

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

DATE: FRIDAY, MARCH 22, 2013
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Rob Pacheco
Jerry Edlao

David Goode
John Morgan
Dr. Sam Gon

STAFF

Russell Tsuji/LAND
Kevin Yim/DOBOR
Alton Miyasaka/DAR

Dan Quinn/PARKS
Bill Tam/DAR
Alyson Yim/ENG

OTHER

Pam Matsukawa, Deputy Attorney General
May Au: E-1
Charles Ka'aukai: E-1
Lena Soliven: E-1
Sherri Lynn Johnson: E-1
Dr. Jim Anthony: E-1
Kaipolani Gorai: E-1
Dr. Francine Kalama: E-1
Sol Ko'ohalahala: J-1
Dean Uehara: D-3
Bruce Plasch: D-7
Randy Cates: D-7
Robbie Dingman: D-7
Frank Carpenter: E-2

Ross Smith: M-1
Clinton Gorai: E-1
Ervin Kahala: E-1
Ralph Makaiau, Jr.: E-1
Ululani Beirne: E-1
Gwen Kim: E-1
Benjamin Shafer: E-1
Jim Coon: J-1
Janona Alconcel: J-1
Ron Weidenbach: D-7
Alan Gottlieb: D-7
Scott McFarlene: D-7
Iwa Kalua: E-2

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 March 8, 2013 Minutes

Member Pacheco recused from item A-1.

Approved as submitted (Edlao, Gon)

Item M-1 Amendment No. 19 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease, Host International, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-03: portion of 1

Ross Smith, Department of Transportation (DOT) – Airports Division, Property Manager presented item M-1 and asked approval to add a food outlet on the Ewa Concourse.

Unanimously approved as submitted (Morgan, Gon)

Item D-4 Set Aside to State of Hawaii, Department of Transportation, Highways Division for Construction and Roadway Maintenance Purposes, at Honomanu, Koolau, Hana, Maui, Tax Map Key: (2) 1-1-001: Por. of 010 (765 sq. ft.) and Por. of 044 (6,071 sq. ft.).

Russell Tsuji representing Land Division conveyed item D-4 which is a widening of the Hana Highway.

Member Morgan queried whether the proclamation was for Kauai where the DOT representative pointed out that Hana Highway is listed at the end of the proclamation and this is due to emergency flooding.

Unanimously approved as submitted (Edlao, Morgan)

Item E-1 Issuance of Six (6) Direct Leases to the following: Ervin H. Kahala and Lucretia I. Kahala, Thoran Fawn Evans, Moses Mahealani Kahala and Dorothy Laniola Kahala, Dutchess K. Malepe and Aviu Malepe, Lena Puanani Soliven and Darryl James Soliven, and Sherri Lynn Leimomi Johnson for Residential Purposes, Ahupua‘a ‘O Kahana State Park, Ko‘olauloa, O‘ahu, Tax Map Key: (1) 5-2-002:001 (por.)

Numerous written testimonies were distributed to the Board members.

Dan Quinn representing State Parks reported on item E-1 and noted the correction in the recommendation which he distributed to the Board members. There are 31 leases, 28 were occupied and 3 were forfeited or not occupied. Back in 2005 or 2006 the Board approved a list of Lessees who might be eligible for the vacant parcels. Staff is moving toward issuing leases to several individuals including 3 on this list. At that time staff got advice from the Attorney

General's (AG) office that the original Act which authorized issuance of the lease had sunset. Staff was also informed that they had no authority to issue leases and had to proceed removing folks who were still in the valley and that caused quite a lot of controversy resulting in the Legislature passing a new statute referred to as Act 15 which authorized the Department to issue leases and created a Planning Council for Kahana. The Planning Council had a number of privileges and responsibilities that has not yet come to fruition, but did recommend to the Department to issue leases to the 6 (Lessees) subject to the submittal and the Department is moving forward to issue those leases. Most of the people had to relocate further mauka to new sub-divided lots to build their houses. These leases are being proposed where the houses still sit. We have a list of those interested in leases and the 6 were considered to qualify early on under the original Act 5 which is a moot point because the Planning Council has the authority to recommend who would be eligible for these leases which does not preclude the Department from considering further leases working with the Planning Council on several lots that have some septic systems with leach fields installed. Staff is recommending two additional conditions because the wastewater systems are not in compliance at these lots and the AG's office advised staff that they are not going to sign-off on these leases until the wastewater systems are in compliance. Most have cess pools built in, but not registered with DOH (Department of Health). Staff's proposal is to add a couple conditions where Mr. Quinn read new conditions 2.B. and 2.C. and changing the old 2.B. and 2.C. to 2.D. and 2.E. The compliance deadline is six months out and some of these could be cured by having them inspected.

Member Goode asked whether this was a requirement of DOH or the AG and Mr. Quinn said the AG. It was Member Goode's understanding of the DOH regs that are if you have an existing cess pool it's allowed to stay until you do renovations that trigger an upgrade to septic which was Mr. Quinn's understanding as well. Like many cess pools throughout the State many have not been registered with DOH and there is no record of them. Member Goode asked whether this would trigger those who have cess pools and haven't done any work at all right now. Would this require them to upgrade to a septic? Mr. Quinn said not in my understanding. Member Goode said that would be onerous and cost \$10,000 and no way would you get it done in 6 months. He wants to make sure it's not an automatic trigger. Mr. Quinn said that wasn't the intent. The intent is to make sure we are in compliance. The smaller cess pools are allowed to remain any time you do a significant amount of renovation modification that may trigger a requirement.

Member Morgan said he heard it requires a telephone call and site visit and the letter coming back saying you are in compliance. Mr. Quinn said that staff sent letters to the 6 Lessees that DOH would have to go out to inspect. The date as part of staff's recommendations can be modified.

Member Edlao asked about the in kind service of 25 hours, how are you going to monitor that. Mr. Quinn said not all Lessees are up to date on their volunteer service and they have a park manager there, but it's a constant challenge. The purpose of Kahana State Park is to have the community be an integral part of the interpretive and malama program in the valley.

Member Pacheco asked whether there was some date and Mr. Quinn confirmed they do, but he would have to defer to staff. Member Pacheco asked whether there were state facilities that visitors could go to. Mr. Quinn said in these particular locations it would be precluded. There is

extra space where 2 parcels are along the highway and the rest are in the cluster on the left as you drive into the park and under this scenario they would remain in place. There are lots of space on the right side and the plan was to allow the lower portion be the accessible area.

May Au, a Lessee at Kahana Valley testified from her written testimony in support, but the memorandum states “none” for applicant requirements and asked why not since all Lessees are required to state what cultural practices/programs they are committed to fulfill the 25 hour lease requirement. She had a concern with who and what criteria will govern the next applicants and suggested opening Kahana up to provide economic sustainability with cultural products.

Clinton “Nana” Gorai distributed his written testimony and testified from it that he was born and raised in Kahana and works the land there sharing with school children. He too wants a residential lease so he can come home to stay, but because he was in the military it prevented him from getting one. He supports the current six Lessees.

Charles Mahoe Kaaukai from Nanakuli testified in support of the six Lessees based on their Hawaiian genealogy.

Ervin Kahala, a Kahana resident testified in support.

Lena Soliven, a Kahana resident testified in support and appreciation.

Ralph Makaiau, Jr., a resident of Kahuku testified that he is a volunteer Chair with the Kahana Planning Council. He worked with the Department and with the community to recognize the people of Kahana. Mr. Makaiau supports this item.

Sherri Lynn Johnson, one of the Lessees testified that they have put in the hours at Kahana and supports the leases to the families.

Member Edlao asked for an example of their interpretive program. Ms. Johnson explained when groups come to Kahana it may require some cooking or crafts, setting up of tents and her mom will let them know what is needed. They also have a computer lab that is manned by volunteers. Member Edlao asked whether any Department staff is there. Ms. Johnson said there is a Park’s coordinator there and they all try to kokua.

Ululani Beirne distributed her written testimony and testified from it in support relating some background on the families. She is one of the council members with the Kahana Planning Council to update the Master Plan of Kahana and the Council supports the six Lessees. Also, the Council asked to consider others and related their predicament and history.

Dr. Jim Anthony testified that he is a resident of Kahana and introduced his wife, Grace that they were here to testify against the proposal. He distributed his written testimony. The Kahana community has little or no confidence in the Planning Council. Act 15 was an instrument that was supposed to facilitate planning from the ground up and nothing has happened in four years. There is no Master Plan in affect and we’re jumping the gun by giving out leases that likely no plan will go into affect in the near future. Kahana is a divided community. The staff’s submittal

is inadequate because it doesn't disclose personal pertinent information on these applicants and questioned where the applications were because they weren't appended in the submittal. Dr. Anthony related the relationships of two of the testifiers and a Planning Council member noting the conflict of interest and that the Council member did not recuse during a vote. The majority of the Lessees in Kahana oppose giving leases to the six Lessees for a variety of reasons. His reasons for opposing this is referred to his Appendix 1 of his written testimony is an opinion from the Attorney General that granting new leases in Kahana is constitutionally barred by Article 11, Section 5 of the Constitution which in his opinion still stands. Article 11, Section 5 of the Hawaii State Constitution prohibits giving out leases under these circumstances and is still the law of the land which prohibits the granting of leases on public owned land. Kahana was purchased with tax payer dollars 35 years ago. Dr. Anthony referred to his Appendix 2 which is an opinion of Deputy Attorney General Wynhoff which says the same thing that not only giving leases is prohibited by law, but Act 5 had sunset and that law is no longer applicable. By law there is no basis despite the existence of Act 15 which is unconstitutional and the only place we can test that is in the courts. If the Board approves this submittal they will take this to a contested case hearing. If this matter goes to litigation every lease in Kahana may be determined to be illegal which is not a prudent thing to do and they are not prepared to take that risk. The staff knows this and read Appendix 3 of his written testimony. If somebody sues all of the leases in Kahana would likely be in jeopardy. Dr. Anthony and his wife put in \$500,000 into on-site improvements on the remainder of a 65 year lease. They can't sell that property to recoup that money. They have 45 years of equity left in that lease, but they can't do anything with it and would like the Board to consider that. Some American history was related where the Board should say "no" to this. If you give anybody leases you should do it according to the law. If you approve this submittal it is defective since it is missing crucial information. He suggested voting to defer so that the Board can be better informed as to what is precisely going on in Kahana and staff is not adequately supervising it. Say "no" or defer to have the Department provide you better information. Dr. Anthony asked the Board to uphold the law.

Chair Aila reminded the Board that the submittal has been reviewed and approved by the Deputy AG's office. Dr. Anthony noted that there will be other places where this can be tested and they are applying for a contested case hearing. Once this happens the process of issuing leases has to stop until the matter is resolved at least at the contested case level. The Chair said we shall go on from there.

Gwen Kim testified that she is a Ka'a'awa resident in support and related her background and some history as a social worker with the youth of Kahana.

Kaipolani Gorai, a Kahana Lessee testified that the community is ready to move forward and they need the Land Board's ok. Kahana is #1 on the State level and they want to be #1 on the Federal level. How is it possible that the Attorney General will give them six more leases?

Benjamin Shafer, a Kahana resident and Chairman of the Kahana Planning Council testified relating his family background in Kahana to perpetuate Hawaiian culture and be accountable to our kuleana. He related some history and what the ideal would be in Kahana's future referring to the need of a Master Plan. The six Lessees were in homes that were supposed to be knocked down and you have families that aren't doing anything at all which is a concern that these people

need to be held accountable which our kupuna expect. He hopes the State has a plan on how the six (Lessees) fit in while they fine tune the Master Plan.

Dr. Rev. Francine Kalama, a resident of Punalu'u testified in support of granting the six new leases to qualified Kahana residents and she related discussions at the Planning Council meeting. It is important that these six have a home and for the cultural programs where the residents taught them.

Kawehia Wallace, daughter of Sherri Lynn Johnston testified in support of the six leases to take care of all the responsibilities there on that 'aina. She related her family's background to Kahana.

Mr. Quinn said that there was no intent or ever has been to not disclose information to the Board. Staff attempted to make a full recount of the legal history of the issues along with the legal assessment of it. Some of the things Dr. Anthony read were probably the AG's advice indicating that they couldn't issue new leases because the original Act 5 had sunset. The Legislature passed Act 15 which was vetoed by the Governor. Some of that language came with some of the Governor's concerns and that was over ridden by the Legislature. What we are dealing with now is Act 15. Staff didn't try to make an assessment of the constitutionality of this particular law and are trying to carry it out as best we can. As for the Master Plan, the Planning Council is tasked with that and is outlined in Act 15. The intent was to have a grass roots initiative, but vetted by the family residents to set the course of the plan and that plan drafted was to come to the Board for Board approval. If it needed to be changed it would go back to the Council and we haven't gotten there yet. There has been a request for a grant in aid to help the Planning Council along because the concern was the individuals of the Planning Council didn't have the capacity or the time to create the Master Plan. They were trying to pursue a consultant to help them do that. As was mentioned, there were a number of plans produced and the perception of any plan contracted by the State is it's a top down position direction by the State. This is an opportunity to the residents to move forward. Mr. Quinn doesn't propose any amendments to our submittal other than the change in the recommendation regarding the wastewater systems. There is a six month limit on that.

Member Morgan asked whether Mr. Quinn saw Dr. Anthony's testimony before today and Mr. Quinn said he did not.

Member Morgan made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded that. All voted in favor.

10:39 AM EXECUTIVE SESSION

11:04 AM RECONVENED

Member Morgan made a motion to approve staff's recommendation as amended. Member Edlao seconded that.

Member Morgan said Dr. Anthony came up with some important points to think about, but it is not the Board to determine whether or not Act 15 is constitutional and if not it is another body that will determine that. The living ahupua'a is a unique model and he would like to see it succeed. There are many opportunities and ways that need to move forward. There are a lot of issues he heard in the testimonies where some people are not pulling their weight and those kinds of things need to be addressed. There is a lack of a konohiki - somebody who will say you are not doing what you are supposed to be doing and if not there will be consequences. This is a big step to improve and move forward.

Member Pacheco asked the standard term in section 2.A. as amended refers to the current lease forms in the current lease for Kahana Valley. Is that right? These leases have similar conditions as in Act 15 and the existing leases are that correct? Mr. Quinn confirmed that saying yes, there will be some nuances that will be different because these folks are staying in the same place, but the attendance has the same conditions also. To have these leases terminate at the same date so they will be 20 years shorter than the new ones that were already leased around 2015 or so there will be a reconsideration. Those are 65 and these are 45 years.

Member Goode asked on the revised recommendation about the wastewater, 6 months any issues related to wastewater must be cured on or before the 30th understanding there is a letter from DOH, can we look at extending that or allowing the Chair to extend. Mr. Quinn acknowledged that it's the Board's option.

Member Morgan said he amends his motion to reflect that. Member Edlao seconded that.

Member Goode commented that we are a nation of laws and we have Act 15 which grants the authority to this Board to grant leases. We are also a nation of opinions until we have a different opinion from a different body we have to abide by the law. He can't see calling the ahupua'a of Kahana a living park without giving leases. How do you give people the right to live in a living Park without a lease? He supports the motion.

Member Edlao said he was glad to move forward and hopefully it will be a good thing to make it better for the people of Hawaii and those who travel there.

Member Gon said it was mentioned in 60 days there is a report to the Legislature on the progress and an offer was made to come before the Board and give a briefing and he thinks that would be a good thing. Mr. Quinn said the requirement for the report was the first year before the Legislature and the things the Legislature would like to hear about this, but it is a good idea to have a briefing for this Board of the status of it. To clarify, he doesn't think there is an annual report that has to be submitted to the Legislature that it was a one time shot. The intent was to produce a plan and go to the Board.

Member Morgan thanked the Gorai family.

All voted in favor as amended.

Dr. Anthony requested a contested case hearing and will follow the usual procedures.

The Board:

Amended staff's recommendation by adding and deleting the following:

2. **Authorize the issuance of direct leases to the residents described in this submittal covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:**

B. That wastewater systems must be in compliance with Department of Health and Environmental Protection Agency Regulations for each of the lots prior to each lease being executed and that the responsibility for resolving any compliance issues be the responsibility of the respective lessee;

C. That any issues relating to wastewater compliance must be cured on or before September 30, 2013, or as may be extended by the Chairperson;

[B]D. Review and approval by the Department of the Attorney General; and

[C]E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Otherwise, staff's submittal was approved as submitted.

Unanimously approved as amended (Morgan, Edlao)

Item J-1 Petition of Coon Brothers Inc. to Negotiate a Lease of Certain Submerged and Fast Lands and Dock at Manele Small Boat Harbor, Lanai, Hawaii

Numerous written testimonies were distributed to the Board members.

Kevin Yim representing Division of Boating and Ocean Recreation (DOBOR) presented item J-1 and reminded the Board of a declaratory ruling to replace a loading dock that was originally built by the petitioner. The Board directed DOBOR to work with Trilogy in resolving the issue and they have. Originally, the petitioner requested for a Memorandum of Agreement (MOA), but there is no legal requirement to enter into a MOA for perpetual use of the loading dock. Staff asked the Federal Transit Administration about the lease and they had no issues with the loading dock and it could be leased. Staff informed the petitioner that a lease would be the best way to resolve the issue. Trilogy decided to lease the loading dock, but because it was over submerged land we were required a contrary resolution and would need the Legislature to provide that over submerged lands. Trilogy asked Senator English and the Senator said he would introduce the resolution as long as the Land Board approves the leasing of the dock over submerged lands to Trilogy. Staff met with the Lanai Harbor Advisory Committee to advise them on this Board submittal which they support. If the Board approves the lease, Senator English will put the conditions of the Board submittal into the contrary resolution. Staff asked for the Board's approval.

Jim Coon testified that the Board has his written testimony and related some history, issues and concerns about the public loading dock that Trilogy built. They also lease adjoining lands. The ferry has priority use and it is not exclusive use. They only use it 20% of the time. The concern is this is the driveway to their slip and if someone parks there they can't get access to the slip. Trilogy requests a minimum 35 year position in their slip to move forward. Trilogy is in support of this and they are committed to Lanai.

Member Pacheco asked in the submittal are the term leases for it to run with the term of your boating lease. Mr. Coon said there is 15 years left on the pavilion. Member Pacheco wondered if that was a direct lease and Mr. Coon confirmed that and he hoped to extend to 20 years to coincide with the 35 year submerged land lease.

Member Pacheco asked if that was his current situation if he allowed the ferry to come in or was that a new case. Mr. Coon said that was a new case scenario because it's non-exclusive. When they are not there other operations can use their dock.

Sol Ko'ohalahala testified in support and submitted his written testimony. Trilogy has been on Lanai for 40 years and he related some history about Manele Bay that Trilogy considered the needs of the community for space. They are sensitive to access and continue to support it by user fees that help the maintenance of the area. This operation is part of the community by contributing to the community and the community supports them. This operation is the most stable thing for this community continuing to employ the people of Lanai, allowing space to the community for their use, and provide transportation for the community. He asked the Board to support and grant the 35 year term of that lease to continue and to consider the deadlines with the Legislature to run with their timetable.

Janona Alconcel, a Lanai resident testified sending in written testimony in support of this item. Trilogy is part of their 'ohana on Lanai. She wished this meeting was on Lanai. The Coon family has given back to the community and the culture with aloha. She speaks for all the families on Lanai and asked for the Board's support.

Member Gon pointed out that they did receive a lot of e-mails from the Lanai folks and there is strong community support.

Member Edlao asked whether the lease will come back to the Board and Mr. Yim confirmed it will. Member Edlao said at that time staff will specify the terms of the lease. There is nothing in the submittal that reflects that the petitioner wants a 35 year lease or should there be something in there or will it be in the lease? Mr. Yim said the verbiage that is in the Board submittal was a subject of discussion because staff felt that the term of the lease of the dock would end when the lease on the land would end because that was their thought. His and Mr. Coon's opinion was maybe that should be negotiated because they have a land lease. I think their thought was that if this was a 35 year lease on the dock they could always renegotiate the land. Mr. Coon said 35 years goes by really fast and when they talked about having the link with the submerged lands as on the land we were under the impression that the land side would be extended 20 years to match the 35 years on the dock. The amount of capital investment we're going to continue to make and have made in the past. We just need that type of continuity to plan forward into the future. In

talking with Ed Underwood, he said he had no problem with that and was hoping he would be more supportive with that part. Mr. Yim said he and Ed had spoken about this and we don't have any negatives on that.

Member Edlao asked he had no problem with that. He wants to know when staff is going to put it in the lease and will that come back and will it specify 35 years or should it be in here. Mr. Yim asked whether it should be in the lease or in the submittal. Member Edlao said here in the submittal and then staff carry on to the lease then talk story during the lease negotiations. It comes back with the term. Mr. Yim said he has no problem putting it in the submittal and that way it gives something to work the lease from.

Member Gon asked isn't this covered in item 2.e. which he read. Mr. Yim acknowledged that the term of the lease will run concurrently with the boating lease which is for 15 years.

Member Pacheco said he respects Mr. Coon's business and what they've done, but he had some questions legally about this and as a Board member. Our ability to go into a long term lease directly, he didn't think they have the authority to do that and he wanted to have some background on that. He understood that you always go to a public bid process for anything....Chair Aila said for Boating rules under Chapter 230 allows for direct negotiations for up to 35 years. Member Pacheco said that wasn't in their argument about a competition clause. Chair Aila pointed out there are actually three leases: the submerged land lease, the lease alongside the pier, and the lease up on the land. Mr. Yim confirmed that.

Member Pacheco said one of the things he always had a problem with is our harbors piecemeal things out with commercial operations and never look at things in totality and so he is glad we're looking at it as a whole operation and we're allowing them to do business. What will it take to give them the business and wanted to understand it better. We have the authority under the boating rules to do this that includes the submerged lands, fast lands and the dock. Mr. Yim said correct. For discussion, there is a contrary resolution because of the submerged lands issue. It may be more expeditious in terms of the time frame to have the lease term negotiated as part of the actual lease rents process just thinking about that because of the time frame.

Member Pacheco asked what the time issue is. Mr. Yim said it is with the submerged lands and Member Pacheco said they want to do it before the end of the Legislative session. Chair Aila said they need a contrary resolution from both Houses before the end of session which is a little more than a month. Mr. Yim acknowledged that. Mr. Coon said when he talked to Senator English he suggested that he is going to make his resolution based on what the Board's decision was and that the Board should be the one even in his resolution to say 35 years. He would like a ratification not knowing whether the Board or Senator English does it first, but somehow he wants concurrence that he has 35 years.

Member Edlao said that is fine and to find the right words to put it in there that is specific and coincide with both.

There were some discussions regarding questions by the small boat harbor that it is non-exclusive and the ferry is a private entity which is a Legislative exemption. Mr. Coon related

more information about the construction work, how the ferry has first access, and Federal monies. He reiterated his earlier testimony about how they can't get in their slip if someone is blocking it. There was more discussion regarding that. Also, other companies that use the dock and how giving Trilogy a direct lease would encourage competition which Mr. Coon explained. Mr. Yim said that the change requested by the applicant would be to recommendation 2.e., in that the term of the lease which is 35 years, which wouldn't run concurrently with the term of the existing lease (boating lease no. B-93-02 issued to Trilogy Corporation). Deputy AG Pam Matsukawa pointed out that we can't deal with the lease right now; that is, the existing lease. Mr. Yim acknowledged that.

Member Pacheco asked can't they just renegotiate the lease. Chair Aila said that you could defer to the Department to negotiate the (term of) the lease (petitioned for) as applicable by law. Mr. Yim agreed. Member Edlao said the legislation will go with the 35 years and negotiate from there. Mr. Yim asked whether it should be in the submittal and the Chair said it should be clear. Member Edlao said he thinks the discussion will reflect that the Board wants to be concurrent with the legislation. Mr. Yim agreed.

Member Pacheco said for him it makes sense to make the whole package the same so there are not pieces, but the legislation is number one. Chair Aila suggested delegate it (the negotiation of the term of the lease petitioned for) to the Chairperson. All agreed.

Member Edlao moved to approve as amended. Member Gon seconded that. All voted in favor.

Unanimously approved as amended (Edlao, Gon)

The Board members amended staff's submittal by adding to be delegated to the Chairperson to negotiate the lease terms. Otherwise, staff's submittal was approved as submitted.

Item D-3 Issuance of Right-of-Entry Permit to Department of Accounting and General Services for the Purposes of Conducting a Biological and Archaeological Inventory Survey on State lands located at Kealakehe, North Kona, Hawaii; Tax Map Key: (3) 7-4-020:004.

Mr. Tsuji conveyed that item D-3 will go to HHFDC (Hawaii Housing Finance and Development Corporation) for housing. The Right-of Entry (ROE) is to do a study to assist the Judiciary. Staff had some concerns.

Dean Uehara representing DAGS (Department of Accounting and General Services) testified that they are still working on the shape of the parcel.

Unanimously approved as submitted (Pacheco, Gon)

Item D-7 Revision of Rent for Revocable Permit No. 6814, Ronald P. Weidenbach, dba Hawaii Fish Company, Kaena, Waialua, Oahu, Tax Map Key (1) 6-9-01:02 & 03.

Written testimonies from Linda Koch, Frederick Mencher, Bruce Plasch, Hawaii Cattlemen's Council, Inc./Alan Gottlieb, Ulupono/Kyle Datta, John Corbin, and Ronald Weidenbach were distributed to the Board members.

Mr. Tsuji reminded the Board members that item D-7 came before the Board before and asked to expedite this to do Phase I and noted that the second part will come back to the Board. An appraisal was done, but the permittee disagreed and got his own done and is trying to pass some legislation. The gross receipts and income generated is about \$88,000 per year. There are CDUA (conservation district use application) issues, two employee dwellings, 18 acres at about \$10,000 per year. It's for an outstanding long term lease.

Member Goode asked about fair market versus an RP (revocable permit) which Mr. Tsuji discussed with him about and said 30 or 25% staff brings as an RP.

Member Morgan noted that aquaculture is not an easy business and asked about a counter proposal. Mr. Tsuji said no. Whether to grant and do an RP the Board has that discretion.

Ron Weidenbach representing Hawaii Fish Company related his background, history of the area, how he acquired it, and the vision for Kaena. The reason they are there is to reduce the State's exposure. Without any financing they have no electricity, no water and have to operate with a generator. The Board approved their operation in 2010, but they are still a start-up and DLNR share in their profits. Mr. Weidenbach related the appraisal process.

Chair Aila asked what is fair rent. Mr. Weidenbach described cleaning up the place to make a model aquaculture farm, 3-1/2 acres of water, matson containers, a Hicks home and they have been in the red for the last two years, and the acreage is poor. They want to pay fair rent, but with the condition of the soil they want to move forward. He asked to reject and set aside the original appraisal and noted that they never missed a payment. This will affect the ag and ranching industry and want the rent in line with what is necessary.

12:19 PM Chair Aila departed for a Senate hearing and Member Gon took over as Chair.

Bruce Plasch testified that he submitted his written testimony and explained they are an economic consulting firm and described the market for farmable land on the North Shore. Land Division recommended a discount which is 3 times more and to reject that until they get a new appraisal.

Member Pacheco asked whether the Board has to accept the new appraisal. Mr. Tsuji said or go to an RP or public auction.

Alan Gottlieb representing Hawaii Cattleman's Council testified that ranchers have concerns with this submittal and that this should go to Department of Agriculture (DOA). He referred to a House Bill which the Department opposes regarding evaluation of land use benefits. There is a need for lands to be affordable and that the three-step appraisal is for hotels and not for farm land. Ranchers have been denied to see the appraisal and they are here to find a solution to be sustainable and viable.

Randy Cates testified that he supports Mr. Weidenbach. There has been a significant change in management and they should have a holistic approach noting that without Mr. Weidenbach there the State will have a liability. Mr. Cates related his experience obtaining an appraisal for an off-shore lease where the rates are based on residential rates. He suggested taking into consideration percentage of gross.

Scott McFarlene representing the State Farm Bureau testified in support of this plan, but had a concern with the precedent impact to farmers in the State and to look at a fair path forward.

Member Goode asked whether he had a recommendation. Mr. McFarlene said he submitted Bills to the Legislature to bring oversight to DOA on fair leases like this one with mix uses. He supports Mr. Weidenbach.

Member Goode asked does the percent rent make better sense in sustainability and the minimum base rent makes sense for ag. Mr. McFarlene agreed that you take the risk of farming. Having large land owners and stewards is good, but consider alternatives.

Member Pacheco asked whether base rent or percentage. Mr. Cates said whatever is greater - \$1400 per year or 1 percent of gross which they are glad to pay. It is several hundred over the years when nothing is generated.

Robbie Dingman representing Ulupono testified asking to reject this.

Member Morgan asked whether Mr. Weidenbach was comfortable with 1 percent or \$1000. Mr. Weidenbach agreed to \$83.00 a month based on the prime rate and that he wants to move forward. He was fine with the Board's 2010 approval. \$900 per year or 1 percent is fair and asked for a long term lease where Member Morgan said that the lease is not before the Board.

Member Pacheco said they are bond by Statute on long term leases. Mr. Weidenbach cited 171-17 which gives the Board the ability. Member Pacheco said we have that process and the RP is different.

Member Morgan moved to approve the 1 percent or \$83.00 per month. Member Edlao seconded that.

Member Morgan said that they need to promote agriculture in Hawaii and anything threatening is not a good idea. He supports efforts to clean-up and go forward.

Member Goode said that staff did the right thing and they don't have an in-house appraiser. Mr. Tsuji said that they have to do it anyway.

Members Goode and Edlao both support the motion. All voted in favor.

Unanimously approved as amended (Morgan, Gon)

Approved as amended. The recommendation section is amended to read as follows:

RECOMMENDATION: That the Board revise the monthly rent of Revocable Permit 6814 to \$83 per month or one percent (1%) of gross annual revenue, whichever is higher, effective May 1, 2013, under the terms and conditions cited above.¹

Item E-2 Update on the Status of Management and Enforcement Action Taken at Kealakekua Bay State Historical Park, Ka‘awaloa, Kealakekua, Hawaii.

Written testimony from Frank Carpenter was distributed to the Board members.

Mr. Quinn briefed the Board on initiating the two RPs (revocable permits) on April 1 with a special permit to land at Napo‘opo‘o. The third permittee has a problem with their business registration and should be considered separately.

Member Pacheco asked how quickly will this be. Mr. Quinn said it may be the next meeting after with recommendations for kayaks. Also, new recreational rules and maybe a new rule package for drift-ins in place to June. There are impacts by overland hikers where the archaeologist will monitor and report back.

Iwa Kalua of Aloha Kayak testified thanking the Board.

Frank Carpenter representing Kona Boys testified in appreciation and look forward to this.

Item D-1 SUBJECT: Memorandum of Agreement between Board of Land and Natural Resources, Garden Isle Racing Association and the Hawaii Army National Guard for Live Firing on Kekaha Firing Range (KFR), Kekaha, Waimea, Kauai, TMK (4) 1-2-002:040

Item D-2 Amend Prior Board Action of September 11, 1998, Item D-11, Sale of Four Leases at Public Auction for Intensive Agriculture Purposes on Hawaii. The purpose of this amendment is to remove all reference to the land situated at Ookala, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:07 from the prior board action. And

Approval in Concept for the Sale of a General Lease at Public Auction for Pasture Purposes with Issuance of an Immediate Right-of-Entry to Conduct an Environmental Assessment of State lands at Ookala, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:07

Written testimonies from Mauka and Makai Access Committee (MAMA), Senator Russell Ruderman, and Karen Eoff were distributed to the Board.

Member Pacheco asked about item D-2 and that there was a public access concern. Mr. Tsuji said there was a preliminary proposal with some pictures and he questioned what access because it's a cliff. There is no shoreline access. The fireworks permittees know the deadlines already scheduled that they need it here to issue and come back afterward.

Member Gon asked no after-the-fact approvals. Mr. Tsuji said the Board expressed not to issue after-the-fact permits.

Member Morgan suggested delegating to the Chairperson, but Mr. Tsuji said that Deputy AG Bill Wynhoff was concerned that they need Board approval. There are cancellations and they don't want to encourage that. Member Morgan suggested changing to a \$1,000.

Item D-5 Issuance of Right-of-Entry Permit to Charlene Schulenburg (Event Coordinator) at Waiohuli-Keokea Beach, Kihei, Maui, Hawaii: Tax Map Key: (2) 3-9-009: Portion of 011.

Item D-6 Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display Purposes at Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.

Mr. Tsuji said there were no changes to the rest of Land Divisions submittals.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-1 Request for Approval to Hold Public Meetings and Hearings to Amend Hawaii Administrative Rules: §13-95-1 Definitions; §13-95-1.1 Licenses, Permits, and Other Exemptions; §13-95-2 Penalty; 13-95-70 Stony Corals; and §13-95-71 Live Rocks (See attached Exhibits A and B)

Written testimony from the Office of Hawaiian Affairs (OHA) was distributed to the Board.

Bill Tam, Acting Administrator for DAR (Division of Aquatic Resources) presented item F-1 and related that these are coral threatened species.

Member Gon said this is ground breaking and he anticipates protection of the coral species. Mr. Tam said they will go to public hearings on each county. The Board members suggested going to Molokai, too and Mr. Tam acknowledged that.

Unanimously approved as submitted (Morgan, Goode)

Item F-2 Request for Approval to Add Federal Funding (\$322,420) and Extend through FY14 the Project Agreement (Contract No. 58627, Amendment No. 4) between the Board of Land and Natural Resources (BLNR) and The Research Corporation of the University of Hawaii (RCUH) for a Division of Aquatic Resources Research Project Titled "Maui/Oahu Marine Resources Assessment"

- Item F-3** Request for Approval to Add Funding (\$566,250 Federal, \$141,750 Commercial Fisheries Special Fund) and Extend through FY14 the Project Agreement (Contract No. 60393, Amendment No. 2) between the Board of Land And Natural Resources (BLNR) and The Research Corporation of the University of Hawaii (RCUH) for a Division of Aquatic Resources (DAR) Research Project Titled “Hawaii Marine Recreational Fishing Survey”
- Item F-4** Request for Approval to Add Funding (\$550,000 Federal, \$10,000 Sport Fish Special Fund) and Extend through FY14 the Project Agreement (Contract No. 60395, Amendment No. 2) between the Board of Land and Natural Resources (BLNR) and The Research Corporation of the University of Hawaii (RCUH) for a Division of Aquatic Resources Research Project Titled “Investigation Of Estuarine Habitats”
- Item F-5** Request for Approval to Add Funding (\$330,000 Federal, \$20,000 Commercial Fisheries Special Fund) and Extend through FY14 the Department of Land and Natural Resources (DLNR)/University Of Hawaii (UH) Contract No. 60379 (Supplemental Contract No. 2) for a Project Titled “Collaborative Administration of the Hawaii Fish Aggregating Device System”
- Item F-6** Request for Approval to Add Federal Funding (\$339,000) and Extend through FY14 the Department of Land and Natural Resources (DLNR)/University of Hawaii (UH) Contract No. 60394 (Supplemental Contract No. 2) for a Project Titled “Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery”

Alton Miyasaka representing DAR said that there are no changes to items F-2, F-3, F-4, F-5 and F-6.

Unanimously approved as submitted (Pacheco, Edlao)

- Item L-1** Authorization to Contract Qualified Professionals to Provide Technical and Advisory Services Relating to the Management of Geothermal Resources

Written testimony from Cory Harden was distributed to the Board members.

Alyson Yim representing Engineering Division conveyed some background on item L-1 to protect the resources and to build up staff. They are hiring a consultant for this program.

Member Gon asked whether there was any socio-economic or cultural to develop. Ms. Yim said that is part of the application.

Member Goode asked whether OCCL (Office of Conservation and Coastal Lands) was involved and Ms. Yim said if it's in conservation.

Unanimously approved as submitted (Edlao, Goode)

Item M-2 Issuance of a Right-of-Entry to Paradigm Construction LLC at Kalaeloa Barbers Point Harbor, Oahu, Tax Map Key No.: (1) 9-1-14, portion of 26

No staff from DOT-Harbors was present.

Unanimously approved as submitted (Edlao, Pacheco)

Adjourned

There being no further business, Chairperson William Aila adjourned the meeting at 1:18 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources