

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

DATE: THURSDAY, JANUARY 27, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Acting Chairperson Agor called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

**MEMBERS**

Ron Agor  
David Goode

Jerry Edlao  
John Morgan

**STAFF**

Sam Lemmo/OCCL

Russell Tsuji/LAND

**OTHERS**

Colin Lau, Deputy Attorney General  
Tina Coleman, D-3

Tracey, K-1  
Cheryl Nickelson, D-3

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      November 22, 2010 Minutes**

**Approved as submitted (Edlao, Goode)**

**Item K-2      Contested Case Hearing Request Regarding the Mauna Kea  
Comprehensive Management Plan, Sub-Plans by Kahea, Mauna Kea  
Anaina Hou, The Sierra Club-Hawaii Chapter, the Royal Order of  
Kamehameha I, and Clarence Kukauakahi Ching, Located at Mauna  
Kea, Island of Hawaii, TMKs: (3) 4-4-015:009 & 012**

Written testimony was received and distributed to the Board.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) briefed that the petitioners appealed the Board's decision which did not approve the petitioners' request for a contested case hearing. It went to the Circuit Court, the Circuit Court upheld the decision and now the petitioners are taking that decision to the Intermediate Court of Appeals which is pending. One of the conditions of the Comprehensive Management Plan (CMP) was to come up with four sub-plans which were done in March 2010 and the Board approved, but staff received a petition for a contested case hearing on the decision in regards to the sub-plans. Staff recommends the Board not grant a contested case hearing on the sub-plans by the same petitioners as the CMP before. The reasons for not granting a contested case hearing is the Board's approval of the CMP and its sub-plans do not constitute a permit action. The sub-plans are tools to help the University manage U.H. management areas and they are internal management tools. According to what we know, a contested case hearing is not required by law and the recommendation is not to grant a contested case hearing.

It was questioned by Member Goode who submitted the written testimony and Mr. Lemmo said he didn't know who it was from.

Member Morgan made a motion to approve as submitted. Member Edlao seconded it.

Acting Chair Agor commented that he didn't see anything in the four sub-plans that violates PASH rights.

Member Edlao stated this is just a plan and no State money is involved and nothing is being built. It is just a plan for UH to manage the area and he is satisfied.

All voted in favor.

**Unanimously approved as submitted (Gon, Agor)**

**Item K-1 Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap. 13-5, HAR), to Designate an Undesignated Portion of the State Land Use Conservation District into the Resource Subzone by A Charitable Foundation Located at Pupukea, Island of Oahu, TMKs: (1) 5-9-023: portion of 001 and (1) 5-9-024:001**

Mr. Lemmo conveyed some background history and has been around a long time. Generally, whenever we designate a sub-zone or re-designate a sub-zone it constitutes a rule amendment and would have to go through that process because our sub-zones are imbedded in our administrative rules. That is what staff has done and is at the final stage seeking the Board's approval to designate this piece of land into the resource sub-zone of the conservation district. If the Board chooses to approve this petition today it will move forward for the Governor's approval. Mr. Lemmo related where the land is staff agrees with the resource sub-zone designation.

Tracey representing Wilson Okamoto consultant to A Charitable Foundation (ACF) testified that they want to keep this land in preservation by donating 79 acres to the State or another appropriate steward. The project has strong community support and ACF is committed in keeping those lands in preservation.

A motion was made by Member Morgan to approve as submitted and was seconded by Member Goode. All voted in favor.

**Unanimously approved as submitted (Morgan, Goode)**

**Item D-7      Reaffirmation and Amendment to Prior Board Action of November 12, 2010, Item D-11, Regarding:**

- a. **The Issuance of a Direct Lease, together with Easements for Access, Utilities, Transmission Lines, Overhead Electrical Lines, Maintenance Buildings and Substation purposes to Kaheawa Wind Power II, LLC (“Kaheawa II”) for Commercial Renewable Wind Energy Generation Facility Purposes (the “Wind Farm II project”), covering unencumbered State lands and also covering a portion of State land (shared area) encumbered by General Lease No. S-5731 previously issued to Kaheawa Wind Power, LLC (“Kaheawa I”); and**
- b. **Delegate to the Chairperson the authority to negotiate and approve the final terms and conditions of the subject lease and easements with Kaheawa II and to negotiate and approve ancillary land disposition documents necessary to effectuate this Wind Farm II project such as amendments or further easements, etc. with respect to Kaheawa I as it relates to the Wind Farm I project at TMK: (2) 4-8-01: Portion of 1, or Kaheawa II as it relates to the subject Wind Farm II project at TMK: (2) 3-6-01: Portion of 14, and (2) 4-8-01: Portion of 1, all at Olowalu-Ukumehame, Lahaina, Maui, Tax Map Key (TMK): (2) 3-6-01: Portion of 14, and (2) 4-8-01: Portion of 1.**

Russell Tsuji representing Land Division reminded the Board of a prior Board action at the November 12, 2010 BLNR meeting held on Maui where the applicant had to make a December 1, 2010 tax credit deadline. Staff thought they adequately described the project to the Board at that meeting where they did execute a lease and easement. But the AG’s office didn’t feel that because staff mentioned eight acres for the shared area which is under the Wind Farm II lease for the sub-station and maintenance building. Although, staff did discuss access, power lines, etc. the amount of acreage was not specifically mentioned. With an abundance of caution with Sunshine Law, staff is bringing this back to reconfirm that staff is going to proceed with preparing the documents and will execute an additional easement for an additional 18 acres that is not part of the Wind Farm I lease, but is for an additional 18 acres. There was a map pointing out where everything

was at that meeting, but the amount of acreage was not mentioned - eighteen acres with the addition of eight for a total of 26 acres. DBEDT is here in support of the project. The applicant met its tax deadline, but because they don't have the access easement you can't do the heavy construction and it's holding up the project.

Member Edlao made a motion to approve as submitted. Member Goode seconded it. All voted in favor.

**Unanimously approved as submitted (Edlao, Goode)**

**Item D-3 Forfeiture of General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, Auhaueake, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.**

A number of written testimonies was received and distributed.

Mr. Tsuji reported that this item was put before the Board for termination for various defaults under the lease dealing with a fence the Lessee had placed on this State parcel situated next to the Coconut Grove Shopping Center. The City issued a notice of violation and staff got confirmation yesterday that the City had resolved the violation because they took off everything - the poles and whatever leftover fencing material was left on the site. The fine was to be about \$27,000 per day, but was reduced down to \$1,000 which was paid and confirmed by the City. Clearing the land resolved any lease defaults under the lease with the exception of the insurance and confirmation was received yesterday that the liability insurance was renewed. Staff recommends deferring at this time since the Lessee is in compliance, but if he should do any construction of another fence he has been forewarned that there is an SMA or accounting process for that. There is a lease process for that as far as review of building plans and whether it is consistent with the terms of the lease. There needs to be 50% of the lot in open space and it was until the fence issue came up. Sometime in October or November volleyball was not allowed.

It was asked by Member Morgan whether to defer or withdraw. Mr. Tsuji said to withdraw since staff could always bring it back. The Lessee was informed that there is a process to build a fence.

Tina Coleman represents the lender of the surrounding parcels for the shopping center and the reputed purchaser pursuant to a foreclosure sale to be confirmed next week.

Cheryl Nickelson represents the court appointed receiver of the Coconut Grove Market Place, Guido Jacometti.

Ms. Coleman described the parcels she represents and who are involved. Brian Anderson's father, Andy Anderson purchased an assignment of the State lease to try and help his son that occurred during the foreclosure process and has been consistently used by Andy Anderson to exert pressure on the lender, the receiver and all of the shop

owners. Andy Anderson threatens disruption in the shopping center and threatens to allow the shopping center to use certain drainage that is on the State parcel since the shopping center was constructed. The construction of this fence was part of those efforts on behalf of Mr. Anderson to try to either get her client to buy out the lease at a ridiculous price or to try and get the tenants to revolt against her client who is the purchaser and was owed over \$21 million on the property. The shopping center is not worth that. During the construction phase of the shopping center the State parcel was also leased by the mother in-law, but controlled by Brian Anderson and that State parcel formed an essential part of the shopping center development because it provides a lot of the drainage for the shopping center as well as the lands uphill from it. It provides space for certain walkways within the shopping center. It provides open space view planes for the tenants pursuant to leases Brian Anderson entered into. And it provided a volleyball court. Since Mr. Anderson has taken it over the fence was designed to ensure that nobody from the shopping center would have access to that parcel. We are concerned that if this application is withdrawn Mr. Anderson will do it again. The tenants took down the fence, not Mr. Anderson.

Ms. Nickelson related some history regarding the development of the shopping center by the Andersons which incorporated the State parcel. She confirmed Ms. Coleman's testimony. That Brian Anderson's engineer estimated it would cost between \$700 thousand and a million dollars to take out the storm drainage system and replace it with something else. Ms. Nickelson reiterated the purpose of the fence to block pedestrian access and Mr. Anderson threatened removal of the drainage system. Mr. Anderson put the fence back up again and the tenants took it down. Mr. Anderson never removed the materials from the shopping center where the landlord had to move the materials out of the way of the pedestrians. Mr. Anderson did not willing comply when there was a violation making it very difficult. This is the reason why the lease is structured the way it is. About 50% of the parcel is devoted to open space and there is no parking permitted. There is no easement. Clearly this is an effort by the Andersons to interfere with the operations in the market place in an effort to exert pressure on the lender and the buyer. This may not be the last time they will be back before the Board.

Member Goode referred to the lease transferred about a year ago to D.G. Andy Anderson and the Chairperson signed the consent of assignment the last day of August. In the foreclosure action there is a new buyer of the surrounding parcel. Ms. Coleman said the lender will take it back on the note. With all these problems it makes the shopping center difficult to sell. Member Goode noted that person should be in control of the State lease, too. Ms. Coleman said presumably that would be their preference. There is no mortgage on the State lease, only on the surrounding parcels. Member Goode asked once this foreclosure action happens he doesn't want these guys to be in control or be the Lessees. Based on the testimonies received the community wants it back. How can we put the Lessee on notice that should foreclosure action happen they are out? Ms. Coleman said that foreclosure action has happened, the sale has occurred and that sale will be confirmed in the next couple weeks on the three parcels. Member Goode asked about the State property. Ms. Coleman said that the bank is willing to buy or lease the property

from the State to make sure the four parcels are contiguous and can be transferred as one parcel to a buyer of the shopping center in accordance to the lease.

Mr. Tsuji said that staff informed him what was going on that there was no mortgage and there is no consent. It's obvious because of the foreclosure proceedings. The problem is he (Andy Anderson) is complying with the term lease. Mr. Tsuji was surprised that the lender for the shopping center did not take a mortgage on this property because there was no buyer and you would take everything and sell it. In this case there was no lender involved.

Member Morgan said it sounds like he (Andy Anderson) is doing all the fencing to affect the foreclosure and when that is finished there isn't a lot to play with or any reason to get involved. Ms. Coleman said he (Andy Anderson) wants the lender to buy the lease out of under him. We've offered to pay the rent, but that wasn't enough. Andy Anderson is going to bring extraordinary pressure on the lender to do that. Everytime he makes a threat her client is saying no, no we need to find a way to get rid of this guy. What Mr. Anderson is counting on is that it will become so disruptive that we will pay what we need to pay.

Member Morgan said we should not look at the motivation for this, but should look at the practice that if he did this and its all cured and if he does it again that is a practice we can say you can't keep on doing this. If the fence comes down, the foreclosure goes through, he wants you to buy out his lease and you say no with everything status quo there is nobody getting hurt. But if he comes back and does something against the terms of the lease or against the County or rules or anything regardless of his intent to cure after he does the second violation that would be grounds to terminate the lease because it would establish a pattern that would be intolerable.

Mr. Tsuji said there is a provision in the lease for any construction. First you would have to submit plans for review by staff and the Chairperson and normally we don't bring those matters before the Board. Maybe after the Board's hearing of testimonies today the Board might want to review those before anything is approved for construction on the site. Ms. Nicholson said it would be a way of fulfilling the objective. It would be difficult to conceive granting permission for construction without dealing with the other issues which she referred to previous testimony on drainage and view planes.

Member Edlao agreed with Member Morgan that Mr. Anderson has to come in for any construction. As long as he abides by the lease there is not much they can do. If there is a pattern they would want someone to abide by the lease.

Member Goode referred to everything that was done that violated the lease we should recommend cancelling the lease. Mr. Tsuji said we would have to provide a notice of violation and an opportunity to cure. He didn't come cure it. Member Goode said the notice of default was returned unclaimed. It's clear we have someone who is not interested in the purposes of the lease plan.

There was more discussions regarding curing of the lease and a pattern that Mr. Anderson has much experience in developing properties throughout Hawaii and knows what he needs to do.

It was asked by Member Goode whether we have a penalty clause on the lease or other intermediate remedies besides outright cancellation. Mr. Tsuji said no, but one other lease that came before the Board for six months, had a lot of controversy, but by the end of the six months they had time to cure everything. The only thing outstanding was a building permit application pending. He suggested the Board allow opportunity for the public to comment.

Member Edlao said he felt uncomfortable getting into details like this without the applicant here because the applicant is under the impression that this was to be withdrawn and not having all this discussion.

Ms. Nicholson said that this is the beginning of the pattern and they don't want him to get another shot.

Member Morgan made a motion to withdraw this item and if there is any proposed construction the applicant must come before the Board to disclose all of the plans he has. Member Edlao seconded it. All voted to withdraw.

#### **Withdrawn (Morgan, Edlao)**

**Item D-6 Cancellation of Revocable Permits Nos. S-5834 and S-5835 issued to the Hale Pau Hana Homeowners Association and Issuance of a Term, Non-Exclusive Easement to the Association of Apartment Owners of Hale Pau Hana for Rubble Rock Revetment, Wall, Concrete Stairways, Landscaping and Maintenance Purposes, Kamaole Beach Lots, Kamaole, Kula, Maui, Tax Map Key (2) 3-9-005: Portion of 001.**

Mr. Tsuji asked the Board to defer this item for staff to come back on.

#### **Deferred (Morgan, Goode)**

**Item D-1 Issuance of Revocable Permit to Adam P. Killermann for Pasture Purposes; por. of Hanapepe, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-05:21.**

**Item D-2 Consent to Assign General Lease No. S-3596, D. L. Downing, General Contractor, Inc., Assignor, to Lesley Hill, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-49:11.**

**Item D-3 Forfeiture of General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, Auhaueae, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.**

**Item D-4 Grant of Perpetual, Non-Exclusive Easement to William Wade Latham for Waterline Purposes, Koolau, Keanae, Hana, Maui, Tax Map Key: (2) 1-1-003: Portion of 092.**

**Item D-5 Cancellation of Governor's Executive Order No. 1961 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Keanae Small Boat Ramp Purposes, Hana (Koolau), Maui, TMK:(2) 1-1-3: 87**

**Unanimously approved as submitted (Morgan, Goode)**

**Item J-1 Approval for Contract IFB-M-2011-00-002, Furnishing Janitorial Services for Comfort Stations at Lahaina Small Boat Harbor and Kihei and Mala Boat Launch Facilities**

**Unanimously approved as submitted (Goode, Morgan)**

**Item M-1 Amendment No. 1 to State Lease No. DOT-A-90-0026 Extension of Fixed-Base Facilities Lease Gate Gourmet, Inc. Honolulu International Airport**

**Item M-2 Amendment No. 8 to Lease No. DOT-A-03-0001 Travelers Services Concession Lease Lenlyn Limited, Honolulu International Airport**

**Unanimously approved as submitted (Morgan, Edlao)**

**Adjourned (Morgan, Edlao)**

There being no further business, Acting Chairperson Agor adjourned the meeting at 9:48 a.m. Recordings of the meeting and all written testimony 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:



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