can remain place.

Roehrig said need to take extraneous features out of legislation. In favor of an insurance program for all owners of shoreline property, so that we equitably share the burden. Wants a shoreline insurance program in Hawaii.

Downing reiterated that pricing for the walls will seem arbitrary and become problematic. Supports less than fair market value, but is unsure how the Board will come to something between fair market, and above zero. Would like a fee structure for the Board to use.

Gon suggested that there be a formula for the Board to use. Agrees with Downing.

Oi suggested putting a minimum rent. Board could charge from 1M to an established minimum. Cost of minimum could cover administrative costs. Tsuji said if the bills passes they could work on a scale.

Public Testimony

Sam Monet, has built seawalls on North Shore in 1980's. The wall had to be built within property with a mottled surface to absorb energy, and at the angle of repose. Noted that his walls are still there, but that his neighbors walls, which did not have the same requirements are not as good so beach is eroding. Supports setting a minimum cost that discourages people from building seawalls close to the highwater mark. Argues that seawalls encroach on public access. Also agrees that people will abandoned their properties to the State, so encouraged the State to plan for the future. Encouraged the Board to make it expensive, so people stop building seawalls and so there is banked money for the inevitable clean-up.

Bob Hampton, Chairman of beach activities at the Hilton Hawaiian Village. Agrees with deficiencies addressed. Noted that sand replenishment helps. Board should incentivize owners of seashore property to make changes that will address the inevitable advance of the ocean. He noted king-tides. Suggested that money that would go into legal fees should go into making improvements for shoreline properties.

Motion

Roehrig would like to send letter, but there should be more consensus. He cannot support the legislation as written.

Yuen said the Department should go ahead and take into account the discussion, and Board members can send in their individual thoughts to the legislature. Does not believe that timing will allow for a consensus letter.

Case said, 1) move forward without letter, or 2) approve letter as is and Members can send in supplemental comments.

Roehrig said send letter supporting concept of less than fair market value being charged and legislature could introduce new bills. Case noted that the bills have been submitted. No second on Roehrig's motion. Gon noted that he liked the idea but not sure how we do that. Yuen did not think we could do it without having to come back to the Board.

Gon seconded for purposes of discussion. Noted that only the first paragraph supported certain bills. All other paragraphs address climate change. Last paragraph change to "enactment of

measures such as these.” Board can say ‘we are interested in the topic of these bills, especially in the topic of fair market value, we are all in agreement with the intent.

Case said, leave reference in subject line.

The undersigned strongly support the intent of these measures and request that these measures be heard in your respective committees.

Last paragraph, details of these measures still need to address some concerns. Board members can send in individual comments. Yuen likes Cases changes. Gon also supports.

Hirokawa: read out changes.

Roehrig said that we should not draft here because the minutes will be unclear regarding what we are actually writing. Suggest that a member of the Board say the words, and we go. There is a motion on the floor as well as a second, we are in discussion now. Come back later.

Case said we put discussion on hold, come back after lunch and hear the changes after lunch.

ITEM K-2 Time Extension Request OA-18-10 by Randy Cates of Mamala Bay Seafood, LLC to extend the construction deadlines by one year on Conservation District Use Permit (CDUP) OA-3719 for the Māmalā Bay Mariculture Facility on submerged lands in the Reef Runway Borrow Pit, Ke‘ehi Lagoon, Honolulu, O‘ahu, TMK (1) 1-1-003:005 (submerged lands).

Sam Lemmo, Administrator, presented for OCCL. Noted that some members were on the Board when this project was originally proposed. How proposing to put up a facility at the reef runway. Has received three time extensions. Main issue with this project has been with HDOT and FAA. FAA circular issued guidelines regarding avian threats to air traffic, which made HDOT hesitant to sign off on maricultural facility. HDOT needs to sign off because the area of the fish farm is EO'd to the HDOT. Applicant still working on getting concurrence from HDOT and FAA. Staff recommendation is to approve the Time Extension.

Board Discussion

Downing asked when will OCCL feel that Cates has been given enough time? Should there be a certain time period? Downing does not believe that one year extension will be enough. Lemmo noted that the board has sometimes put limits on extensions and then applicant comes back and tried to amend that limit. Lemmo noted that generally the truth comes out as to whether the project will really happen. He also noted that the board could deny the extension. He does not support putting a limit on the extensions. In this case, he believes that Cates would move forward if he could, but is having real problems with FAA and HDOT.

Gomes asked if OCCL can talk to HDOT and FAA? Lemmo said that they did, and there is some clarification. However, he does not know if HDOT or FAA has given Cates any real guidance or answer on whether this project will be able to move forward.

Randy Cates supplied additional background met with FAA and HDOT prior to initial application before the Board. FAA requested that the whole operation be changed to become a submerged operation. Required that the EA be changed to a submerged operation. This was done. Received approval based on HDOT approval. Administration changed. New Administration did not want project. New FAA circular states that there should be no aquaculture operation within five nautical miles of an airport. HDOT said that they would support project if FAA would change language of circular. Cates traveled to D.C several times. In April, the circular advisory came out, allows aquaculture operations within 5 miles of an airport in certain instances. However still opposed Cates operation based on homeland security. Now working with Senator Inouye. Meeting with head of Homeland Security in Hawaii. He has agreed to meet with HDOT. Next step is to get HDOT to sit down to a meeting. Believes HDOT and FAA's response is arbitrary and capricious because a similar operation in Kona (Kona Blue) was approved. Believes fish farming technology is important to feed Hawaii's people.

Roehrig said that the Board should support this project, supports innovative ways to feed the Hawaii population.

Chair noted that the proper way to support this project is to approve the extension.

Roehrig asked if the extension has to be limited to one year? Would like to amend the length of time. Downing suggested two years.

Lemmo would like to amend the submittal to say, two years to initiate construction and two years to complete.

Gon liked the idea of taking some sort of action above and beyond. Would like Chair to contact HDOT. Chair noted that she would commit to inquiring about the status.

Amendment:

Request of extension will be two years to initiate construction and two- years to complete

Motion

Approved as amended (Roehrig, Gon) unanimous.

ITEM D-10 Amend Prior Board of Land and Natural Resources action of April 8, 2016, under Agenda Item D-5: *“Amend GL S-6050, Grant of Term, Non-Exclusive Easements to the Puamana Community Association for Shoreline Seawall/Revetment Encroachments Purposes, Puamana, Lāhainā, Maui, Tax Map Key: (2) 4-6-028:*

seaward of 001, increasing the Easement Area from 1,895 Square Feet to 5,242 Square Feet.”

The purpose of this amendment is to modify the approved easement areas, resulting in an increase to the current easement area of GL S-6050 from 1,895 square feet to a new total of approximately 5,365 square feet, more or less.

Russell Tsuji presented for the Land Division. Noted that the applicants consultant is here to answer questions.

Mark Roy thanked the Board for reviewing this item and provided some history on the easements for the shoreline encroachments. Structures date back to the 1930's. Request that the amendments be approved.

Board Discussion

Gon asked if they agree with the recommendations in the submittal. Roy replied, yes.

Roehrig would like to have the AG and Land to resolve the discrepancy that says that this land is acquired automatically per the Gold Coast decision. Does not agree that the landowner needs to apply for an easement.

Case noted that the land becomes the property of the State, the structure then ends up on State land, so the land owner then needs an easement for his structure, which is on State land. Roehrig disagrees and believes that the legislature must pass law that says owner must apply for an easement.

Public Testimony

Mike Roy, Puamana Community Association thanked the Board for reviewing. We have been diligently working to obtain these shoreline easements. We are here to ask the Board to approve the amendments made by Staff.

Member Gon asked Roy, if he agrees with Staff recommendations. Roy said yes, we are.

Motion

Approved as submitted (Gomes, Oi) unanimous.

Downing wanted viewable pictures. Gomes agreed that the pictures need more clarity. Can staff send e-pics. Yuen also agreed. Case noted that staff will discuss better imaging.

11:44 am: Recess

11:55 am: Reconvene

**No Agenda Item Number*
INFORMATIONAL BRIEFING REGARDING
THE DEVELOPMENT OF THE ALA WAI SMALL BOAT HARBOR

Ed Underwood provided the briefing. Went through a PowerPoint. Noted that the management of the small boat harbors is only one of (13) mandates. All (13) mandates are funded out of the Boating Special Fund made up of only user fees.

Anu Hittle, from the Coral Reef Initiative at UH is working with DOBOR. Presented results of research, which showed that in contrast to the rest of the Nation, Hawaii's harbors do not make a profit overall.

Noted that slip fees are not adequate to repair docks at Ala Wai. Noted that dilapidated state of Ala Wai Harbor is the result of underfunding, not mismanagement. Noted that DOBOR's Small Boat Harbors are State assets.

Gomes asked if other harbors and marinas in other States privately run? Hittle said that in general they are State owned, but run by marina companies.

Underwood noted that in their overall vision, they want to move staff to ocean recreation and go to third party management for the Harbors. Ala Wai will be their first harbor.

Roehrig wanted to know if the Executive Branch made cuts before it went to the Legislature or if the Legislature cut the budget? Underwood noted that it was both. Roehrig wanted to know how much the Executive cut and how much the Legislature cut? He would like to see how much each cut out of the budget.

Case said the Legislature see the full request and they see the net amount the Executive Branch sees.

Underwood shared the following comments from the public.

Harbor management problems.

Keep Harbor the way it is. Want laundry, fuel dock, and haul out facility. No high rise.

Propose a design build. Developer will have all of the comments and use those, as well as design guidelines. Developer must design to highest and best use, keeping in mind DLNR and DOBORs missions, as well as the many users.

Gomes asked if the developer should also propose a 3rd party manager. Underwood noted that they need a concurrent resolution to lease the submerged lands. If that does not work, they can still hire a marina management company to assist in the management of the harbors. Has met with HGEA and will be meeting with UPW. Noted that Kewalo provides an excellent model.

Downing would like a hard copy of the power point (and Roehrig) e-mail to Gomes.

Oi asked if you hired these people would they be coming to the Board for approval when they do things? How they are going to operate, what kind of functions they will have, people who rent the slips in the harbor have a chance to have input on what is going on there too?

Underwood said that's part of what the outreach was. We will come back before the Board for approval.

Case clarified that you would have a basic management agreement and Board would have to approve that would allow the company to do certain things. If there is a request for a permit, or a temporary land disposition would it come back before the Board. Underwood replied yes.

Roehrig asked why nothing comes to the Board from Kewalo. Underwood noted that Kewalo is an HCDA property.

Public Testimony

Chair asked people to keep comments to 3- minutes.

Sam Monet, resident at the harbor for about 15 -18 years. Surfs and races catamarans. Ala Wai has a \$900,000 net income. Disagrees with argument that the Ala Wai does not make money. Will bring financials next time. Ala Wai supports all of the other harbors in the State. Suppose developer wants to build a high rise? Increase parking problems, increase tourism, delivery trucks, more employee parking.

Downing noted, that the parking stalls are for ocean users and not for surfers. Noted that his daughter works for DTL, when Monet asked for the relationship. Downing asked what he needed to recuse himself from?

Monet, theoretically the harbor is allowed to go forward. Then what? Governor and developer will go to Asia for funds. Asians will park their money in the harbor for use as a money laundering facility. Twenty years later when water inundates the building, who will fix the building. We in Hawaii have been short-termed. Noted that he was educated abroad, and planning in Hawaii is based on numbers that are false, and short term. The harbor will be under water. Need to fix what is there. Only 60 percent occupied because only 60 percent of slips are in working conditions. If docks are fixed, could increase revenue at the harbor.

Gomes asked Monet if he has figures different from UH? Can the harbor be sustainable? Monet said, yes. Case clarified that the revenue is enough to replace the docks and other capital improvement? Yes. Case clarified that there is 8M in Capital Improvement Funds, that seems in excess of \$900,000. Roehrig suggested he bring in his numbers.

Gomes asked how he can get the alternate figures that Monet says he has. Clarified that it looks like a third-party manager looks like a win-win, but he opposes a high rise. Looks forward to receiving numbers from Monet.

Rob Johnson, represents owners of the Ilikai Apartment building. Valuation of the Ilikai is over 1B dollars. Noted various investors and the value of their investments. Planning process—disagrees with the way the planning process is being done in this case. Set aside properties for public use, plan—argued that proper planning would take about \$500,000 and would include a master plan so that public can comment on the entire proposal. Noted that users of the harbor are paying DTL fees. Believes the process is flawed. Agrees that current management is outdated. Needs to update certain things.

Case asked if he objecting to the concept of 3rd party management? He does not object to the concept. Case asked him to accelerate his testimony.

Noted that the Ala Wai has a 16% profit margin. Underwood gave him the numbers 2.5 to 4 M per year. But that goes into special fund, and not back into the Ala Wai. Tightened financials would go a long way to improving the harbor and meeting the DOBOR goals. Ala Wai could be the number one harbor in the world.

Gomes said, you are saying, basically DOBOR whatever management is one thing, it is important, and to divvy up the finances, the money does not go to the General Fund, whatever is generated out of Ala Wai Boat Harbor stays for maintenance and operations. Johnson said, if it did, you would have the #1 harbor in the world. Case asked if the Ilikai looks over the harbor. Johnson said yes.

Case asked Johnson your private financial interest is in the harbor management? Johnson said it is just one thing. The biggest obstacle is the land in front of the Ilikai that they are proposing to develop.

Case clarified that they are concerned about construction in the harbor blocking the may block views from the Ilikai. Johnson replied, absolutely. Case said she just wanted to be clear that there is not a personal interest. We want to make sure what we are doing is in the public interest

His major investors will oppose the project if it blocks their view. Case asked if the Ilikai supports any of the public facilities at the harbor. Johnson said no.

Yuen clarified that the investors want a clear view of State property. Yuen asked if he would agree that the owners do not have a right to a view over the State land. Johnson replied, yes.

Nancy Mueting. Family has a condo in the Ilikai. Would like the parking lot to be nicer. Likes the human scale of the harbor. Opposed to breaking the urban wall and putting massive structures in the harbor. She does volunteer work in the harbor and has noted that people go to the harbor to get relief from the urban areas.

Michelle Matson. President of the Oahu Island Parks Conservancy and Diamond Head Citizens Advisory Committee. Liked the presentation, which focused on public interest and did not advocate a high rise. Supports a parking structure on Lot A with a green roof and Lot B as a

landscaped area. Opposes higher density in the harbor that would impact public uses and shoreline along the harbor. Changes must follow protection of public lands in the public interest.

Lyle Holden. CPA and business man in Hawaii for 40 years. Discussing management of assets. How best to let the public use the assets? Noted that marinas are profitable, especially if they are managed by 3rd parties. Believes State could develop a profitable management property.

Bruce Lenkit. Impressed by DOBORs statement that they are not in favor of a high rise. Agrees with Downing that the parking spaces are for ocean users. Board should listen to DOBOR which is opposed to a high rise. No comment on 3rd party management. Regarding management, noted that there are 180/700 vacant slips. Lowest number was 120 vacant slips. Wait list is 8-10 years. Average revenue lost due to vacant slips is around \$800,000 to \$900,000 per year. High rise would aggravate parking issues.

Roehrig asked AG if the Board has authority to allow a 3rd party to run the harbor without going to the Legislature. AG replied he did not know off the top of his head, and Roehrig asked him to research that.

Charles Carrol. Lives in the Ilikai. Looked over financials spreadsheets. In 2010, revenues increased by about 10%, but expenses increased by 70%. So, problem is not generation of revenue, but management of expenses. Thus, management is an issue, so maybe should be turned over to 3rd party management. Talked to neighbors, and most favor appropriate redevelopment. This means re-establishing services that have been lost, adding additional amenities, such as restaurants, public restaurants at night, green space. Oppose a high rise. A high rise will not benefit citizens of Hawaii.

Downing-two bathrooms that the Hilton is supposed to have open for the public are not open? Open periodically. Understanding is that they are closed because of homeless. Does not think that is sufficient reason to close the bathrooms because it was a condition for their redevelopment.

Janet Mandrel, Makai Society. Makai Society had done a master plan 17-18 years ago. Used to have monthly meetings in the harbor. Has not have one in about 6 months. Primarily attended by slip holders who pay for the harbor. Case noted that the boating fees are to pay for the use of the slip. What happens to that funding is a broader State discussion. Mandrel said that user fees are a user pays/user benefits. Case agreed, and said that the benefit to the user is the slip, and what happens to that money is a broader discussion, not limited to slip users. Wanted to distinguish between outsourcing services or privatizing services.

James Manaku, subsistence cultural practitioner. Noted that no matter what happens, cultural practitioners are affected. Wants to ensure that cultural practitioners still have access and are not barred "for their own safety."

End of informational meeting.

ITEM J-7 Issuance of Revocable Permit for North Shore Canoe Club, for Storage for Canoes and Trailer Parking, Located at Hale'iwa Small Boat Harbor, Hale'iwa, O'ahu, Tax Map Key: (1) 6-2-003:011 (por.).

Ed Underwood and Keiki Kipapa, DOBOR, presented before the Board. This RP is so that the North Shore Canoe Club can store equipment during the off-season.

Board Discussion

Downing asked if there are Canoe Halau on State land now? Yes, one at Maunalua bay, Kaneohe Canoe Club. Others are on County property. Does the club at Maunalua pay a fee? No, it is free. So, Downing believes that this one should be free, which is what Statute says.

Underwood said that this is because they want to store on harbor property, rather than on the beach. So, the rent is minimal. Downing asked how do we make it free? Underwood replied, he was not sure.

Case commented that if it is consistent with the other ones, you are talking about a minimum rent and that is intended to cover administrative fees. Underwood said they are trying to follow the RP guidelines. Downing said he understood.

Kipapa clarified that this Club is moving their canoes off shore during the off-season, so there is a charge. Other Clubs leave their canoes on the beach, even in the off-season.

Public Testimony

Maitani Way, with the Norths Shore Canoe Club. Suggested that the Canoe clubs help to fix the harbors in exchange for rent.

Motion

Approved as submitted (Roehrig, Downing) unanimous.

11:58 am: Lunch Break.

12:45 pm: Reconvene

ITEM K-1 Conservation District Use Application (CDUA) HA-3805 Regarding the Federal Highways Administration, Federal Lands Highway Division, Hīlea Bridge Replacement Project, Located in the Ka'ū District, Island of Hawai'i, on Tax Map Key: (3) 9-5-017:007

Sam Lemmo presented for the OCCL. Hīlea Bridge Replacement. The makai side of the bridge is in the conservation district, and the mauka side is not. Only a very small portion is in the conservation district. Most of the project is not in the conservation district. Recommend approval.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Oi, Gomes) unanimous.

- ITEM M-1** Issuance of a Revocable Permit to the Airlines Committee of Hawaii for the Operation and Maintenance of Passenger Loading Bridges at Daniel K. Inouye International Airport, Kahului Airport, Hilo International Airport, and Lihū'e Airport, Tax Map Key: (1) 1-1-03:042 (HNL); (2) 2-3-8-01: Portion of 019 (OGG); (3) 2-1-12: Portion of 90 (ITO); and (4) 3-5-01: Portion of 008 (LIH).

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Roehrig, Gomes) unanimous.

Chair Case would like to **withdraw** Item M-14. Smith agreed.

Rob Smith- DOT, Airports presented the following: Items M-2, M-3, M-4, M-5, M-6, M-7, M-8, M-9, M-10, M-11, M-12, M-13, M-15, and M-16 consecutively.

- ITEM M-2** Amendment to Prior Board Action of October 13, 2017, Item M-2, Amendment No. 1 to State Lease No. DOT-A-16-0009, Barbers Point Aviation Services, LLC, Request Amendment to Premises and Annual Rental, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.

- ITEM M-3** Issuance of a Revocable Permit for Space to Place Building Signage, Exclusive Air LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

- ITEM M-4** Issuance of a Revocable Permit for Space to Store a Propane Fuel Tank, The Gas Company, LLC dba Hawaii Gas, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

- ITEM M-5** Issuance of a Revocable Permit for the Purpose of Operating a Cargo Truck Turn Around Area to Hawaiian Airlines, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 001 (Portion).

ITEM M-6 Issuance of a Revocable Permit for Aircraft Parking, Hele Lani LLC, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.

ITEM M-7 Issuance of a Revocable Permit for a Car Dealership Overflow Parking to Lithia of Honolulu – BGMCC, LLC, 2969 and 2979 Ualena Street, Daniel K. Inouye International Airport, Tax Map Key: (1) 9-1-13:33 (Portion).

Board Discussion

Member Gomes asked who owns the Car Dealership? Smith said DTL of Honolulu. Gomes asked what brand? Smith said it was Lithia, was not sure. It is the first time he has seen them as well.

ITEM M-8 Grant of a Term, Non-Exclusive Easement, and Issuance of a Temporary Right-of-Entry Permit to Servco Pacific Inc. for Access Purposes, Situate at Mokauea, Kalihi, Honolulu, O’ahu, Hawai’i, Tax Map Key: (1) 1-2-025:002 (Por.).

ITEM M-9 Amendment No. 5 to Concession Agreement No. DOT-A-08-0011 for the Purpose of Adding Baggage Storage Rental Offices, Smarte Carte, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 066 (Portion).

ITEM M-10 Amendment to Prior Board Action of December 13, 2013, Item M-5, Issuance of a Direct Lease for a Radar Training Facility, Applicant/Lessee Name Change from the State of Hawaii; Department of Defense Hawaii Air National Guard, to the United States of America, Department of the Air Force, Kalaeloa Airport, Island of O’ahu, State of Hawai’i, Tax Map Key: (1) 0-1-13:33 (Portion).

Ross Smith clarification; *Item M-10 agenda is correct, submittal is wrong.*

ITEM M-11 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft to The Car Store Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 22.

ITEM M-12 Issuance of a Revocable Permit for an Airline Lounge to United Airlines, Inc., Diamond Head Concourse, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 065 (Portion).

Smith, agenda is correct, submittal is wrong. Recommendation is for an RP, not a direct lease.

ITEM M-13 Issuance of a Revocable Permit for Aircraft Parking, Yamashita, Bruce and Sheri, Daniel K. Inouye International Airport, Tax Map Key: (9)1-1-76: Portion of 23.

ITEM M-15 Issuance of a Revocable Permit for Aircraft Parking, Dillon R. Orian, Ellison Onizuka Kona International Airport at Keahole, Tax Map Key: (3) 7-3-43: Portion of 40.

ITEM M-16 Issuance of a Revocable Permit for Aircraft Parking, Helelani Blue, LLC, Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 90.

Board Discussion-No further questions on the other Items

Public Testimony- None

Motion

Approved as submitted, Items M-2, M-3, M-4, M-5, M-6, M-8, M-9, M-10, M-11, M-13, M-15, and M-16 (Roehrig, Gomes) unanimous.

Approved as amended Item M-12 (Roehrig, Gomes) unanimous.

Item C-1 Request for Approval for Issuance of a request for interest for Federal Grant with the U.S. Forest Service Wood Innovations Grants Program and Authorize the Chairperson to Execute a Contract with Successful Providers.

Dave Smith, DOFAW, summarized the request.

Board Discussion- None

Public Testimony- None

Motion

Approved as submitted (Downing, Gomes) unanimous.

ITEM J-1 Continuation of a Revocable Permit to Atlantis Submarines Hawaii, LLC, to operate Submarine Tours and other Maritime Related Activities at the Honokōhau Small Boat Harbor, Island of Hawai‘i, Tax Map Key: (3) 7-4-008:003 (Portion).

Ed Underwood, DOBOR, would like to add that they will comply with HRS Chapter 343. Land and OCCL agreed with the exemptions.

Board Discussion

Amendment:

Add applicant to comply with Chapter 343, HAR. Item 47 and declare Exemption Class 1, and exempt from an EA.

Public Testimony-None

Motion

Approved as amended (Downing, Gomes) unanimous.

ITEM J-8 Continuation of a Revocable Permit (“RP”) to A&K Ventures LLC, for Purposes of Landscaping, Maintenance, Storage of Small Boats and Trailers and other activities at Mala Wharf and Surrounding Areas, Alamihi, Lāhainā, Maui, Hawai‘i, identified by Tax Map Key: (2) 4-5-005: 019 (Por.).

Ed Underwood, DOBOR, presented submittal.

Board Discussion

Amendment:

Add applicant to comply with Chapter 343, HAR. Item 47 and declare Exemption Class 1, and exempt from an EA.

Public Testimony-None

Motion

Approved as amended (Gomes, Yuen) unanimous.

Russell Tsuji, Land Division presented following Items D-2, D-3, D-4, D-5, D-6, D-8, D-12, D-13, and D-14.

ITEM D-2 Amend Grant of Non-Exclusive Easement under Land Office Deed No. S-29,140, Easter Seals Hawaii, Grantor, to State of Hawai‘i, by its Board of Land and Natural Resources, Grantee, Menhune Road Rockfall Mitigation Project, Kīkīaola, Waimea, Kaua‘i, Tax Map Key: (4) 1-6-010:001 (portion).

The purpose of the amendment is to expand the character of use of the easement to include a 4-foot high chain-link fence with gate for safety purposes.

Tsuji made an **amendment** to the Recommendation Section by adding a Declaration of Exemption from HRS343 as a new Recommendation No. 1 as noted below and renumbering the other Recommendation to No. 2.

Board Discussion-None

Public Testimony-None

Amendment:

- 1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.***

Approved as amended (Gomes, Yuen) unanimous.

ITEM D-4 Grant of Perpetual, Non-Exclusive Easement to the County of Kaua‘i, Department of Public Works (COK DPW) for Sidewalk and Pathway Access Purposes as Part of its Līhu‘e Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)]; Issuance of Immediate Management and Construction Right-of-Entry to COK DPW, Kalapakī, Līhu‘e, Kaua‘i, Tax Map Keys: (4) 3-6-002:021 & 022.

Board Discussion

Oi asked if anyone from the County of Kauai was here. Noted that the Molokoa residents opposed the bike path through their subdivision. They wanted to question the County. Tsuji, did not know the answer. However, he knows that the County is developing bike paths all around Lihue.

Oi also asked, on Exhibit A, the place where the easement is going abuts a county parking lot, so why is the easement going on school property? This item will be withdrawn.

Public Testimony- None

Motion

DEFERRED

ITEM D-5 Lessee’s Request for Early Termination of General Lease No. S-5439, Anna K. Cordero and James J. Cordero, Lessee, Kīkala and Kēōkea, Puna, Hawai‘i, Tax Map Key: (3) 1-2-043:039.

Board Discussion

Gomes asked about the Termination of lease. Has an inspection been done on this property? Are there hazardous materials or derelict vehicles? Tsuji said that are no structures or vehicles on the property. Most of the improvements on the property were not constructed. It is too far away for the potential residents. If anything is there, the staff will take care of it.

Public Testimony-None

Motion

Approve as submitted (Gon, Gomes) unanimous.

ITEM D-6 Amend Prior Board Action of January 27, 2017, Agenda Item D-9, *Grant of Term, Non-Exclusive Easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, for Seawall Encroachment Purposes, Lālāmilo, South Kohala, Hawai‘i, Tax Map Key: (3) 6-9-001: portion of 002.*

The purpose of the amendment is to correct the name of the grantee of the easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Trust dated December 30, 1985, as Restated and Amended, and the Dora C. Thevenin Trust dated December 30, 1985, as Restated and Amended.

Board Discussion- None

Public Testimony- None

Motion

Approve as submitted (Go, Gomes) unanimous.

ITEM D-7 Resubmittal: Determination of Rent upon Reopening for Milolii-Hoopuloa Residential Leases, Phase III, Consisting of Five (5) General Leases for Residential Purposes at Milolii and Ho‘ōpūloa, South Kona, Hawai‘i, Tax Map Key: (3) 8-9-014: 050, 053, 056, and 060-061.

Board Discussion-

Public Testimony

Motion

Approve as submitted (Go, Gomes) unanimous.

3:50 pm Back in Session

ITEM D-8 Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lāhainā, Maui, Tax Map Key: (2) 4-3-010: Seaward of 009.

Tsuji and Sam Lemmo explained the reason for the revetment at Kahana Bay. This shoreline is unraveling. There is no beach sand resources for this particular stretch of beach. The erosion is eating into a clay bank. Our perspective is exchanging the clay bank causing water contributory

with an engineered concrete or rock structure. The problem of erosion is unique to every situation.

Board Discussion

Gomes asked how long is this project going to take. Lemmo replied approximately 6-months Board received really clear photos. Downing said the photos do not actually show what they are doing. He passed out another photo that showed Sheet pile rather than sand bags.

Case said the over-arching to protect beaches does not come into play here because once whatever is there has eroded away, and there is no structure and it would keep eroding we would not get more beach.

What the Condominium Associations along the bay would like to propose beach restoration will take time.

Oi commented that with the rising sea-levels, like in this case, they hit soil already. So, throughout the State if you hit soil along the shore-line, they will be allowed to harden the shoreline?

Downing said it has to be a case-by-case decision. It is a lateral drift of the sand. Lemmo said it just depends on the situation.

Public Testimony-None

Motion

Approve as submitted (Oi, Gomes) unanimous.

Item D-11 Issuance of Right-of-Entry Permit for Due Diligence to Hawaiian Electric Company, Inc. on Lands Encumbered by Executive Order No. 3947 for Harbor Purposes, and Executive Order No. 4075 for Government Services Purposes, Mokauea, Kalihi and Kapālama, Honolulu, O‘ahu, Tax Map Key: (1) 1-2-025: Various (see project boundary on Exhibit A).

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Go, Gomes) unanimous.

ITEM D-12 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Lagoon on February 23, 2018, Waikīkī, Honolulu, O‘ahu, Tax Map Key: (1) 2-3-037:021 (Portion).

Board Discussion

Downing asked if there are 2-sets of fireworks going off at the same time, how do they not interfere with each other? How is the public not affected?

Public Testimony-None

Motion

DEFERRED

ITEM D-13 Amend Prior Board Action of December 8, 2017, Item D-10 by Adding the Issuance of Immediate Right-of-Entry until the Issuance of the Requested Lease.

Amend Conditions for General Lease No. 6056 to Waimānalo Health Center for Community Service Purposes by (a) Expanding Lease Area, and (b) Allowing Subletting and Mortgaging with Prior Approval of the State of Hawai‘i as Lessor; and

Consent to Sublease for Community Service Purposes, Waimānalo Health Center, Sublessor; Roman Catholic Church in the State of Hawai‘i, Sublessee; and

Consent to Federal Interest regarding a Two-Story Medical Building; Waimānalo Health Center, Lessee; Waimānalo, Ko‘olaupoko, O‘ahu, Tax Map Key: (1) 4-1-015: portion of 001.

Tsuji said there was a typo for #6, should be #7 in Recommendations of the submittal.

Board Discussion

The Board amended the recommendation section by renumbering the added recommendation from “6” to “7.”

Public Testimony-None

Motion

Approve as amended (Go, Gomes) unanimous.

ITEM D-14 Issuance of Right-of-Entry Permit to Hawaii Surfing Association, for Event Operations Purposes Related to the 2018 Hawaii Surfing Association Honolulu Legends of the Bay Amateur Surfing Contest at Honolulu, Lāhainā, Maui, Tax Map Key (2) 4-1-001: Portion of 010.

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Go, Gomes) unanimous.

ITEM D-15 After-the-Fact Consent to Assignment of General Lease No. S-3601, BCI Coca-Cola Bottling Company of Los Angeles (now known as Reyes Coca-Cola Bottling, L.L.C.), Assignor, to Coca-Cola Bottling of Hawaii, LLC, Assignee, Kanoelehua Industrial Lots, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-2-049:007.

Board Discussion-None

Public Testimony-None

Motion

Approve as submitted (Go, Gomes) unanimous.

3:00 pm: Recess (Contested Case Matter)

3:56 pm: Back in Session for Land Board Meeting

Continuation of ITEM D-8 that was previously deferred for discussion.

Lemmo, OCCL, indicated this area in the picture was sandbagged originally in 2007-2008, at that time, and if you will notice to the north of this is another condominium unit but they have a gigantic revetment and all these places along Kahana Bay, there are a number of condominium properties with decent beaches, they are all gone. Every one of them has sand bags now. This shoreline is unraveling. These guys came in to put in a seawall. They got a CDUP from the Board, the CDA was issued several years ago. It is a hybrid seawall. The reason we recommended they could harden their shoreline, the backshore area is not sand. Our perspective was simply we are exchanging the clay bank causing water turbidity with an engineered concrete structure. This demonstrated that the problem with erosion is situational. Each situation is unique, depending on the environmental conditions that will determine what you should or should not do.

ITEM D-16. Approval of a Letter from the Members of the Board of Land and Natural Resources to the Legislature in Support of House Bill 1120 and Senate Bill 986, Relating to Special Shoreline Encroachment Easements.

Board Discussion

Roehrig and Gon provided proposals.

Tsuji asked if the last paragraph could delete “State.” Gon noted that DLNR will provide its own arguments. Maybe the letter should just say that the board endorsed the idea of less than market value for these encroachments. Case wanted the letter to have just Stan’s 1st paragraph. Yuen

wanted to delete global warming from the letter. Use erosion or other causes. Yuen agrees with having a simple letter. After much discussion among the Board member's they came to a consensus for the letter to read as follows:

Amendment to letter (Exhibit A):

"The Board of Land and Natural Resources strongly endorses the concept of modifying HRS 171 to allow the assessment of less than fair market value by the BLNR when granting easements for shoreline structures that were legally constructed on previously private property but are now on public property seaward of the shoreline due to erosion and other causes. We request that measures such as HB 1120 and SB 986 be heard in committee."

Public Testimony-None

Motion

Approved as amended (Yuen, Gon) unanimous.

Motion to Adjourn (Oi, Downing) Unanimous.


There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:20 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted, .



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources