

JUN 08 2018 *ds*

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

DATE: FRIDAY, MARCH 9, 2018
TIME: 9:30 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case
Thomas Oi
Stanley Roehrig
Samuel Gon

Chris Yuen
Keone Downing
James Gomes

STAFF

Cindy Young/AG
Russell Tsuji/LAND
Kevin Moore /LAND
Ian Hirokawa /LAND
Megan Statts/DOBOR
Todd Teshima/DOBOR

Ed Underwood /DOBOR
Ross Smith/DOT Airports
Keiki Kipapa/DOBOR
David Smith/DOFAW
Pua Aiu/CO
Emma Yuen/DOFAW

OTHERS

Cindy Young/AG
Stuart Matsunaga/D3
Dre Kalili/M6
Dave Rodrigues/J2
Boogie Apana/J2
Rocky Kaluhiwa/J2
Cedric Bertleman/J2
William Holt/D2
Faria Savio/J1

William Ross/D4
Carl Young/M5
Louis Perez/J2
James Sedeno/D8
Gerald Higuchi/J2
Randy Cates/J2
Joshua Shade/J2
Stuart Matsunaga/D4
John Savio/J1

ITEM A-1

Chair Case called the meeting to order at 9:30 a.m. and proceeded to read the standard contested case hearing statement.

ITEM A-1 Approval of January 26, 2018 meeting minutes.

Board Discussion

Gon and Yuen submitted comments to the Land Board Secretary prior to the meeting.

Public Testimony-None

MOTION

Approved as amended (Gon, Gomes) unanimous.

ITEM D-4 Issuance of Right-of-Entry Permit to Akamai Land Surveying, Inc., for Survey of Road and Adjacent Property Boundary Purposes, Wahikuli, Lāhainā, Maui, Tax Map Key: (2) 4-5-021:023.

Russell Tsuji, Land Division, briefed the Board. There was a personal injury and the Plaintiff is requesting the survey to see if it did indeed happen on their property which is next to State lands.

Board Discussion

Oi asked, how come the State Survey office does not do this? Tsuji said, they do not have the man-power. William Ross, representing the Plaintiff, relayed that they will be paying for the survey. He said, the property line appears from all the Tax Maps to demonstrate that the accident took place on State land.

Public Testimony-None

MOTION

Approved as submitted (Gomes, Roehrig) unanimous.

ITEM D-1 After-the-Fact Consent to Assignment of 100% Membership Interest in Lessee Pixar Development, LLC from John Kenneth Purdy to Hotel Coral Reef, LLC; After-the-Fact Consent to Quitclaim Assignment of Membership Interest in Lessee Pixar Development, LLC from Michael F. Harrah to Hotel Coral Reef, LLC; After-the-fact Consent to Real Property Mortgage and Financing Statement, Pixar Development, LLC, Mortgagor, and First Hawaiian Bank, Mortgagee (2010 Mortgage); Consent to

Mortgage with Estoppel Certificate, Pixar Development, LLC, Mortgagor, and First Hawaiian Bank, Mortgagee (2018 Refinance); Amendment of Development Agreement dated August 17, 2016 between the Board of Land and Natural Resources and Pixar Development, LLC, Lessee, to Allow an Additional 18 Months over the 24 Months Provided for Construction of Improvements; General Lease Nos. S-3832 and S-5578, Pixar Development, LLC, Lessee, Kapa'a Town Lots, Kapa'a, Kawaihau, Kaua'i, Tax Map Keys: (4) 4-5-011:046 and 4-5-012:005.

Russell Tsuji, Land Division, summarized the history of the lease. William Holt representing the Lessee is present to answer any questions.

Board Discussion

Oi asked how would we be able to track these changes in ownership? There have been a lot of changes that happened since 2004. Tsuji replied, generally the transfer would come to us so we can evaluate the consent. In this case, Mr. Hara did not realize it required a consent when the ownership changed interest. The old lease may not have been very clear.

Oi said they came to the Board for consent to mortgage in 2014 and ownership changed a couple of times by then and they should have identified the changes at that time.

Roehrig commented on the various way this could have been avoided and that we could have had a premium and someone made money. He suggested the Division work with the BOC to flag these types of leases when they are recorded there through the use of the Conveyance Tax Certificate.

There was a very robust discussion whether that was feasible or not. Roehrig was very dismayed that this lease should have provided a premium to the State when Purdy transferred his interest and was not in favor of waiving it. Someone is responsible to pay for it when the transfer happened.

Oi said to Tsuji, that you evaluate some of the leases every 5, 10, 15 years. Somehow when you have the opening of the lease rent, staff can check to make sure it is the same Lessee at that time or it has been reassigned.

Case relayed that the current lease requires notification to the Land Division on transfers of ownership interest. There is no mechanism for finding out without them telling you. What you are suggesting is to periodically ask at the reopening. Tsuji said it might be a little difficult because we do not go back and check DCCA, but when they ask for an amendment or extension there would be an opportunity to check.

Roehrig addressed the Deputy AG Cindy Young and asked what provision of the law provides the calculation of the premium and which entities are responsible for the payment of the premium. Young replied the lease addresses the assignments in general and the provisions. The lease is

not attached with the submittal. Generally, when you look at leases there are provisions relating to assignments. Roehrig said we need to read the lease. He would like to know who is supposed to pay the premium before he votes.

Oi asked the applicant when are you going to start construction? Applicant said once the mortgage is approved we should be starting next month.

Staff will retrieve a copy of the lease for review and the Board will come back for discussion.

Public Testimony-None

Return to discussion on Item D-1 (Copy of Lease given to the Board)

Case said there is an outstanding question regarding the premium that was due on prior transactions that was brought to our attention are collectable. The Attorney General's office would like to review it in detail and she would like to suggest deferring this item.

Tsuji brought to the Board's attention regarding approval of Recommendations D, E, and F? And revise the motion.

Amendment:

Approval of recommendations D, E and F of the submittal with the proviso that any estoppel certificate issued by the State will need to note the unresolved issue of whether a lease assignment premium is due for the 2005 assignment of membership interests in Pixar Development, LLC. Staff was directed to seek the advice of the Department of the Attorney General on who is responsible for paying a lease assignment premium when a transaction involves the sale of the membership interest in a lessee as opposed to an outright assignment of the lease to a third party.

MOTION

Approved as amended (Gomes, Oi) Unanimous.

ITEM D-8 Sale of Remnant to James M. Sedeno, Waimānalo, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-1-023:008.

Russell Tsuji, Land Division explained that this might have been a taro patch at one time. It has never been leased. It was offered to the abutting property owners. The Sedeno's are here to answer any questions.

Board Discussion

Downing asked Tsuji how did it end up being a flag lot? Oi commented that if he remembers correctly this is Land Court. When you Land Court the property you have to notify the public. If someone made a claim on it or they could not get title to it, it becomes an exclusion. This remnant is an exclusion to Map 1. An exclusion can be a piece of property within this Land Court property and that is how the State ended up with it.

Yuen said he feels the submittal is making an assumption that the property is not developable in its configuration. The Planning Department may give a variance, you could build a house that meets all the setback requirements. It is a legal lot of record, although non-conforming lot does not mean you cannot build a house on it. If you own the adjoining property you have a lot of options. Tsuji agreed, the Land Division is not in the residential leasing business. Yuen said he did not want the appraiser proceeding on the assumption that it is not a buildable lot.

Case asked Yuen if he disagreed with Recommendation #1? If so, then you are disagreeing with the definition of a remnant. Tsuji said if that is the case then this off. The remnant Statute requires consolidation and the valuation is based on how much value it would add to the property. Yuen asked if prohibit consolidation and re-subdivision? Tsuji replied, he did not think the Statue goes that far.

Roehrig explained that the consolidation would include petitioning the Land Court to agree to change your perimeter boundaries. The Land Court Judge has to hold a proceeding or hearing on the issue of changing your boundaries. At that time, the Land Court can hear the issue on whether you can develop this lot and City and County will need to weigh in on this.

Oi asked Sedeno what was the purpose of "Easement A" which is 12-feet wide. Sedeno conveyed that it was the driveway. Oi asked if the driveway goes all the way to the remnant? Sedeno said no, they have a fence. Oi said if you owned the lot you would not need an easement. Tsuji clarified that the easement serves the parcel. Oi said that this does not qualify for a remnant because it is not land-locked, there is access, they can build.

Yuen said unless they can show that it is unsuitable/undesirable for some reason then we can sell it as a remnant. You may to inquire with DPP. Downing commented that his house is zoned R-5 and his lot sits on 4,400 square-feet, and he has a two-story house on it. He feels calling it a remnant as far as appraising does not seem right.

Roehrig conveyed that if it was a lo'i and was taken care of by tenant farmers, there may be descendent who have a claim on it and if Land Court did not hold a hearing on this particular land, that could be the reason why it was not included in the Land Court subdivision.

Public Testimony

Sedeno would like someone to check it again. They have been maintaining the land.

Board Members expressed concern about the finding in the recommendations section that “the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics.” Board Members noted that substandard lot sizes can be used with county approval, and therefore the subject parcel may be “suitable for development” for residential use. They requested a showing that the parcel is “physically undesirable” for development or utilization if the matter is brought back to the Board.

Motion

Deferred (Roehrig, Yuen) unanimous.

ITEM D-3 Issuance of Right-of-Entry Permit to Department of Hawaiian Home Lands for Purposes of Conducting Archaeological Reconnaissance, Flora and Fauna Surveys, and Cadastral Survey for a Proposed Potable Well Site and Water Transmission Line, on Government Lands Situated in Honokōwai, Lāhainā, Maui, Tax Map Keys: (2) 4-4-004:002 & 008.

Russell Tsuji, Land Division, explained that DHHL would like to survey for a possible water well. Stuart Matsunaga is here to answer any questions.

Board Discussion-None

Public Testimony

Stuart Matsunaga, Land Division for Hawaiian Homelands, thanked the staff for working on the Right-of-Entry. It is very important for us to proceed with an EA to develop the well, and the transmission line to service our West Maui properties.

MOTION

Approved as submitted (Gomes, Gon) unanimous.

10:35 am: Break

11:50 am: Reconvene

ITEM M-1 Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft to Support Commercial Helicopter Operations, Hawaii Pacific Aviation, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 21.

ITEM M-2 Issuance of a Revocable Permit for an Airline Lounge, Japan Airlines Co., Ltd., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 051 (Portion).

Board Discussion

Oi thought that Japan Airlines already had a room. Smith said they have a room that they shared.

ITEM-M-3 Amendment No. 6 to Concession Agreement No. DOT-A-08-0011 for the Purpose of Adding Baggage Storage Space, Smarte Carte, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-03: 01 (Portion).

ITEM M-4 Issuance of a Revocable Permit to Southwest Airlines Co. for the Purpose of Airline Operations, Daniel K. Inouye International Airport, Tax Map Keys: (1) 1-1-003: 053 (Portion), (1) 1-1-003: 042 (Portion), (1) 1-1-003: 051 (Portion) and (1) 1-1-003: 058 (Portion).

Ross Smith, DOT-Airports reviewed the requests for Revocable Permits and the monthly rent to be charged.

Public Testimony-None

MOTION

Approved as submitted (Oi, Gomes) unanimous.

ITEM M-5 Issuance of a Revocable Permit to Hawaii Men's Shed Association at Warehouse 6, at Pier 20, Honolulu Harbor, Hawai'i. Tax Map Key: (1) 1-5-039:026 (Portion).

Carl Young, DOT-Harbors, present to answer questions.

Board Discussion

Downing asked how many people are in the Association? Young replied, it is growing. It started at 10 and we are up to 20 people. It fluctuates. Yuen asked how the name came about? Young was not sure, but it is a program to help elderly men.

Public Testimony-None

MOTION

Approved as submitted (Roehrig, Gon) unanimous.

ITEM M- 6 Issuance of a Construction Right-of-Entry to Kiewit Infrastructure West Company, at the 1845 Auiki Street, former Kapālama Military Reservation, Kalihi-Kai, Honolulu, Hawai'i. Tax Map Key: (1) 1-2-025: Portions of 011, 084, 100.

Dre Kalili, DOT Harbors, explained that Kiewit would like to use their facility for a base yard.
Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Oi) unanimous.

ITEM D-5 Issuance of Right-of-Entry Permit to Waikīkī Beach Activities, Ltd. for Beach Activities Purposes from March 24 to 27, 2018, Waikīkī, Honolulu, O’ahu, Tax Map Key: (1) 2-3-037: Portion of 021.

Russell Tsuji, Land Division presented the submittal and did not have anything else to add.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Downing, Gomes) unanimous.

ITEM D-6 Issuance of Right-of-Entry Permit to Waikiki Community Center for Beach Activities Purposes to be held on April 14 and 15, 2018 at Duke Kahanamoku Beach, Honolulu, O’ahu, Tax Map Key: (1) 2-3-037: Portion of 021

Russell Tsuji, Land Division explained this would be gratis.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Downing, Gon) unanimous.

ITEM J-2 Termination of Boating Lease No. B-11-01, dated April 1, 2011 between the State of Hawaii, Lessor, and The Sandbar Group, Inc., Lessee; located at He’eia Small Boat Harbor, O’ahu, Hawai’i, Tax Map Key: (1) 4-6-006:067 Portion.

Keiki Kipapa, Division of Boating and Recreation (DOBOR). Based on the history and writing of this submittal, the rental fees are in arrears by \$10,000, remaining interest of \$16,751.00 was

still outstanding. The fuel provision service on the agreement has been sporadic. On February 23, 2018, Sandbar Group came before us after the submittal was completed and paid off their late fees. Sandbar used the interest owed was used for fixing the pipes, they did spend almost \$30,000.

Board Discussion

Case asked if the recommendation is still to terminate the lease? Kipapa said it was brought to attention that they do not know who really owns the lease. There have been a lot of changes. She spoke to the President, Ross Inouye and he said he has not been involved for the past 2-years, although he signed the documents.

Ed Underwood, Administrator, DOBOR conveyed they have complied with the notices of default paying the back rent and the insurance requirements. More than 20% interest has changed, but we do not know. We have asked, and we are trying to get clarity. We have had many complaints from the community.

Yuen asked if there are grounds for default now that they have paid? Underwood said as of today, they have complied with the notices of default after the fact. Case noted that they are current on their rent & fees. Are they current under the other commitments under the lease to provide gas, etc.? Underwood replied that it was a hit and miss. We have been told that fuel is being provided, the community has told us it is very sporadic at best. Yuen asked would that be grounds for default? Underwood said yes.

Case asked to clarify if they are required to tell you who the ownership interest are in the lessee and they have not done that and that is a violation of the lease also. Roehrig asked what was contained in the Notice of Default? Underwood said there were (2) notices, (1) for the back rent and the 2nd one for insurance. Roehrig said those (2) have been taken care of.

Kipapa said another Notice of Default was sent out on February 22, 2018 regard providing fuel. Roehrig asked for clarification on the process of the Notices of Default. Kipapa replied, that if there is another violation, another notice is issued. They are still in default.

Downing commented that we waived the interest so they could purchase a fuel truck. Underwood said, the truck was not purchased. Instead the money was used to put in new feed lines from the fuel tank to the pumps. Downing asked if they asked DOBOR if they could do this? Underwood said no, when we followed up on the fuel truck, we found out they felt it was better to put the money in the fuel lines so they could bring the tanks operational.

Downing said that when we waived the interest it was to purchase a fuel truck so they could provide immediate usage, not two-years later. At that point if they felt putting the money in the fuel lines, I feel they should have come back to the Board and asked if we would allow that.

Roehrig asked the following questions, were you informed they were going to put in the fuel lines? Underwood, no. Did you know they put in the fuel line? Kipapa, no. Is the fuel line installed? Kipapa, yes. Are tanks installed? Kipapa, Yes. Is there fuel in the tanks? Kipapa, I do not know. If the tanks are filled, is it now serviceable for the public? Kipapa said she went on a site visit 2-days ago and overheard a Captain say they had to send another guy to go get fuel. I spoke to Dave Rodrigues, the daily Operations Manager. He said the fuel tanks were running. Asked the Captain he said, no they are not. He tried to get fuel.

Louis Perez and Dave Rodrigues, representing the Sandbar Group. Explained how the ownership of shares for the lease are structured so they would not have to do an assignment of lease. Basically, the Akamai Foundation (Perez) as shareholders of the lease are trying to upgrade the pier and outlined their business plan and what they were trying to accomplish. It takes time and capitol which we have to raise.

The Board Members addressed the list of names that are supporting the termination of the lease. Roehrig asked if they have a public meeting in order to work this out? Perez said no, it is a struggle every day. There was strong community support to develop the pier. It is baby steps for us. It is going to take time and money.

Yuen commented that Akamai Foundation and the investors basically own more than 20% of the Sandbar Group. The ownership based on stock, the ownership has been transferred out of the original people who were the lessees. From what you are telling me, clearly under the assignment clause that includes the transfer of stock as an assignment, there has been an assignment and there has not been a consent to the assignment. Perez said they are not disputing that, we initially came in debt so as not to trigger an assignment. We did send a letter to DOBOR, asking for the assignment. Yuen said, that DOBOR said they did not receive it.

There was further robust discussion about what was planned for the pier.

Public Testimony

The Board listened to the following in support of Item J-2 and their reasons in support of the termination of the lease.

Boogie Apana; Gerald Higuchi; Rocky Kaluhiwa, Randy Cates; Cedric Bertelsmann & Joshua Shade. There was a written testimony signed by 60 others supporting the submittal to terminate the lease. The concerns included, services not being provided as fuel, ice, lack of respect for the community, there is no containment for the fuel lines and not marked. The Manger has been living in the building. Not meeting the terms of the lease. No one knows who owns the lease, there is no accountability, if there is a problem with the guy running the facility, the guy whose name is on the lease (Russell Inouye) who is not present, says he is out of this deal, he has nothing to do with it. Who do you turn to?

Gomes addressed Higuchi, you know what the issues are. Do you have anything to add, any options as to what should happen? Higuchi replied, that the lease should be terminated, there are too many hands involved, rebid.

Roehrig asked DOBOR staff what they had in black and white regarding the issue of ownership of this entity? Is there any default notice of not having the proper ownership? Kipapa noted that she spoke to Inouye and asked him about the lease. He is the President and we have no changes since he walked away 2-years ago. He never made an Assignment to Consent. He said he wanted to give up the lease.

Case said she is looking at the DCCA Business Registration website and as of October 1, 2017 and he is not listed as an officer. Perez said the change occurred in December 2016, the filing was updated in the fall of 2017. Rodrigues was President in 2016. Kipapa said Inouye is the one who signed the lease, he was more than 25% stockholder

Case said it sounds like he is not in there anymore. That was a transfer which we were not notified. Perez said they sent a letter. DOBOR said they did not receive. Kipapa received an email copy of the letter on March 7, 2018, but the letter was not signed, and it was addressed to Chair in 2015. There is nothing in file. Perez said he will go back and check.

Roehrig asked who sent the letter dated July 9, 2015 to the Chair which is not signed by Fred DeAngelo and Evan Minut.

Yuen addressed Cates and asked has it been your experience that fuel has been available since mid-February? Cates replied, Underwood (DOBOR) said fuel was available. I have asked other boater's if they have seen it, if they had it, I have asked for it, the only thing I heard was they had it at one time but did not have enough money to fill the tanks. Yuen asked when was the last time you went and tried to get fuel there? Cates said two months ago, his boat is diesel and they do not sell that. Yuen asked if he ever saw anyone get fuel? Cates said no.

Roehrig addressed Cates and said this is getting to be a contentious situation. One suggestion is to take a breath and make things better. Find a solution, there are different layers here. If we do not have peace on the pier we have to change it promptly. We have a duty to be reasonable and equitable in the handling of each leasehold.

Oi commented that the character of use specifies an ice house, not an ice machine in the restaurant, there is a difference between the two. You are not providing that. Perez said it was broken when they came in. Perez noted that they needed an influx of money. According to the Exhibit, there shall be no assignment of lease or interest.

Perez justified that it would be a 20% change in ownership interest. Oi said it seems nothing seems to be improving because you are running on a cash basis operation, it is hard to run a

business like that. Perez said there have been tremendous improvements but the company does not put out cash to cover any improvements. It is all from contributions.

Yuen said based on the submittal we cannot make a default the Sandbar Group today. In the course of what has happened today there are several things that have to be brought back to the Board either as a Consent or a Default.

Yuen made the motion to not default the Sandbar Group today, because they paid. DOBOR brings this back to the Board, there are things that need to be dealt with, 1) there has been assignment of the lease via transfer of the stock without the consent of the Board. Case said on page 9, does say 20% or more interest. Yuen said Mr. Inouye is down to 6% 2) the last time the Board acted this we would forgive the interest of \$16,000 due, so they could provide a fuel truck, providing fuel by the end of 2016. This did not happen.

What the leasee is saying is we should credit \$28,000 that they spent on the fuel lines and gas tank against the interest. If they want that to happen, it should come to the Board. It is up to DOBOR to bring this to the Board and make the decision to credit or not and have them pay the interest. 3) We have this dispute about availability of fuel, which is clearly a part of the lease. He tasked DOBOR to verify that you can buy gas and diesel. If they are not selling fuel regularly bring it back to the Board as a default.

Yuen said for the benefit for the public we have a lot of rules we operate under.

Yuen made a motion to defer for the following reasons:

- 1) There has been an assignment of lease via transfer of stock ownership without the Board's consent. Mr. Inouye the original leasee is down to 6%. Case mentioned on page 9, it does say 20% or more interest.
- 2) The last time the Board acted on this, the interest of \$16,000 due was forgiven so that a fuel truck could be purchased to provide fuel by the end of 2016. This did not happen. Money was spent on new fuel lines and gas tanks. They did not have Board approval. Verify the fuel lines are to code and legal. Leasee is asking for a credit of \$28,000 for the fuel lines. If they want this it needs to come before the Board.
- 3) There is a dispute regarding availability of fuel. If they are not providing fuel on a regular basis, they are in default
- 4) Verify that ice available
- 5) Verify the facility is not being used as residential. Case noted that if you are barbecuing over-night it is legitimate to sleep there.

Yuen said it is up to DOBOR to bring it back to the Board, as information items, Consent, or Default. If a default is issued, they have 60-days after the default is issued in writing, to bring it back to the Board. DOBOR is tasked to verify that there is/or is not compliance of the lease.

Roehrig second the motion.

Gomes said they have been in default since 2016. Case noted that if anyone goes down there and is not able to purchase fuel during normal business hours please let DOBOR know about it. Downing commented he believes there is a default. I agreed not to close it down in 2015 because the people needed gas and we were they would provide a gas truck, this is why I voted to extend it and put them under default at that time, they decided and maybe they are right to put the money into the fuel line, but that is not what I agreed to. For me that is a default. Case commented that it also took a year.

Roehrig said you guys got to get along, we have only one facility, he would like to see what DOBOR reports back before he makes a final decision. Case added the goal is to maintain a good family, local, fishing atmosphere that has to work for everyone. I would like to ask everyone to use your best intention and best behavior. It needs to work on all sides. It is a community pier, Sandbar is a community development organization, the purpose is to make a good facility for the community. It is important to get to the goals here.

Gomes added he would support the motion with reservations, what I see is the kupuna's within the community reaching out, they are the people living there, that's their aina. They are the eyes and ears of the community, they know everything. Including the commercial fishermen. I personally would say no, but I will wait and allow the due diligence process and hope you do better and support the community and the community support you. Your eyes and ears are the people sitting behind you. You guys can come and go and they will still be there. Their roots are deeply ingrained in that area. He suggested to do their best with everyone concerned.

Roehrig asked DOBOR to review the video near the bathrooms for inappropriateness. Case said if it is a security camera that is allowed.

Yuen, said he wanted to make a slight change to the motion on the time frame to bring it back. The lease says basically, apart from failure to pay rent if the Department is going to say they are in breach, the have to send a letter of written notice of breach or default and if failure continues after 60-days after delivery of written the notice. If it is a matter of various consents bring it back to the Board in 2-months.

Roehrig agrees to the modification

Motion

Deferred with conditions (Yuen, Roehrig) Unanimous.

ITEM J-1 Administrative Enforcement Action for Violation of Hawaii Administrative Rule Section 13-255-6: Waikī Beach uses and activities; restrictions, against Islands Beach Activities, Inc. for display of Advertising Material on Waikī Beach.

Chair Case asked if there was a request for a contested case, you can decide later but if you are, we will not hear it. Savio replied, not at this time.

Ed Underwood, Division of Boating and Ocean Recreation, summarized that they had received complaints from various people and the City & County of Honolulu. During a walk on the beach Staff witnessed various violations and are present to answer questions. Owners of the catamaran are here as well. We also met with their attorney George Lindsey, who is not present today.

Board Discussion

Roehrig asked if there was some kind of understanding is this matter settled? Underwood replied, just the language in the recommendation regarding future termination of their lease. Roehrig commented that he asked that DOBOR seek a written opinion from the AG's office regarding these types of violations on major beaches. Underwood said he consulted with the AG's office and received a verbal. Chair Case we do not have this today.

Gomes asked Underwood if they had made any progress regarding signs of different colors after the last meeting where we had a similar violation Underwood, replied yes

Faria Savio, wife of John Savio, who is managing the business right now. Written testimony from their attorney, George Lindsey. Presented her matter in way that they were focusing on safety when they placed the sign. We were not cited for any wrong-doing and the \$10,000 fine should be dismissed since we were not cited the first time.

As we know it, on October 4th, three individuals from DLNR decided to do a sweep of the beach, I was not there. This what I know from one of the members of DLNR and a member of my crew, (no crew member present). Three individuals, approached two of our crew on the Manu Kai Catamaran, they were not in uniform, did not identify who they were, and asked the crew members to remove the sign. At that point, one of the crew members asked "why"? He was told it was prohibited and the sign was not legal. He put the sign on the net of the boat. In the meantime, they were doing their regular safety preparation for the next sail.

Savio continued, just before they left for their first sail, one of the crew members took the sign off the netting and placed it by the mooring, where we always have it for safety aspect for any of our visitors and guests to Hawaii. At that time, the second crewman was unaware of what had happened earlier that morning.

Jazzel Ahina, DOCARE Officer, who had contacted Savio later and the two people with her were walking back and noticed the sign back at the mooring, however out boat was no longer there as

they left for a sail. John Savio also owns Na Hoku II Catamaran, they picked up the sign and walked over to Na Hoku II Catamaran and said this sign is illegal, you are not allowed to have it. The crewmember put the sign on Na Hoku and Officer Ahina asked for the Owners name and number.

We were contacted by Officer Ahina who explained what had occurred and that if it happened again we would be cited for the very first time. We had a meeting with our Captains and crewmembers the next morning to tell them they no longer were allowed to put the sign there.

Savio said she took a walk down the beach to see which signs were permitted. She needed clarity and it took two weeks before she got a response of what was permitted. In the spirit of cooperation with DOBOR I sent Statts an e-mail for approval of our signs. We finally got approval on January 9th.

On January 30th, we got a package say we were getting fined for \$10,000 for something that happened on October 4th. We went for another walk and saw other illegal signs. I do not understand how it took so long to make a charge of something totally unfair. We have no problem following the rules, but it has to be the same for everybody.

Roehrig asked Staff if there is anything in the submittal that says they corrected their signs or what is a fair fine? Underwood replied no.

Megan Statts, DOBOR, when we did the walk in October, this is not about a catamaran landing site, this is about a sign that had pricing and information of sails. The issue that came up later regarding the uniformity of signs for catamaran landing sites. The sign that is at issue here is of advertising and soliciting on Waikiki Beach. This is not about a landing sign. When we approached, myself and Todd Teshima had our Boating uniforms and Pua Aiu had her badge. I identified myself, Pua identified herself.

We explained the reason why you cannot be advertising, you cannot have prices on your signage while it is on the beach. Pua said the same thing. We told the guy that you can take it and put it on the boat and that is not a problem. The guy was extremely defiant and started to laugh at us and told us it was ridiculous for us to tell him to remove it from the beach. Aiu and Teshima were witness to this conversation. I again identified myself and said my name is Megan and John knows who I am and if he has any questions he regarding this he knows how to get a hold of me have him call me.

We continued to walk down the beach as we walked down the beach to deal with another issue, we confiscated some boards with DOCARE, we were probably there for 45-minutes. When we were coming back we noticed the sign was still there. The same people we encountered during the first stop there. were the same people standing by the sign that we told them to take down as indicated in the photos. That is when we contacted DOCARE. It was not somebody else.

Roehrig asked without getting into identity, when we send individuals to do corrective action, they have to under the law have the authority to direct people on public property to do something. By what lawful authority can we send out agents to tell members of the public that they cannot do something?

Case explained that this a civil violation. DOBOR is notifying the people of the violation of the rules. They did not comply. The DOCARE officer would need that authority to make a criminal citation. There is a difference between a civil and criminal proceeding.

Yuen commented that these are people who have DOBOR permits and are being told by a DOBOR Manager that they are in violation of DOBOR rules.

Pua Aiu, Chair's Office. we walked the whole beach, and the signs that we saw were either on private or signs on the beach. There is a difference between a landing sign and an advertising sign. There were numerous things that we were down there for.

Downing made a motion to reduce the fines as follows:

Amendment:

- 1. Reduce fine to \$1,000.00 for the first violation and \$2,000.00 for the second violation.***
- 2. Meet with Megan Statts, DOBOR to clarify that signage is uniform among the catamaran's.***

Motion

Approved as amended (Downing, Gomes)

After the motion was passed, Savio requested a contested case.

ITEM J-3 Approve installation of an existing mooring outside Māla Wharf Offshore Mooring Area and declare Installation Exempt from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Lāhainā, Island of Maui, Hawai'i, for Mark E. Paul.

ITEM J-4 Approve installation of four (4) existing moorings outside Kīhei and Lāhainā Offshore Mooring areas and declare installation Exempt from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Island of Maui, Hawai'i, for Kristie Wrigglesworth on behalf of Catamaran Express, Inc., The Leilani Corporation, Unicorn Tours of Hawaii, Inc., and Four-Island Ocean Adventures, Inc.

- ITEM J-5** Approve installation of an existing mooring outside Māla Wharf Offshore Mooring Area and Declare Installation Exempt from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Lāhainā, Island of Maui, Hawai'i, for Michael Spalding.
- ITEM J-6** Approve installation of an existing mooring within Reed's Bay, outside of an established Offshore Mooring Area, and Declare Installation Exempt from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, ITEM Hawai'i Administrative Rules, Hilo, Island of Hawai'i, Hawai'i, for Nicole Albright.
- ITEM J-7** Approve Installation of an existing mooring within Puakō Bay, outside of an established Offshore Mooring Area, and Declare Installation Exempt from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Puako, Island of Hawai'i, Hawai'i, for Michael Kapchinske.
- ITEM J-8** Approve installation of an existing Offshore Mooring and Declare Exemption from Requirements of Chapter 343, Hawai'i Revised Statutes, and Title 11, Chapter 200, Hawai'i Administrative Rules, Māa Wharf Offshore Mooring Area, Lāhainā, Island of Mau'i, for Michael Miller.

Ed Underwood, DOBOR, these off-shore moorings are currently existing, they have come into compliance, they have received all their permits

Case asked why are we permitting these outside the mooring areas? Underwood clarified that we have very few designated mooring areas around the State and the rule says we need approval from the Board for approval.

MOTION

Approved as submitted (Gomes, Gon)

- ITEM F-1** Request Approval for a FY-19 Federally Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation of the University of Hawaii (RCUH) for the Division of Aquatic Resources (DAR) Research Project entitled "Statewide Marine Resources Assessment."
- ITEM F-2** Request Approval for a FY-19 Federally Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation

of the University of Hawaii (RCUH) for the Division of Aquatic Resources (DAR) Research Project Entitled "Investigation of Estuarine Habitats."

Mike Fujimoto, Division of Aquatic Research. These are existing projects that need new contracts/agreements.

Gomes asked what kind of research that you know of, has been completed in respect to being positive and how is it being implemented?

Fujimoto replied, the Marine Source Assessment is for surveys and inventories to adjust regulations. We find where stocks are stable or areas where stocks are not stable. These are just snapshots, we do not know what is being harvested.

Gomes asked with the research how can you implement that? Fujimoto said, they have another contract for the shoreline survey of fishermen, seeing how much they are catching, how much effort they are using.

Case commented that there lies the challenge because there is no report requirements for recreational fishing.

Gon asked if the results of the on-going estuarine habitats and resources can they be found on the DAR web site; can you go to any public place find the results from previous years? Fujimoto said there might be links. The results are sent to the Fish and Wildlife are very brief, nationally we are trying to get it accessible to the public. All the information has to be entered by the US Fish and Wildlife personnel, so they want your whole years' work down to a paragraph. They have to enter every State, every program nationwide.

Gomes asked if it was worth funding this and the public are reducing us to just one paragraph and the public does not even get an opportunity to really see how you are doing? Fujimoto said the money that funds this come from excise tax from fishing equipment.

Gomes said he they once we had a public hearing on Maui, they go to another State to go fishing they have to get tagged and they have to pay for it. Here we do not have that. They said if you want to get a better handle on what is being harvested whether commercial, marine license, and individuals trying to get licenses. Some of them did not want this, how do you enforce a commercial fisherman that is fishing on the shore? How do we get more information out to the public, how do we resolve this? You are doing all this research.

Fujimoto said we have links to websites on our site. The project pays for the research and not for the writing of articles.

Motion

Approve as submitted (Gomes, Downing) unanimous.

ITEM C-1 Request approval to enter into a Memorandum of Understanding between the Sustainable Forestry Initiative, Friends of the Future and the Department of Land and Natural Resources to continue to collaboratively work through the Project Learning Tree Program.

Emma Yuen, DOFAW, summarized the Memorandum of Understanding and the work they were doing with the group.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Roehrig, Gon) unanimous.

ITEM C-2 Request approval of the Triparvata Forest Stewardship Management Plan and Forest Stewardship agreement with Triparvata LLC Tax Map Key (3) 7-9-001:019, North Kona District, Island of Hawaii

and;

Request approval of Declaration of Exemption to Chapter 343, Hawaii Revised Statutes for the project.

Emma Yuen, DOFAW, explained the purpose of the Agreement.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Gomes) unanimous.

ITEM D-2 Request for Right-of-Entry Permit to the County of Maui, Department of Public Works, Highways Division, for Survey and Planning for Koukou'ai Bridge Repair Project, on Lands Encumbered by General Lease No. S-5485, Kīko'o-Popoloa, Kīpahulu, Hāna, Maui, Tax Map Key: (2) 1-6-008: Portion of 008.

ITEM D-7 Issuance of a Right-of-Entry Permit to Waikiki Rough Water Swim Committee, Inc. for a Swim Race Event to be held on September 1, 2018, at Waikīkī, Honolulu, O'ahu, Tax Map Key: (1) 2-3-37: Portion of 21.

ITEM D-9 Consent to Assign Grant of Non-Exclusive Easement S-5680, Everett V. Freeman and Roberta M. Cosco, Assignors, to Kelly K. White, Assignee, Amend the Easement Conditions by Allowing the Easement to Run with the Abutting Property, and Updating the Insurance Provision; Kāneohe, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-5-047: seaward of 090.

Russell Tsuji was available to answer questions.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted Items D-2, D-5 & D-9 (Gon, Gomes) unanimous.

Motion to adjourn (Gomes, Gon) unanimous.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 3:50 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