

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

DATE: FRIDAY, FEBRUARY 09, 2018
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Jimmy Gomes
Stanley Roehrig
Keone Downing

Sam Gon
Tommy Oi
Chris Yuen

STAFF

Daniel Morris/AG
Russell Tsuji/Land
Ed Underwood/DOBOR
David Smith/DOFAW
Irene Sprechter/DOFAW

Kevin Moore/Land
Curt Cottrell/Parks
Sam Lemmo/OCCL
Cal Miyahara-Land

OTHERS

Steven Lim/D5
Don Medeiros/D8
Fariyal Savio/J1
Stephanie Pascual/D11
Merv Kotake/M4
Jim Coon/J2
Soo Stover/J1
Lynn McCrory/M3
Jason Jeremiah/D5
Shorty Bertlman/J9
Cathy Ho Schar/E1
Johnathon Kwock/E1
Mark Kelley/K1, K2
Heidi Snow/K2

John Savio/J1
George Lindsey/J1
Vinh Ta/D3
Wendy Oda/D10
Nate Wong/D11
Steve Dixon/J11
Janice Takahashi/D16
Natalie Waters/K3
Steven Lim/D5
Lehua Asam/J9
J. Stilgenbauer/E1
James Manaku/C5
Mark Buttons/K1

Chair Case called the meeting to order at 9:34 am. The Chair read the standard contested case hearing statement

ITEM J-1 will be withdrawn.

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

Motion

Approve as amended (Gon, Oi) unanimous.

ITEM A-2 Request approval for August 25, 2017 meeting minutes.

Motion

Approve as amended (Roehrig, Gon) unanimous.

ITEM A-3 Request approval of October 13, 2017 meeting minutes.

Motion

Approve as amended (Gomes, Oi) unanimous. Gon was not present at this meeting and will recuse from voting.

ITEM M-3 Issuance of a Revocable Permit for Storage Space to Lāna‘i Resorts, LLC dba Pūlama Lāna‘i, Daniel K. Inouye International Airport, Tax Map Key no.: (1) 1-1-003:058 (Portion).

Rob Smith provided the staff submittal

Board Discussion

Member Gomes asked if the existing lounge be used for the residents and the guests? Smith said it is a limited lounge mainly for the resort guests. Gomes asked if the public could use it and if it was an enclosed area. Smith said he was not sure if the public had access but it is in an enclosed area.

Lynn McCrory, Pulama Lanai- it is restricted to the Four Seasons guests on Lanai. The concierge picks them up at the gate and take them to the lounge until their flight is ready to go to the inter-islands.

Gomes asked what if you have a local resident who wants to go to the Lanai Four Seasons will he have access to that lounge? Perry said it is tied to them staying at the Hotel. Gomes said DOT is setting aside specifically for Four Seasons for Lanai only? Perry said yes, coming, and going too.

Gomes asked Smith if this was the only one like this in the State or do we have others? Smith replied we have other lounges for specific airlines. Perry noted this is specifically for storage space. Member Oi noted we approved the lounge a couple of months ago.

Public Testimony-None

Motion

Approved as submitted (Gomes, Oi) Unanimous.

ITEM M-4 Issuance of a Direct Lease, Office, and Warehouse Space for a Regulated Steam Sterilization Treatment Plant to NCNS Environmental, Inc., 2989 Ualena Street, Daniel K. Inouye International Airport, Tax Map Key no.: (1) 1-1-04: 019.

Dave Smith provide the specifics for a direct lease. Applicant is available to answer questions.

Board Discussion

Chair Case noted that they have received written testimony which has been distributed.

Member Downing said to Smith-DOT, many times you have come to us and said you could not give a direct lease only RP's. Your reasoning was that you may needed to have the space available to do something else. Now all of a sudden you come in with a direct lease.

Smith replied that they do have some direct leases, in this case it is intended that the leased area be used for an activity that is related to the airport purpose.

Downing asked Smith to clarify that if it is for an airport purpose you can do a direct lease and if it is not than you would do an RP? Smith said we could do a lease for a non-airport use provided we went through another process. Downing wanted to know what the process was.

Smith replied, we are allowed now to auction for any use, but the FAA would tell us that for certain parts of the airport it should be only for aeronautical use. If you look at some of our airports and the amount of land we have we could use it for revenue generating purposes.

Downing said he would like to know the different categories how you are creating these. You mentioned that you were doing appraisals in October and Smith said yes, they were done and adjustments have been made. Downing asked if it went up or down? Smith replied that for this particular parcel he did not check. Downing said that you came with the same amount in September and the appraisal was not going to be done until October.

Smith said they did implement new rates in October. Downing said that the rate you have here is the same rate as September, it should be changed. Smith said it should be adjusted up or down. Downing asked when are we planning to adjust it? Smith said he will check as soon as he gets back to the office.

Roehrig said, this will have to come to us because we have to see what the new rent is. Chair Case said that we will hold off on the vote until Smith can work it out. They will hear from the applicant

in the meantime. Member Yuen asked if this was the only provider of this type of steam sterilization?

Public Testimony

Mervin Kotake, Counsel and Nate Wong, NCNS Environmental Inc., Applicant. Kotake, noted that the Applicant has all the necessary licenses in place to transport and process regulated waste for their airline customers which is then taken to H-Power, and some to the land fill.

There are only (2) others who are actually licensed, to answer Member Yuen's question, to transport and process the waste. Yuen asked if the other (2) companies interested in a space like this & relocating? My concern in these direct leases always, are we being fair to potential competitors. Is this really a situation where there is one operator that is uniquely suited to provide this service?

Kotake replied that he could not speak for the competition, but what we know (1) is primarily in the business in the medical waste and the other (1) primarily deals with military foreign waste. Yuen noted that you have a customer list of airlines, and are they the ones who chooses who to use?

Kotake said the airlines are responsible for the goods that comes in. If Customs or DOA rejects the item for whatever the reason, they will call Freight. They will get in touch with the customer who ordered the goods and ask them if they want to pay to ship it back or have it treated and destroyed. The customer is given a list to choose from if he does not want to return it. Yuen asked who watches to see that the items are picked up by the licensed vendor? Kotake said it is under the jurisdiction of AFFES which is under the Department of Agriculture. NCNS has a client agreement with all the necessary permits.

Yuen said you kind of skipped over my question, there is impounded material that has to be sterilized who makes the decision what company to call? Wong said there is a list that AFFES or CPP puts out and the generators are ultimately responsible for the treatment and disposal and final destruction. I have no insight as to who they are going to call or call with. Primarily, since 1990 we have been doing the confiscated goods out of the airport. Approximately 95% of the market. Yuen asked what is your basis for saying that? Is it because you know that one company does medical and the other does military? Wong replied yes.

Roehrig asked Kotake, we get this all the time, you say this encourages competition, explain to me the practical basis for that statement. You have (3) entities in this business, how does us giving a direct lease as oppose to a public auction lease to NCNS, how does this encourage competition at the Daniel K. Inouye International Airport? Kotake said it is more at the level of potential business with the caterers if the demand for foreign travel continues to grow and we cannot keep with the demand they have an outlet through a party like NCNS, it helps this whole process.

Roehrig said that did not answer his question. We have a standard we must follow because every time one of these direct leases come before the Board, there are always allegations whether or not this is an inside deal, or this up and up, we do not sit here to judge anybody's character, but we need to see some objective basis to how it encourages competition. Otherwise, NCNS is free to go to a public auction, you might get it cheaper. We get requests for negotiated leases directly all

the time, and it revolves around whether it encourages competition or not. The practicality is what is going to govern. The general position is we make leases by public auction. Direct lease is an exception. Market is growing that might be one basis

Wong noted that there are (3) major players NCNS, Honolulu Disposal, is a solid-waste company, who also does foreign waste material, primarily with Peral Harbor and Hickam, they are a back-up which is required by AFFES to (2) of the (4) caterers. Hawaii Bio-waste which is primarily a bio-hazard removal company who is permitted to do foreign waste, regulated garbage.

Wong said he went out as a private business looking for warehouse space. This warehouse has been vacant for about 15-years. I made an inquiry and they asked us to submit a proposal to DOT. The other two competitors are long standing 20+ business. I do not think they want to pick up their operations to move to the airport corridor where I am trying to relocate my business.

Roehrig asked if NSNC got this direct lease would they be in completion? Wong said yes, he would be able to become a back-up to the other caterer's.

Downing said you are hesitant to provide a list of your clients. Wong said yes, there is some information that is not necessary to this lease. Downing said, the reasoning he is mentioning this is that, 1.) Smith has come before us with only RP's, he brought up a ruling that says competition, if this was to go out to public auction, would anyone else want the business, it is closer to the airport. It has to do with the process. When this came up as a direct lease for me, all of sudden you can do a direct lease. One month ago, you could only get an RP. Then the subject of rent came up, looking out for the State. If they are doing an appraisal we should see the newest appraisal and not tell us this was the price before and I think it would be fair to you, if this is fair to you today, and Smith comes back and says it is another \$5,000, you should have the right to decide if you really want it. Downing said he understands the business side of it. Member Oi asked Wong if he was informed that an appraisal would be done? Wong replied he was told after he made an offer.

Oi said, there is a lease rent on the submittal, you agreed on. Now, it has come to our attention that this not the appraisal price that you thought it was. Case said there may an adjustment to that and if there is an adjustment to that you will have the opportunity to agree or not agree. Oi said you know what the range is, would you agree to whatever the new appraisal is now?

Case asked Smith if he was going to have an updated number today? Smith said, he could when he gets back to his office. Roehrig suggested he call as NSNC is here now. Case agreed. Oi said, you can agree to whatever the appraisal is that saves one step having to come back to the Board. Oi said we will defer this to come back later today. Case said let's finish asking the questions that have to do with the Airport process. We would like to resolve this today you have a right to agree or disagree with the current appraisal. We will bring this back later in the meeting.

Member Gomes said, a lot of these questions should be answered by Smith. Roehrig asked Smith to find out what the appraisal is and discuss with NSNC. If they agree or not agree, Council can come back and tell us what was decided.

Oi asked Smith, you said if it is for airport purposes you can do a direct lease. Smith said yes. Other than this issue here for other airlines, because it is for airport purposes you can issue a direct lease and you have been doing that? Smith said yes.

Yuen asked Smith how to come this has been vacant for 20-years? Smith noted that when we got these properties back, we just did not get any responses back to lease the area. Yuen clarified that it was lack of interest at the offered rate. Smith replied yes. Yuen said if you have lack of interest at your offered rate, it suggests you should lower your offered rate. Smith said he was not sure how much liberty they would have to adjust the rate downward other than the fact that the appraisal says this. Case asked Smith if there was any other interest in this property. He replied, no.

Gomes said Wong inquired about other vacant properties and he had no reply. Why wasn't he notified? Wong said there was someone in front of him. Gomes want to be sure he was being treated fairly. Case said the Board will defer until the Smith provides the updated information/

Public Testimony-None

Come back when they are ready.

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

Ed Underwood-DOBOR, coming back with this submittal after consulting with the Attorney General's office. The applicant agrees to the recommendations for paying the prevailing wages and to be bonded.

Board Discussion

Downing asked if we would own this structure after. Underwood said yes.

Public Testimony-None

Motion

Approved as submitted (Gomes, Roehrig) Unanimous.

ITEM D-11 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 no.: (1) 2-3-037:021 (por).

Cal Miyahara, Land Division, mentioned that there would be (2) fireworks show that night. One would be the regular fireworks off the beach and the other from the lagoon. A representative from Hawaii Explosives is present to answer questions.

Board Discussion

Downing asked for an explanation as to why this was a good idea? Case asked if he could clarify, are you questioning the proximity and the time? Downing said yes, we have a Friday night fireworks show that everyone raves about how great it is for the community, how the people enjoy it, they come, set-up, they picnic, they do all these things. Now you are going to have a show that goes off at 7:45 pm, that lasts 7-8 minutes. Now you are going to kick out all the people so you can make room for your new show. So, all the things Hilton told us that are wonderful for the community and why we should be discounting that show. We are turning around and saying, "now public that was a great show but now you have to leave, because we want to put on a private show for other people". That is where I have a really hard time balancing public and commercial-private. For all the things, we went through for a year and half about how really great this is for the public, you going to turn around now and scoot them out. A 7-minute show gives you less than 15-minutes to clear out people who have come for the Friday night show. They brought their coolers, they brought their chairs, blankets to set up on the grass and now you going to tell them you have to get out. I do not see how hospitable to the people we have been using on the Hilton side to create this permit structure in the beginning. That is my concern.

Roehrig said the last time we had this discussion it appeared in the newspaper, I made some comments about Hilton Hawaiian Village being treated fairly. I got some really nasty e-mails from backers of Hilton Hawaiian Village. Here we are back again, are we going to get e-mails again because we are chasing the public out. Agrees with Downing, we need some transparency what is going to happen here so we can be prepared as well as staff that we are making a sensible decision and roughing up the public.

Stephanie Pascual, applicant said she would sum up your concerns. The weekly firework show will go on and we plan to post signs informing the public that the grassy area and the lagoon area will be used for safety purposes and if they can just go behind the fence then they can enjoy a second show. To clarify the weekly show is 4-minutes and the second show is 3-minutes. We will start moving people out of the area around 8:05 pm and will not re-open until we know everything is safe, so about 9:10 pm. So, they are just being pushed back to the fence line.

Oi asked, those public who are watching the weekly show will have a place to go to watch the second show? Pascua replied yes. They can enjoy the show from the fence line. I will post a week in advance so they have an opportunity to plan ahead.

Yuen said you mentioned the crowd goes from 100% to 20% after the show. How long does it take? Pascua said about 15-minutes with the signs. Yuen said on normal night. Pascua said by the time she leaves at 9:00 pm there are very few people left.

Downing said you tie up the beach from 2:00 for the lagoon set-up. You tie up the beach-side at 3:30 for the regular fireworks. You are creating a narrow corridor that we have been in debate before, for the people to use the beach during the day-time. For me you can say the people go down to 20%, but we are still clearing them out. A park, a beach that is meant for them first. To set-up for a private show.

Yuen asked other than Friday nights, how much of the public would be hanging out in the lagoon area that would be restricted? Pascua replied very minimal. Yuen said he wanted to get a feel for how many members of the public are inconvenienced by having this area closed for an hour or so.

Case said what we are asking the public not so much to leave but move so they can see another show. Downing noted that now the public has to gather their things and go behind the fence. He said Hilton has continued to use the public to have their shows, now, they want to have them move after they have set up all their things. Case asked Downing if he was opposed to having (2) shows in one night or the location. Downing said both because of the proximity of blocking for the set-up of the shore.

Roehrig asked Downing looking at the big picture for us, what do you think we should do? Downing replied if you want to have (2) shows, fire it from the same location. But Hilton does not want to because it is for a different set of people. This where we had a conflict between firing in the lagoon and firing in the ocean.

Roehrig made a motion to not approve. Downing second the motion. (3) ayes (Roehrig, Gomes, and Downing), (4) oppose, (Case, Gon, Oi, Yuen).

Further Discussion: Yuen asked Downing going forward, if he was opposed to having (2) shows in one night? Downing said no, he was opposed to the blocking both sides of the beach for setting up. It takes away the beach usage, because you have (2) separate times and (2) different areas to set up for the firework display. Downing noted that they had half of beach for usage by the public. Pascual clarified that the blocking of the beach is only a portion on the lagoon side, we may be able to negotiate setting up on the side that is already closed for the Hilton. The beach side of the Hilton is closed at 4:00 pm.

Downing showed Yuen on the map which areas of the beach gets blocked off. Pascual noted, that for future reference, understanding this is a concern, we as a company will not recommend Hilton sell any other shows on a Friday night.

Pascual, clarified the time table and the area's that are blocked off to the Board. Case said in the future maps to have the (2) shown. Downing asked Pascual that she mentioned that other than this show, you are not going to recommend Hilton have another show on a Friday? Pascual said yes, other than this show that is on the table now, I am going to recommend that they do not sell another show in the lagoon on a Friday night.

Yuen made a motion to approve, Oi, second the motion based on the public knowing that there is a second show after and they may have to relocate. Gon said this Board has made it clear that we do not appreciate private shows or 2-shows on the same night as the Friday night public show. Your response to make strong recommendations that this will never happen again is really appreciated. And you can anticipate that if it should happen again, this Board will not approve it.

Roehrig noted that staff should have made an effort to discuss the submittal with Member Downing before it came before the Board as this is his area of expertise and they rely on his knowledge and

input regarding these matters. My suggestion in the future is that staff consult with Member Downing so we do not have conflicts like today.

Downing said after listening to Pascual, it really upsets me, that she is going to strongly suggest that there not be (2) firework shows on a Friday, and yet for some reason she took this job to have the fireworks on Friday. Where her concern seems to be for not having (2) shows on a Friday. Regarding Oi's comments, he said most of these people come on Friday, they are not going to know in advance of the second show. For that reason, I am still voting "no".

Pascual said it did not become a concern until she sat in front of the Board today and expressed your concerns. This is not the first time this has come before you, and it has been approved. I did not think it was a really big concern to move forward with this plan. But hearing you talk today, coming from the position I have with the company, I can tell you guys that in the future, this something we are not going to be happy to come before you again, I am asking that you consider this request and that I will not be coming back again with this kind of request. I want everyone to be happy.

Gomes, after hearing that you said this would not happen again, I am going to change my vote to "yes". I can sympathize with the other Board Members who voted "no". Moving forward, and you have come before us many times when we started making changes as far as the way we are setup, the way fees were done, I think you were more compliant than other vendors who came before us. I trust you, and that you will not let this happen again.

Motion

Approved as submitted (Yuen, Oi). Motion passed 6-1 (Downing opposed).

CONTINUATION OF ITEM M-4:

Smith said he consulted with his Property Manager's at the Airport and due to vandalism to the building, they have down-graded what is in the submittal before you. Instead of the lease rent of \$148,027.20, it will be amended to \$137,490.00.

AG Morris also noted that although in the submittal it is not in the Recommendations, that it be Exempt from Chapter 343. Amend Recommendations to include Exemption from Chapter 343.

Amendment:

- 1. Property rental rate shall be \$137,490 per appraisal that was done in October 2017.***
- 2. Add Exemption from Chapter 343 to the Recommendations.***

Case asked for a motion to approve as amended. Member Gon accepted the amendments, Roehrig seconded the motion.

Motion

Approved as amended (Gon, Roehrig). Unanimous.

ITEM K-3 Conservation District Use Application (CDUA) OA-3804 and Proposed Issuance of a Non-Exclusive Easement, Regarding Portlock Road Drainage Outfall Improvement Project by the City and County of Honolulu – Department of Design and Construction, Located in the Honolulu District, Island of O‘ahu, seaward of Tax Map Key no. (s): (1) 3-9-003:002 & (1) 3-9-003:028.

Sam Lemmo presented for OCCL. He noted that this submittal is a combination of CDUP and an Easement. The City and County’s drainage is not functioning properly so it is leading to water quality issues. To improve the water quality at this outfall, the City would like to demo the existing drainage and build a new one in the same footprint. Staff recommend approval for both the CDUP and the Easement.

Board Discussion

Gon asked if the project will impede the public right of way. Lemmo confirmed that it will not.

Downing noted that he would like the following included in the project:

- The storm drains to have a filter system to trap debris that comes down the roadway.
- The sand being dug to make the culvert to be moved to the side of the culvert and not sent away. They can just pick the rubble up and cart that away.

Questions regarding how the drain will be cleaned were sufficiently answered by Natalie Waters, who was contracted by the City to do the design for the project. Downing commended Ms. Waters on the design which calls for the drain to be built off site.

Roehrig asked if this was close to the surf site “Turtles”? Downing said it is over 3.4-miles away, it is closer to “Seconds”.

AG Morris noted that the recommendation should be amended to note that this project is exempt from Chapter 343. It is in the staff report but not in the Recommendations.

Public Testimony-None

Amendment:

Add that the project is Exempt from Chapter 343 in the Recommendations.

Motion

Approved as amended (Downing, Gon) unanimous.

11:16 am: Break

11:26 am: Reconvene

ITEM D-5 Issuance of Direct Lease of Submerged Lands to the Trustees of the Estate of Bernice Pauahi Bishop for Cultural and Historical Site Preservation Purposes, Kahalu‘u, North Kona, Island of Hawai‘i, Tax Map Keys no.: (3) 7-8-013: seaward of 002 and 043.

Ian Hirokawa presented for the Land Division. Direct Lease of submerged lands to Kamehameha Schools for cultural, educational, and historical site preservation purposes. The property in question is the old Keauhou Beach Resort. Mauka end would be shoreline and Makai end would be boundary are. Noted that there are (2) heiau that Bishop Estate will maintain so they are asking for exclusive use of the area to protect the heiau. Hirokawa noted that there is usually public access to submerged lands, but in this case, there is a compelling reason to limit public access. Kamehameha Schools plans to allow public access and parking to the beach areas, and noted that the heiau are not located in the beach areas.

Board Discussion

Oi asked if this is filled land. Hirokawa said it is not. There is evidence it may have been a former fishpond.

Roehrig noted that there is a disagreement between Kamehameha Schools and the State regarding ownership of the submerged lands. Hirokawa replied, it is a respectful disagreement between KS and the State regarding the ownership of submerged lands. KS asserts that these are private lands because there may have been a fishpond there. The lease is a means to work collaboratively without getting caught up in the land ownership issue.

Roehrig clarified that his question was about the heiau? Hirokawa said that the waves wash around the heiau, not over them, so the heiau are private property on the submerged lands. Roehrig asked if there needs to be clarification over who owns what for the purposed of the lease?

Hirokawa said the purpose of the lease is to let KS do what they need to do without getting caught up in who owns what.

Yuen asked if Hirokawa would clarify the area subject to the lease. Hirokawa went over Exhibit A. Yuen noted that the lease does not extend to the beach on the Kahalu‘u Beach park side. He then asked about the walkability near the heiau.

Public Testimony

Steven Lim, Carlsmith Ball LLP, representing the Trustees of the Bishop Estate. Gave a brief history of KS efforts to return the Kahalu‘u area to what its rightful place. Asked for the Board to support the competing interest of public access and maintenance of the heiau. Noted a correction on page 4. Technically the heiau are not on submerged land. State surveyors created 2 islands for the heiau, so they are not submerged lands, but you have to go over submerged lands to reach them.

Planning Department requested 10 parking spaces for the public. Explained public walkways to the cove, and how they will have to go around the heiau through tidepools. The Planning

Department approved the public access plan, which avoids public access in areas of high cultural sensitivity, including heiau and cultural layers around the heiau.

KS believes it owns the property out to the Heiau, but is agreeing to go through this process, as though the State owns the land in order to ensure that it can maintain and manage the heiau. The lease includes an agreement to disagree on land ownership while agreeing to the lease.

Yuen clarified that the agreement to lease only involves part of a smaller area that KS claims to own. Jason Jeremiah KS representative, agreed and noted the documentation supporting their claim. Yuen asked if there will be a sign saying that you can walk on the wall near the Kahalu'u Beach Park end? Yes, to a certain point. Also, the wall is legal and marks the shoreline in that area.

Jason Jeremiah clarified that the ruins of Kapuanoni heiau would have been somewhat makai of the pool. Noted that there is no evidence that it was incorporated into the pool deck, but it is hard to tell because of the construction damage.

Gon asked if there is any intention to restore Kapuanoni. Jeremiah said it is part of the long-term plan. He noted that there is a preservation plan that documents 12 sites, and 11 will be preserved. Three heiau have already been fully restored.

Yuen asked Steve Lim why Exhibit B looks like the public access is makai of the red line, which is the DLNR certified shoreline. The lease area beyond the shoreline does not really show up on Exhibit B. Any idea how wide that lease area is?

Yuen wanted to ensure that people on the south side can access the beach area. The answer was yes, but naupaka will be planted to keep people out of the sand dune.

Motion

Approve as submitted (Roehrig, Gon) unanimous.

ITEM D-10 Amend Prior Board Action of May 11, 1979, Item F-20 regarding *Direct Issuance of Lease to Public Utility for Power Substation Purposes*; Sand Island, Honolulu, O'ahu, Tax Map Key no.: (1) 1-5-041:296.

The Amendment is regarding the Immediate Management Right-of-Entry, Rent Payable and Commencement Date.

Russell Tsuji presented for Land Division. Noted that this submittal is an old matter, that they are catching up on. This is the 40th year of disagreement about the appraisal. Tsuji outlined the new appraisal process. The appraiser will also be asked to determine the rent for the next 25 years, and also determine an incremental increase in the rent, if appropriate.

Board Discussion

Gon asked if HECO was fine with the submittal (Wendy Oda, from Hawaiian Electric)

Public Testimony- None

Amendment:

“RENT”

A single independent appraisal for:

- (1) A one-time payment of fair market rent for the period from May 11, 1979 to May 10, 2019 [40 years] including rental adjustments on the 15th and 30th anniversary dates of the term;*
- (2) Annual rent for the period from May 11, 2019 to May 10, 2044 [25 years], further subject to the appraiser evaluating and, if appropriate, determine incremental increases in the rent and for appropriate time periods, if any; and*
- (3) The appraisal described above shall be subject to review and approval by the Chairperson.”*

MOTION

Approve as amended (Gone, Gomes) unanimous.

ITEM D-6 Set Aside to the Department of Hawaiian Home Lands for Agricultural Development, and Issuance of Immediate Management Right-of-Entry to the Department of Hawaiian Home Lands, Waiohinu, Ka’u, Hawaii, Tax Map Key: (3) 9-5-005:003.

Russell Tsuji presented for the Land Division and noted that William Aila is present for DHHL. This is for a set aside to DHHL for beneficiaries in the Ka’u area.

Mr. Aila pointed out that this set aside and right of entry helps to resolve and the injustice that DHHL committed in 1986 when accelerated awards were given Statewide. Beneficiaries during that time were not awarded land suitable for farming. This action will give those beneficiaries the opportunity to farm.

Gon asked if there was an MOA written already. Tsuji said no, not for this one. This is a set aside for their project only.

Yuen mentioned that he was on the Board when there was a major set aside to Hawaiian Homes, 16,000 acres, it is not that common that land gets transferred out of DLNR. You have to watch for rights-of-way, there is one for DOFAW, does the County Department of Water have access through this parcel? Aila said he did not believe so. Yuen noted that recently we had our water RP’s on the agenda in Ka’u. Aila said there are springs and ditches that go to various entities along the way, including Department of Water Supply. Our Department is in discussion with DNLR the impact of the issuances of those easements.

Yuen asked if it was their hope to get water from that system? Aila replied that this particular lot is within a nice rain-belt and is naturally irrigated. We do have other parcels that are makai of the area you are describing. It is our intent to work with the Department to get water for those parcels.

Chair Case noted that the Board did ask Staff to work with DHHL on trying to resolve the water issues in Ka'u. We have had some extensive discussions internally and have begun discussions with DHHL and I too have been in conversations with the County to see if we can help sort this out.

Gomes asked if the current Lessees will be evicted? Aila said that they will be incorporated into the project. These are month-to-month revocable permits. Tsuji noted the leases will transfer with the land. Gomes asked if the leases will have to be part Hawaiian. Aila said that the program will include both beneficiaries and non-beneficiaries. Yuen said they would still be on month-to-month leases. Aila said they are not considering general leases at this time. These portions are makai of the rain-belt. We are going to focus first on the section that has adequate rain fall to move the farmers up into that area. Gomes asked what the average rainfall is in that area. Aila replied about 60-inches or more.

Public Testimony-None

MOTION

Approved as submitted (Roehrig/Gomes) unanimous.

ITEM D-16 Rescind Prior Board Action of September 28, 2007, (Item D-1), *Set Aside to the Hawaii Housing Finance and Development Corporation for the Future Housing and Housing Related Development Purposes, Wahiawa, Aiea and Honolulu, Oahu, Tax Map Keys: (1) 7-3-12:15, 7-3-13:9; 9-9-44:20, 9-9-44:24; 1-7-41:2; 2-2-13:4; 2-2-13:14; 2-2-13:96; 2-2-13:101; and*

Set Aside to the Agribusiness Development Corporation for Agricultural Purposes, Waianae-Uka, Wahiawa, Oahu, Tax Map Keys: (1) 7-3-013:008 and 009.

Russell Tsuji presented for the Land Division. HFDC and DOA want the land to be transferred to the Agricultural Development Corporation via EO.

Board Discussion

Downing asked Janice Takahashi from HFDC why it is a good idea to give this land away. She noted that there is no sewer capacity in this area. We were looking to do some rental housing on the lands and in discussion with the City there is no capacity of build housing on the property. In the meantime, ADC can use the property and we are able to work with ADC on getting land in their Whitmore project where we can build housing there.

Public Testimony-None

Motion

Approve as submitted (Oi, Gomes) unanimous.

ITEM D-8 Authorize the Issuance of Two Perpetual, Non-Exclusive Easements to the County of Maui for Bus Stop Shelters and Appurtenant Purposes; Issuance of Immediate Construction Right-of-Entry, Wailuku Town, Wailuku, Maui, Tax Map Key: (2) 3-4-013:013 Portion

Russell Tsuji presented for the Land Division.

Public Testimony- None

Motion

Approve as submitted (Gomes/Gon) unanimous.

ITEM D-3 Sale of Abandoned Powerline Right-of-Way Remnants to Vinh Duc Ta, Ola'a, Puna, Hawaii, Tax Map Key: (3) 1-7-001:014 & 039.

Russell Tsuji presented this submittal which is for the applicant to purchase a right-of-way remnant abutting his property piece of property.

Board Discussion

Downing asked if the parcel was ever offered to the other two land owners. Tsuji noted that if the parcels are abutting, then they would have been offered as it is required by Statute.

Public Testimony - None

Motion

Approved as submitted (Roehrig/Gon) unanimous.

ITEM D-9 Authorize the Issuance of a Management Right-of-Entry to the Department of Transportation - Airports Division, for Airport Purposes, Kahului Airport, Kahului, Wailuku, Maui, Tax Map Key: (2) 3-8-001:019 (portion).

Russell Tsuji presented for Land Division. This submittal is for the issuance of a Right-of- Entry.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gomes, Gon) unanimous.

ITEM M-1 Issuance of a Revocable Permit for Florist Concession Storage Space, Greeters of Hawaii, Ltd., Daniel K. Inouye International Airport, Tax Map Key no.: (1) 1-1-003: 066 (Portion).

ITEM M-2 Issuance of a Revocable Permit for Parking and Storage of Vehicles, Hawaii Industrial Services, Ltd., Daniel K. Inouye International Airport, Tax Map Key no.: (1) 1-1-04: 008 (Portion).

ITEM M-5 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft to Support Commercial Helicopter Operations, Novictor Aviation LLC, Daniel K. Inouye International Airport, Tax Map Key no.: (1) 1-1-76: Portion of 22.

Ross Smith, DOT-Airports, provided a summary of each of these items and provided the lease amounts.

Board Discussion

AG Morris that the recommendation be amended to include Board approval of 343 Exemption.

Public Testimony- None

Amendment:

Recommendations to include the determination that they are Exempt from the requirement of Chapter 343.

Motion

Approved as amended (Oi, Gon) unanimous.

ITEM D-2 Issuance of Right-of-Entry Permit to Hawaii Beach Volleyball Association for Dinosaur Beach Volleyball Tournament at Kalapakī Beach, Līhu‘e, Kaua‘i, Tax Map Key no.: (4) 3-5-002: seaward of 002.

Russell Tsuji noted that this item had been pulled from an earlier agenda. Staff is recommending that this be a gratis rent per the request of the applicant.

Board Discussion- None

Public Testimony-None

Motion

Approved as amended (Oi, Gomes) unanimous.

ITEM D-14 Consent to Assign the 3/5 Undivided Interest in Homestead Lease No. 54 of Muriel Puninani Enos Ioane, Julia Kauai Yukie Enos Hanson and William Pali Enos, Jr., Assignor, to Muriel Puninani Enos Ioane, Julia Kauai Yukie Enos Hanson and William Pali Enos, Jr. as Trustees of the John Enos II Family Land Trust dated October 23, 2017, Assignee; Wai‘anae, Ewa, O‘ahu, Tax Map Key no.: (1) 8-5-4:3 & 61.

Kevin Moore presented the submittal to assign a lease on a homestead. Staff recommendation is to approve.

Board Discussion

In response to a question from Gomes, Moore gave a synopsis on the problems that usually happen on other leases when the leasee dies without a will.

Roehrig noted that traditionally Hawaiians transfer title by word of mouth, rather than by paper. Camille Kalama representing the family was available to answer questions.

Public Testimony -None

Motion

Approved as submitted (Roehrig, Gon) unanimous.

12:35 pm Lunch

1:15 pm Reconvene

ITEM J-11 Request for reduced rent by Revocable Permit No. 15; The Kona Sailing Club at Honokōhau Small Boat Harbor, Kealakehe, North Kona, Island of Hawai‘i, Hawai‘i; Tax Map Key no.: (3) 7-4-008:003 (Portion).

Ed Underwood, presented for the Division of Boating and Ocean Recreation. This item is a request for reduced rent for the Kona Sailing Club at Honokohau Harbor. He noted that this item had come before the Board in the past and the Board had requested that DOBOR come up with a policy for reduced rent to non-profits.

He gave some history on how DOBOR developed its policy and flow chart for decision making. He noted that the Kona Sailing Club is not a 501C (1) or a 501C (3), so do not qualify for reduced rent under (qualifying statute).

Board Discussion

Roehrig asked if they were a 501-something? Underwood said they could not find anything. They are a non-profit Corporation.

Case noted that we are focused on non-profit public benefit, not Associations.

Steve Dixon addressed the Board on behalf of the Kona Sailing Club. He noted that the Kona Sailing Club hosts the Big Island Youth Sailing Foundation that is a non-profit recognized by the IRS. Kona Sailing Club rents approximately 20,000 square feet at Honokohau Boat Harbor. This is a gathering organization for people on the Kona Coast. It is not a yacht club. Noted that in 1997 the Board approved the Kona Sailing Club lease for \$860, in 2016 the amount was raised to \$926.46. In 2017 the board raised rent to \$1,019.37. Concerned that the Kona Sailing Club will fail if the rent is not returned to the 2016 amount or traditional rate of \$860. There is basically no youth organization in Kona other than the Kona Youth Sailing Club and the Big Island Sailing Foundation.

He provided a copy of the Kona Sailing Financials to Downing.

Roehrig confirmed that the Big Island Sailing Foundation is a 501C (3). The Kona Sailing club supports them by storing their boats, manages their classes etc. The youth sailing foundation is about 50% of the activity of the Kona Sailing Club. Roehrig asked why the Foundation is not the renter, so that they can qualify for the non-profit.

Underwood noted that they only reviewed the Kona Sailing Club request, but they are open to looking at the Big Island Sailing Foundation as the lessor. Case noted that the facility also has to be used to for the non-profit purposes. The primary use needs to be for public benefit.

Case said the distinction that we are trying to make. If you are an Association there is no public benefit in us providing free space for storing boats. What you are saying is there is a public benefit in educating youth in sailing. Dixon said we are storing their boats. Case said arguably that is part of that public benefit for that purpose, but for storing adult peoples boats for recreation, that is not our place to provide this kind of rent for that purpose. Roehrig added unless your boat is being used by the kids. Dixon replied, sometimes it is.

Case asked what is the purposes/primary use? Roehrig said you have to work out those details. Case noted you need to be a 501C (3) for public benefit organization, and use has to be for that purpose not for other purposes.

Dixon noted that the Board is telling him that the Kona Youth Sailing Club needs to become a 501C (3) or that they need to turn over the lease to Big Island Sailing Foundation.

Case asked if they charge rent to store boats at the facility. Dixon said "yes."

Yuen noted that it looks like there are 35 boats at the facility. How many of the boats are for the youth? Dixon said that the youth sailing has about 7 boats. Downing had a discussion with Dixon regarding the figures that were turned in. He noted that their bank account numbers were pretty stable despite the increase in rent.

Roehrig made a motion to defer that mater to give DOBOR an opportunity to have a reasonable period of time to determine if the Big Island Youth Sailing Foundation would qualify under the

circumstances for reduced rent and if so, the feasibility of having the lease under that entity rather than the Kona Sailing Club.

Case noted that if that was to work out. It would be appropriate to come back with a new request for reduced rent, rather than to defer it now. Kona Sailing Club does not qualify for reduced rent now. Yuen and Roehrig agreed without prejudice. Deny it with the understanding that you will come back with the new entity.

Dixon clarified that until they come back they will continue pay the original rent. Yuen said that is correct

Roehrig noted that they can come back with a revised request if the Big Island Sailing Foundation can be the lessee.

Conditions:

DOBOR to work with applicant to see if they can qualify for reduced rent. Downing also asked if they could figure out how much of the space is used for the Big Island Sailing Foundation.

Motion

Approved as submitted with conditions (Roehrig, Gomes) unanimous.

ITEM J-9 Request for Reduced Rent; Revocable Permit No. 22; Nā Kālai Wa‘a; South Kawaihae Small Boat Harbor, Island of Hawai‘i, Hawai‘i; Tax Map Key no.: (3) 6-1-003:022 (Portion).

Underwood noted, they are a 501C (3). Their request is to reduce the rent from \$1,373.33 to \$206.45 a month. Underwood went over financials, and that Na Kalai Wa‘a reaches over 85% of public. Felt that 85% was a bit high and they probably reached about 50% of the public. Recommend that rent reduced to \$686.66.

Public Testimony

Shorty Bertleman addressed the Board. Noted that they get most of their funding through grants. Brought their operating budget for review. Mission is to promote education and cultural education through sailing (canoes).

Case clarified that the bulk of the money that they raise through grants is for programs but not for overhead like rent. Bertleman said that was correct. He noted 2017 was a good year because they were able to get several grants.

Lehua Asam program director for the ANA grant, brought some pictures and a list of programs that they offer. Reiterated that most of their funds are tied up in grants, and if those are taken out, the spreadsheet is actually in the red. Noted that because they always had an affordable rate at Halau Kukui, they never thought to include costs for rent in their grants. Noted that they provide space rent free to community groups.

And 85% discount will allow them to continue offering free space to the YMCA, local schools and local non-profits who host camps and other programs at that space.

Board of Discussion

Downing asked about a \$75,000 salary on the profit and loss standard. Noted that 40% of money goes to payroll for (9) people, and then "other salary." Also \$71,000 for payroll services. Asam said, these funds are for fringe benefits. Downing said he could not run a business if he had to pay 40% of his income to payroll.

Case pointed out that for non-profits payroll is usually the biggest expense. Asam noted that they actually do not pay high salaries, but the large payroll is due to the type of work they do. Much of their programs are reflected in the payroll costs.

Yuen asked what the ANA grant and who was it from? Asam replied, it stands for Administration for Native Americans, it is from the Department of Health on the federal level. They provide grants to Native American and Native Hawaiians that focus on health benefits for the community.

Yuen said, you heard the discussion with Kona Sailing Club, what is the 15% that is not general public is there some benefit to the membership (what is outside of the 85%). Asam replied she was not sure, the Executive Director put that in but I would base it off a 100% is probably to public good. The canoe is never used for private events or benefits, but they can be used for fundraising activities, so they did not count fundraising in the 85%. However, in the non-profit world, fundraisers are public benefits as well.

Roehrig noted that Na Kalai Wa'a has been helpful with his canoe club.

Case asked how they came to \$206.45. They basically inherited that amount from the YWCA. Yuen asked if there is another commercial opportunity that could be located at this site? Underwood said not right now, although that site will grow in value over time.

Gon commented that Makali'i has been a presence there. The educational and environmental advocacy is very clear to him. He would be happy to reduce the rent as well

Roehrig motioned that the rent be set at 206.45/month. Gon seconded the motion.

Downing suggested gratis, because the paperwork would cost more than the rent. Reset annual rent at \$480. Roehrig agreed to the amendment and Gon said he would agree and second the motion with the amendment.

Amendment:

Reduce rent to \$480.00 annually.

Motion

Approved as amended (Roehrig, Gon) unanimous.

ITEM E-1 Request approval to Authorize the Chairperson to Negotiate and enter into a Memorandum of Understanding (MOU), between the State of Hawai'i Department of Land and Natural Resources Division of State Parks (DSP) and the University of Hawai'i Community Design Center (UHCDC) to cooperatively work on Proof of Concepts for numerous DSP properties.

Curt Cottrell presented for State Parks. Request for approval for the Chair to sign an MOA between the State Parks and UH for design services. The project is a partnership between State Parks and UH to do a proof of concept project. They received a grant from the legislature to work on a project at the Wahiawa Recreational Area, and Kekaha Kai State park, and to work on over-run parks to manage human waste in remote areas with no-water.

Cathy Ho Schar, Assistant Professor, Community Design Center, Judith Stilgenbauer, Associate Professor, Johnathan Kwock, Graduate Student, outlined their program and presented some examples of their work. Goal is to provide the client with data based designs.

Board Discussion

Roehrig asked what the scope of work for Kekaha Kai? Russell Kumabe, State Parks, we are focusing on the Mahai'ula-side where we have (2) house structures. Looking at how we can preserve it as cultural entity, using them for program use.

Case asked Jonathan what is most interesting to him about the Wahiawa project. He responded that this is the largest freshwater reservoir and is underutilized. It also has a lot of history and people in Wahiawa have many memories about it. So, it is a space that has potential to combine environmental and community interaction in design.

Gon noted he really liked the innovation and approach, creativity, the students learning a particular practice and applying it. Downing commented he hoped that other schools within the system would grasp the concept, like the School of Engineering, they would fresh eyes versus the way we go about doing it.

Public Testimony- None.

Motion

Approved as submitted (Downing, Gon) unanimous.

Chair Case reminded everyone here if you want to request a contested case, you may do so before, or after they hear testimony.

ITEM J-8 Administrative Enforcement Action for Violation of Hawai'i Administrative Rule Section 13-255-6: Waikiki Beach Uses and Activities; Restrictions, against Welakahao Catamaran, Inc. for Display of Advertising Material on Waikiki Beach.

Ed Underwood, DOBOR, provided a brief background. Staff is present to answer any questions.

Soo Stover, shared pictures of where the original check-in location. They have had the permit for 4-years. When we acquired the company, this is the check in area. Due to erosion of the beach we have had to relocate. In that location, there is no check-in area and no signage allowed. How are our guests supposed to find us? They get lost as it is. We have been looking for an activity desk and finally found one at the Outrigger. I believe we are in compliance now. We are not purposely trying to break the rules, it has always been our intention to follow and comply. We are also running a business and we have to be there somehow to receive our guests.

Board Discussion

Roehrig, I have one area of concern, you have a RP with DOBOR, we get a certain amount of revenue. You were fined under the HAR 13-255-6C, we are leasing you a place and collecting money from you every month, and at the same time we are hitting you with a fine for \$5,000.00 because you are there. There is a fundamental disconnect. I looked at this Administrative Rule, and find this ordinance to be vague, and find this to be a case of Commercial Speech which is protected under the Constitution. He cited 1982 Hawai'i cases invalidating an ordinance that prohibited handbilling throughout Waikiki, State v. Bloss and State v. Hawkins.

Case said the ordinance cited in the submittal prohibits storage, parking, and display. Yuen said the ordinance in question cited in the cases banned a number of things through-out Waikiki, and the courts said that was not valid because Waikiki has a high concentration of retail/commercial activity, commercial speech is not incompatible with the activities with the district. Yuen noted he thought these two cases were different than hand-billing or advertising on Waikiki Beach itself. There was further robust discussion regarding the ordinance.

Case said the whole issue at Waikiki is that there is decreasing space for people to enjoy. In this case, sue for commercial purposes is not permitted. I do not think it is a free speech issue, it is a real estate issue.

Downing said he is not a lawyer, I observe and it was my calabash Uncle that started the beach cats at Waikiki Beach. There have been signs in Waikiki talking about catamarans since the 50's. I think a lot of the rules were written because in the late 70's, selling on the beach became popular. It got to the point that everyone was upset that the visitor could not enjoy the beach. The catamaran pays for a mooring, they leave the beach, how is their business conducted? In the old days, they did not go through the hotels, internet, etc., it was foot traffic. Fast-forward, we take a percentage of their gross, for this what do we give them? Basically, we tell them you can embark and disembark your guests. This is what you are paying your mooring fee for. We are not taking money from their mooring fee, but from their business. And without this location and how do you direct people to them. I think it is wrong on our part or we should not take the 3%. How do we solve it? We should create a standardize set up for the (6) catamarans and they have an umbrella,

they have a chair and we curtail them to an area that is the exact spot their mooring is put in the sand, which is a hazard to being with.

Underwood commented that they are following the 1928 <Please check this date, sounds wrong> Waikiki Beach reclaim recommendation, which says no commercial activity of any kind on the beach, we are open to a sign marking your business, what we are not open to is advertising on the beach for catamaran rides. In this situation, here were (3) separate occasions that they were warned not to this. Subsequent to that Megan Statts worked with the with all the Waikiki Catamaran operators to standardize the signage on the beach, you cannot advertise prices.

Roehrig felt the Statute was suspect and gave an explanation why. We have to find a consensual way to solve this. Yuen mentioned that they have been warned before. Megan Statts said that during the walk with Pua Aiu. In October 28, 2016, they were blocking the right-of-way and then again on June 17, 2017 I sent them a letter because they were doing the same thing, just in a different location before "king tides".

Stover repeated again that they were not trying to break the rules, we were trying to take care of our guests. Or guests could not find us. We need some place where the guests can find us. All we are trying to do is to receive our guests, take them on the boat and operate our business.

Oi noted that they use the umbrella as a tool for your guest can find you. Stover replied yes.

Pua Aiu, special assignment to the Chair's office explained the Waikiki Special District and the rules that apply do not allow for business for commercial activity on the beach except by permit. The catamarans are permitted in limited ways. The beach side of Waikiki should have less commercial activity then the street side so that people can go to the beach and not be bothered by solicitations' all the time. There are strict rules regarding commercial activity on the beach and we are trying to comply with those rules. We get a lot of complaints about commercial activity on the beach. Right now, boating is working on the signs so the guests can find the catamaran and as many of you have pointed out we do not like the signs that have all the pricing and you should not be able to solicit customers at the beach. That is highly prohibited. Money should not change hands at the beach. So, the issue with this one is it is the third time we have seen those brochures on the beach, we told them they cannot have the brochures on the beach twice before. If it was just the girls holding the Holokai sign we would not have cited them. But there was the solicitation.

Roehrig made a motion to dismiss, considers this protected commercial speech, there is no proof that any one was soliciting, they were merely transacting business that they are allowed to do under revocable permit. They are being fined \$5,000, they are no longer there, the only reason they were there was due to the "king tides", they were forced to go there, under the circumstances he felt it was unequable to charge them. Downing second the motion.

Further Board Discussion: Case said she does not necessarily disagree with the motion, she does disagree with the reasoning for the motion. Does not feel we can get into a legal analysis of whether this is protected commercial speech that is protected, it is much bigger complicated area. Although she is sympathetic to their situation. I do think it is important to recognize our staff gets complaints all the time for this stuff on Waikiki Beach. We get double the complaints because we

do not do anything about it. It is tremendously frustrating for staff when they do go and do something about it and they document it after repeated warnings and then they bring that to the Board and the Board takes it in a different direction. I just want to validate that our staff is trying to enforce the rules under situations where people are pleading for them to enforce the rules, especially at Waikiki Beach and they are in a total bind if we do not support them in that.

Yuen also disagreed on the motion first on the commercial speech grounds, he cited some cases that the Court invalidated that because it applied to the entire Waikiki area, including the sidewalks. The general rule for commercial speech in subsequent cases that talk about this you can have restrictions on commercial speech and there are alternatives if there is a strong governmental interest in regulating it in a particular area and its content neutral. I agree with fining, but that it is excessive.

Gomes agrees with both Roehrig and Yuen, I think the fine is excessive. He personally feels that they did not intentionally violate the rules. He sympathizes with the staff, they have a job to do. I think going forward you should be assessed anything close to this fine. Basically, you need to do what you need to do to get it done. We need to find a balance for all the catamarans in Waikiki and other entities that have come before the Board.

The motion to dismiss did not pass. (1-aye 6-no).

Yuen made a motion to approval staff recommendation and reduce the fine to \$500.00. Gomes seconded the motion.

Further Board Discussion:

Downing commented he was fine with the \$500.00. He believes staff is doing their best. In the catamaran case, at least they are looking at what kind of signage that would have low impact and still allow them to conduct business. Regarding allowing an information sheet that they can handout if they take the prices out and allow them to let them know how to contact them.

Oi said he would vote for the \$500.00 reduction in fine but would also like the AG's office to look at the Administrative Rules that DOBOR uses to make sure it complies to whatever is going on the beach. Gomes agrees.

Roehrig agrees with the reduction of fine to \$500.00 under the conditions already stated. They should be allowed to have an information sheet on the and not be cited for that. There should be a zone of conduct. Heartily endorses to have the AG's review the HAR.

Case state for the record that there is a motion to approve the staff submittal with a reduction of the violation to \$500.00 with (2) proviso's, staff, and AG to take a fresh look at the Administrative Rules to ensure that they are consistent with the realities on the beach and any potential issues raised by the (2) Supreme Court cases Roehrig cited. Ask staff to look at a uniform application of a protocol for the catamarans on the beach so customers can find them without the identification, location, being a place to solicit business. Includes outrigger canoes.

Underwood mentioned that in December, they implemented a color-coded sign for the catamarans.

Amendment:

- *Reduce fine to \$500.00*
- *Staff and AG to review (2) Supreme Court Cases to ensure realities relating to the beach (SOH vs Bloss 64HAW148 & SOH vs Hawkins 64HAW499)*
- *Staff to look at a uniform application/protocol for the catamarans so customers can locate them.*

Motion

Approved as amended (Yuen, Downing) unanimous.

ITEM C-5 Request Approval of Declaration of Exemption to Chapter 343, Hawaii Revised Statutes Environmental Compliance requirements for these commercial trail activities;

and,

Request to Delegate Authority to the Division of Forestry and Wildlife Branch Managers to act as the Authorized Representatives for applicable Sections of Chapter 13-130, Hawaii Administrative Rules, Rules Regulating Hawaii Statewide Trail, and Access Program

and,

Authorize the Chairperson, and the Administrator and Branch Managers of the Division of Forestry and Wildlife to determine and approve Chapter 343, Hawaii Revised Statutes Environmental Compliance requirements, including Approval of Declarations of Exemptions, as applicable, for Authorizations or Permits issued under the Rules Regulating Hawaii Statewide Trail and Access Program.

Irene Sprechter and Mike Millay, DOFAW, requesting (13) commercial tour operator hiking permits and approve Exemption from Chapter 343. Delegate authority to issue permits in the future to the Branch Managers for the Division. Reason for the delegation is that they have just implemented a new on-line application form.

Board Discussion

Gomes asked if there has been any feedback from the 13 operators. Millay said that all feedback has been positive. He noted that there will be more permits to come.

Downing asked what the fees are for the permit? Millay said they vary from \$5.00 per hiker. Downing asked about the bikes? Millay said \$7.00 Downing asked are they going down a road or trails? Are they limited to so many rider per trail? Bikes cut up trails. Millay said that the bike trails are established and there are rules that regulate the number of bikes allowed on specific trails. The trails are determined by trail advisory councils by island.

Sprechter noted that they are monitoring the impact on resources based on the number, frequency, and use.

Yuen asked if there is a set limit on commercial users per trail. Millay said that is determined at the branch level. Sprechter said they have identified trails for commercial use and it restricts the number of people at any given period. Yuen asked if that was done at the Branch level. Millay said, it is built into the new application system. It will limit the number of guided tours per day. Tours are permitted by specific days.

Downing asked who monitors that the tours are in compliance? DOCARE is responsible for enforcement.

Case mentioned the website for Na Aha Hele Trails. It is organized by island, then alphabetically. www.Hawaiitrail.hawaii.gov

Gon confirmed that this in no way interferes with public access to trails.

Oi asked about pig hunting meetings on Nounou mountain. Staff will follow up.

Correction on Number 3 of the Board submittal, should be Number 13.

Public Testimony

James Manaku. Bikes should be kept out of hunting areas. It could be dangerous. Also, groups make a lot of noise, and scare the pigs away. Also concerned that enforcement will not be able to keep up. Concerned that people going off trail, because they will, will trample plant resources. Further, they leave a lot of trash. Keep tours away from hunting areas and resources that Native Hawaiians use.

Amendment:

Correction on Number 3 of the Board submittal, should be Number 13.

Motion

Approved as with amendments by Sam and Staff (Oi, Gon) unanimous.

5- minute break

ITEM K-1 Conservation District Enforcement Case (ENF) OA-18-10 Regarding the Alleged Unauthorized Construction of a Shoreline Erosion Control Structure by Mark and Diane Button, located in the Waialua District, Island of O'ahu, seaward of Tax Map Key no.: (1) 6-8-004:018

ITEM K-2 Conservation District Enforcement Case (ENF) OA-18-12 Regarding the Alleged Unauthorized Construction of a Shoreline Erosion Control Structure by the Heidi Snow Trust, located in the Waialua District, Island of O'ahu, seaward of Tax Map Key no.: (1) 6-8-004:031.

Sam Lemmo presented Items K-1 and K-2 for OCCL. He noted that representatives for the violators are present. Construction took place in a chronically eroding area in Waialua. Gave some history of these violations. After OCCL decided to issue violations, because in discussions with the City, it seemed that the City was not going to issue a violation. Further, it appears that City has issued Notices of Violation and has been working to get the land owners to apply for after the fact permits. Also, one property has a shoreline certification, although it expired during the period of work.

Lemmo noted that we might not be on solid ground if we issue a violation, on the other hand, if the City never issues after the fact permits, then we would be left with unauthorized structures on the shoreline.

Board Discussion

Gon asked if the structures are landward of the shoreline certification, then they do not require a permit from DLNR. Lemmo also noted that if those wooden bulkheads were not there, the shoreline would move further mauka, so the shoreline location may be artificial.

Case clarified that even if the structure is mauka of the shoreline, some of the work was being done makai of the shoreline?

Yuen noted that there is a 2016 shoreline certification that has expired, and the work for that property was done mauka of the shoreline.

Roehrig asked what Lemmo wants the Board to do.

Lemmo responded that he wants the Board to defer the item because he is not sure there is a case on the property that has a certified shoreline. He believes that there may be a case against the other structure. However, he has noted that there is a pattern that when people go to the City for permits, they may not always get them. So, he is concerned that if no permits are issued, then it may be that both agencies are left with illegal structures and nothing has been done about it.

Gomes asked what is a realistic timeframe for a deferral? Lemmo suggested two years.

Roehrig asked what is the problem between OCCL and the City about SMA permits. There was some discussion about this issue.

Mark Kelley of Decker Works, general contractor for the job. Also, an unlicensed architect with no name. Worked on the Snow house. Initially they were going to repair the wall. They repaired that wall, by making it deeper and adding structure to the top. The wall goes down 12 feet, the old wall was 6-9 feet. It is a railroad tie wall. In the process of doing this, they had to repair Mr. Buttons wall, because work on the Snow wall undermined the Buttons wall. Initiated the shoreline survey prior to construction. It has not been submitted to DLNR. (Snow property has the shoreline survey).

Mark Button's property had a October 24, 2016 shoreline survey, which expired on October 24, 2017. Architect had initiated the application process. Gave the permit process that they worked on and noted that the City said that they needed to strengthen the wall, so they added a concrete wall behind the railroad tie wall. That made the project a new wall rather than a repair.

Yuen noted that they built the wall before they got the shoreline setback variance. Noted that they never got a permit for the wall that they have already constructed.

Roehrig asked why they built the wall without first getting a permit. What motivated them to do the wall. Kelley said that the strong motivation was concern about the winter waves eroding the property owners land.

Case pointed out that there are processes in place for emergency construction. Mark Button provided pictures to the Board.

Kelley noted that in the past, they have filed for permits and they have gone through. He also noted that their communication with the City was that they were doing the process the way they should. They did this while they were working on Heidi Snow's wall and before the city issued an NOV.

Mr. Button started working on his wall about two years ago after some of his vegetation got ripped out by waves. Button noted that they did two shoreline surveys during the period leading up to construction. Has been working on this since 2013.

Yuen moved to defer indefinitely. Case asked that staff do a report to the Chair in one year. Roehrig wanted Lemmo to keep in touch with these people. Oi noted that the White property also is not certified. Roehrig seconded with Chair's amendment.

Downing asked if the house on the other side of Button's has a wall or not? What was done to protect their property? Mr. Button's wall has a buttress on the outside so that nothing wraps around to the neighbor's yard.

Condition:

Staff to provide a report to Chair in one year.

Motion

Deferred with condition (Yuen, Roehrig) unanimous.

ITEM J-3 Approve the installation of an existing Offshore Mooring and Declare Exemption from Requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules Māla Wharf Offshore Mooring Area, Lāhainā, Island of Maui, for Marina Batham and John Huntley.

- ITEM J-4** Approve the installation of three existing Offshore Moorings and Declare Exemption from Requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Lāhainā Roadstead Offshore Mooring Area, Lāhainā Island of Maui, for Hone Heke Corporation dba Expeditions.
- ITEM J-5** Approve installation of an existing Offshore Mooring outside Kā'anapali Offshore Mooring Area and Declare Installation Exempt from Requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Kā'anapali, Island of Maui, Hawai'i, for PRK Sails, Inc. (Peter Z. Dyck).
- ITEM J-6** Approve installation of an existing Offshore Mooring within Reed's Bay, outside of an established Offshore Mooring Area and Declare Installation Exempt from Requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawaii Administrative Rules, Hilo Island of Hawai'i, Hawaii for Bruce McCullough.
- ITEM J-7** Approve Installation of an existing Offshore Mooring within Reed's Bay, outside of an established Offshore Mooring Area and Declare Installation Exempt from Requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Hilo, Island of Hawai'i, for Scott Pruitt.

Ed Underwood, DOBOR, Items J-3 through Item J-7 are requests to authorize the installation of off-shore moorings. Noted that moorings for Reeds Bay are in a designated mooring area, but they are not in the rules.

Board Discussion- None

Public Testimony- None

Motion

Approved as submitted (Oi, Yuen) unanimous.

- ITEM J-10** Request for Reduced Rent; Revocable Permit No. 6; Hawai'i Big Game Fishing Club, Inc.; Honokōhau Small Boat Harbor, North Kona, Island of Hawai'i, Hawai'i; Tax Map Key no.: (3) 7-4-008:003 (Portion).

Ed Underwood, presented the request to reduce rent for the Honokaa Small Fishing Club. They are a 501C (4) but not a 1 or 3. They are in arrears for rent by about \$700. They charge for events so DOBOR cannot understand why they cannot charge enough to meet the rent of \$1000 per month. We forgot to include the map, Exhibit E. Underwood passed out the map. Staff does not believe rent should be discounted.

Board Discussion

Yuen asked if it does not fit the Statute, does it need to come before the Board? Case noted that the Board had asked for this. However, in the future, may no longer need to bring these items to the Board if they are not 501C (1) or (3). Gon noted that in this case, there is no option to reduce rent, so he feels it does not need to come before the Board, but in cases where there is a possible option (like 2 earlier cases) then they should come before Board.

Public Testimony-None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM J-12 Authorize Public Auction of a Lease for purposes of Landscaping, Maintenance, Storage of Small Boats and Trailers and other Maritime related activities at Māla Wharf and surrounding areas, Alamihi, Lāhainā, Maui, Hawai‘i, identified by Tax Map Key no.: (2) 4-5-005:019 (Por.)

Underwood presented for DOBOR. This is to address a concern raised by the AG regarding the 343 Exemption. This does not trigger 343, but in the future if it does we will bring it back to the Board

Board Discussion- None

Public Testimony- None

Motion

Approved as submitted (Gon, Oi) unanimous.

ITEM D-1 Set Aside to the County of Kaua‘i, Board of Water Supply for Well Site Purposes; Issuance of Immediate Management Right-of-Entry at Waimea Heights House Lots, Lot E-1, Kikīaola, Waimea, Kaua‘i, Tax Map Key no.: (4) 1-2-006:018 (por.)

Kevin Moore. Request to set aside a water well site to the County of Kauai and an immediate right of entry. The facility is already built.

Board Discussion- None

Public Testimony-None

Motion

Approved as submitted (Oi, Gon) unanimous.

ITEM C-1 Request Delegation of Authority to the Chairperson to approve Memoranda of Understanding / Agreements, Contracts for Goods and Services, and Cooperative Agreements, that Award Grant Funds to the Division of Forestry and Wildlife, subject to the review and approval by the Deputy Attorney General.

ITEM C-2 Request Approval of a Memorandum of Understanding between the State of Hawaii Department of Land and Natural Resources and the United States Department of the Interior, National Park Service to cooperatively work to conserve Natural and Cultural resources and ecosystems.

ITEM C-3 Request for Approval to enter into two Memorandum of Agreements between the Hawai'i Tourism Authority and the Department of Land and Natural Resources Division of Forestry and Wildlife for grant funds: (1) \$50,000 for the protection and preservation of the Kaniakapūpū ruins in Nu'uanu, Honolulu, O'ahu; and (2) \$65,000 for the new paths for Ka'ena Point Project, O'ahu and;

Request Approval of Declaration of Exemption to Chapter 343, Hawai'i Revised Statutes for these two projects.

Irene Sprechter, DOFAW, was available to answer questions.

Board Discussion

Gon noted that he likes these MOA.

Public Testimony-None

Motion

Approved as submitted (Gon, Yuen) unanimous.

ITEM D-4 Consent to Sublease General Lease No. S-3961, Hilo-Hawaiian Associates, Inc., Lessee/Sublessor; to Banyan Mini Mart LLC dba Coco Gift Shop; Lornalee Karvas dba Jaymielee's Styling Salon; Original Big Island Shave Ice Co., Inc., also known as Reginald Ignacio dba Original Big Island Shave Ice Co., Inc.; and Hawaii Forest & Trail, Ltd.*, also known as Hawaii Forest & Trail, Ltd. dba Hawaii Forest & Trail Adventures and Activities, Sublessees, Waiākea, South Hilo, Hawai'i, Tax Map Key no.: (3) 2-21-003:005 (por.).

Kevin Moore presented for Land division. This is a request for consent to several small leases that are already in existence.

Board Discussion

Yuen questioned the mechanics of the lease rental fee. He noted that we lose money on the percentage rent if the tenant creates subleases but we don't collect percentage rent from the income of the sublessees. Moore noted that the lease of the sublease is factored into the hotel lease. Moore

also noted that this goes back to the Board policy of not participating in subleases recognizing that the leasee has put in a lot of money into hotel improvements. Discussion.

The Board directed staff to revisit the subletting provision of the lease quoted at pages 3-4 of the submittal, consult with lessee, and reassess staff's position on whether the State should participate in the 2% on the gross receipts of the sublessees.

Public Testimony-None

Motion

Deferred (Yuen, Oi) unanimous.

ITEM D-12 Request of Waiver of Requirement for Conducting Phase 1 Environmental Site Assessment upon Cancellation of Revocable Permit No. 7469; Cheryl McConnell and Wesley Furtado, Former Permittees; and

Issuance of Revocable Permit and Right-of-Entry Permit to Richard & Kathleen Teixeira for Pasture and Horse Stabling Purposes; Waimānalo, Ko'olaupoko, O'ahu, Tax Map Key no.: (1) 4-1-013:022.

ITEM D-13 Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Waterline Purposes; Issuance of Immediate Right-of-Entry Permit; Wahiawā, O'ahu, Tax Map Key no.: (1) 7-3-013: Portion of 009.

Kevin Moore, Land Division amended the submittal to include a new paragraph 1 in the Recommendation section

Amendment:

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.

The remaining paragraphs in the Recommendation section are to be renumbered accordingly.

ITEM D-15 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 O'ahu, Maui, and Moloka'i. See Exhibit A, for List of Subject Properties

Kevin Moore, Land Division presented the staff submittals for Item D-12, Item D-13 and Item D-15.

Board Discussion- None

Public Testimony-None

Motion

Approved Item D-12 and Item D-15 as submitted. Approve Item D-13 as amended (Gon, Oi) unanimous.

ITEM D-7 Request for Issuance of Right-of-Entry Permit to Chrysalis, Inc. on Lands located at Wailea Beach, Honua'ula, Maui, Tax Map Key no: (2) 2-1-23: seaward of 007.

Kevin Moore, Land Division, was present to answer questions on the staff submittal.

Board Discussion- None

Public Testimony-None

Motion

Approved as submitted (Gon, Oi) unanimous.

Motion to adjourn. (Gon, Yuen) Unanimous.

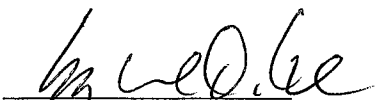
There being no further business, Chairperson Suzanne Case adjourned the meeting at 5:30 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources