

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

DATE: FRIDAY, JULY 22, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 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.
Ron Agor
Rob Pacheco

Jerry Edlao
John Morgan
David Goode

STAFF

Dan Quinn/PARKS
Charlene Unoki/LAND
Russell Tsuji/LAND
Carty Chang/ENG

Randy Kennedy/DOFAW
Sam Lemmo/OCCL
Dr. Bob Nishimoto/DAR
Ed Underwood/DOBOR

OTHERS

Julie China, Deputy Attorney General
Jo Jordan, C-3
Julianne Hughes, D-6
Rebecca Alakai, J-1

Cynthia Rezendes, C-3
Tracy Fukuda, K-1
Phil Hauret, D-6, D-9
Kaleo Lindsey, J-1

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

Item A-1 May 27, 2011 Minutes

Member Pacheco recused himself.

Approved as submitted (Morgan, Agor)

Item A-2 June 9, 2011 Minutes

Item A-3 June 23, 2011 Minutes

Item A-4 July 8, 2011 Minutes

Items A-2, A-3 and A-4 were not ready for this Board meeting.

Chair Aila and the Board members recognized Charlene Unoki for her years of service to the Department.

Item C-3 Request Approval for Final Integrated Ka'ena Point Action Plan as a Guiding Document for the Management of Ka'ena Point, Implement Emergency Actions and Delegate Authority to the Chairperson to Make Modifications to the Plan, as Necessary, to Implement the Mission and Goals of the Action Plan.

Dan Quinn, Administrator for State Parks on behalf of the Stewardship Team of Kaena Point related that this is listed under DOFAW but is a Departmental effort following up on the presentation made by the Kaena Point Advisory Group. He reminded the Board that the Advisory Group was created last October 2010 to give advice to the Department and made recommendations to the Board in a briefing and this is the follow up action from that. Several items that were presented and recommended by the Advisory Group include the protection of the leina kauhane, the sand dunes, prevention of erosion, designation of a road, and the creation and implementation of a permitting system for the area beyond the paved road. The stewardship group has incorporated all of these recommendations into the final integrated Kaena Point Action Plan. Mr. Quinn orientated the Board by presenting maps and described the area the Department manages starting at the end of Dillingham Air Field all the way around to Makua Cave on the Waianae side. He pointed out what is where (the road, the fence, etc.), what areas are impacted by off roading and which areas are protected or not. The recommendations today are to immediately implement the most pressing emergency actions for managing the area which includes first delineating the primary and shoreline access roads, repair and maintenance of the primary access road and establish a State Park access permit. He pointed out the upper road and loop roads to access fishing sites and other roads. The public will be noticed on when staff will be out there delineating the roads. He also reported that on the Fourth of July there were over a hundred jeeps tearing around. There will be maintenance on the main road and a vehicular permit is being ironed out which will be a good tool for DOCARE to enforce and a method informing the user where they should or shouldn't be. The biggest challenge is people can be driving on a designated road, but we don't have that right now. Chair Aila was the Chair of the Advisory Group and he asked for the Board to approve the recommendation for the final Kaena Point Integrated Action Plan as a guiding document for the management of Kaena Point.

Randy Kennedy representing Division of Forestry and Wildlife (DOFAW) said staff has been working on this for the past 20 years and that this is a good compromise.

Member Edlao asked whether a permitting process will be looked at immediately that a permitting system would help minimize enforcement. Mr. Quinn said that staff is working to come up with conditions. If a fee is involved staff will come back to the Board to have the fees set by them. This needs to go hand in hand with any enforcement which is the goal. Also, this will not apply to hikers, only to vehicles.

It was asked by Member Edlao whether the Advisory Group is enforcing and Mr. Quinn said only DOCARE (Division of Conservation Resources and Enforcement) can enforce. The Advisory Group made several trips out there that the Friends of Kaena are doing educational outreach, and there is a ranger working out there on the fence. Staff spoke to all the commands of all the military where the Army put out a video to educate members of the Armed Forces who participate in the off roading activities, but there are a lot of locals tearing up the aina as well.

It was asked by Member Pacheco on whether there were specifics on increased DOCARE presence and Mr. Quinn said its general for the whole Department, no there are no specifics. In answer to Member Edlao's reference to NARS, Mr. Kennedy said there is a similar situation to call DOCARE in any threatened situation. Member Edlao said we need to start a permitting fee to get monies for maintenance and enforcement. Mr. Kennedy said that some people have been going out there for years and will self police.

Chair Aila said a lot of strategizing has been going on that once a road gets designated and a permit is required that we won't to have as much a DOCARE presence. If someone drives in you either have a permit or not and leave, are you on a designated road or not which will make it simple to enforce. Staff is asking permission from the Board to go out and begin this process. There will be strong dialogue from fishermen and public park users. Staff believes with specific enforcement compliance will follow.

Member Agor complimented the Department and all those involved that this is a great plan and could be a model for other communities who might want to preserve areas.

Cynthia Rezentes representing the Kaena Point Advisory Group testified in support of this plan and had concerns of much more degradation during the rainy winter season. Comparing last year to this year there is much more degradation from off roading which she related in detail. She asked to approve this for the Department to start mitigating or they might lose the entire area and it may no longer be a fishing area because of the silt.

Representative Jo Jordan testified that she is a member of the Kaena Point Advisory Group. It was heard from the audience at the last meeting to move forward and to continue the dialogue. Our obligation here is to protect the resource for future generations and she asked the Board to support this plan.

Member Morgan moved to approve as submitted. Member Edlao seconded it. All voted in favor.

Mr. Quinn had the Board members sign the plan.

Unanimously approved as submitted (Morgan, Edlao)

Item D-5 Consent to Lease of Lands under Governor's Executive Order No. 4130 to Hawaii Housing Finance and Development Corporation, Iwilei, Honolulu, Oahu, Tax Map Key: (1) 1-5-007:002.

Charlene Unoki representing Land Division presented item D-5 the set aside was for an affordable rental housing project when HHFDC received the EO they entered into a 55 year lease with senior residences at Iwilei Limited Partnership that this is to address the 55 years as well as the additional 20 years. This is to ask the Board's consent for the 75 year lease.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-1 Set Aside to Department of Agriculture for Agricultural Purposes, Puna, South Hilo, North Hilo, Hamakua, North Kohala, South Kohala and Kau, Hawaii, Tax Map Keys: (3) 1-2-6:5 and 77; 1-4-34:27; 1-8-6:103; 1-9-1:18; 2-4-49:29; 3-1-4:1 and 2; 3-9-1:1 and 2; 3-9-2:7 and 8; 4-1-1:6; 4-1-5:1; 4-4-11:33; 4-6-4:1, 2, 3, 5 and 6; 4-9-11:2; 5-5-3:12, 18, 4, 5 and 6; 5-5-4:51; 5-5-6:2, 3, 4 and 15; 5-5-7:11; 8-8-4:10; 9-5-15:3; 9-6-2:55; 5-5-5:1.

Ms. Unoki related that item D-1 is a request from the Department of Agriculture (DOA) to set aside lands for agricultural purposes. Following the intent of Act 90, Session Laws 2003 which she read from the submittal and the Board of Agriculture approved a list of properties on the Big Island which staff reviewed. Some are not going to transfer over to DOA at this time. In Ka'u, DOFAW is interested in resource protection adjacent to the Forest Reserve and in Puna staff can't turnover the entire property. A property in Kohala was added to the list which was okay with DOA. She asked to withdraw Tax Map Key: 1-4-3, parts of 27 and DOFAW will do the necessary approval in concept from the Board and once that is done staff can turn the property over to DOA. Staff recommends approving the set aside as well as transferring various tenants over to DOA and taking one property out of the list.

The Board:

APPROVED AND AMENDED

After further consultation with DOFAW, staff is recommending the deletion of TMK: (3) 1-4-34:27 from list of properties covered by the submittal. DOFAW advises that this parcel is in the Nanawale Forest Reserve and certain statutory procedures will need to be followed to withdraw the land from the forest reserve before it can be set aside to DOA. DOFAW staff will bring a separate submittal to the Board regarding this parcel in the future. Accordingly, the submittal should be amended to delete all references TMK: (3) 1-4-34:27, General Lease No. S-5537 that encumbers the parcel, and all other descriptive

information in the submittal relating to the parcel. The total transfer area of 6,792.740 acres shown in the table on page 2 of the submittal should be reduced to 6,790.940 acres to reflect the exclusion of the two-acre parcel from the transfer. Similarly, the total annual rental income figure of \$94,441 shown in the table on page 4 of the submittal should be reduced by \$1,250 to \$93,191 to reflect the exclusion of the parcel from the transfer. All other terms and conditions of the submittal to remain the same.

Unanimously approved as amended (Morgan, Agor)

Item D-3 Amend Prior Board Action of June 23, 2011, Item D-7, Issuance of Direct Lease to Boteilho Hawaii Enterprises, Inc. for Dairy Purposes, Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Key: 3rd/5-5-003:004, 005 & 006, 5-5-005:001, and 5-5-006:002, 003, 004 & 015.

Ms. Unoki reminded the Board of this action from June 23, 2011 and Mr. Boteilho asked to change the semi annual payments to monthly. Staff also didn't cancel the old lease when they issued the new lease, a house cleaning issue.

Unanimously approved as submitted (Pacheco, Edlao)

Item K-1 Conservation District Use Application (CDUA) OA-3585 for Hawaiian Electric Company Inc.'s (HECO) Proposed Kalaheo Repeater Project by Hawaiian Electric Company, Inc., Located at Oneawa Ridge, Kaneohe District, Island of Oahu, TMK: (1) 4-5-033:001.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed there is an existing telecommunications monopole on the adjoining parcel and the proposal is to build a similar telecommunications tower mentioned in the staff report. Once the new tower was built the applicant will take down the old tower. The applicant has gone through an environmental assessment and staff recommends approving this project according to standard conditions as well as special conditions (camouflaging, taking down the old facility, etc.).

It was asked by Member Edlao whether there will be a pad on the ground.

Tracy Fukuda representing Wilson Okamoto Corporation said it will be a pole in the ground on a 2'x 2' foundation at about 30 feet tall. There was some discussion on the color of the pole which is a dark forest green.

Member Goode asked whether the purpose of using the existing site is continuous use. Ms. Fukuda confirmed that.

Member Edlao related how DLNR had to clean up a site previously and asked whether there was a bond or provision should the applicant abandon the tower. Robert Tatum a

HECO Communications Engineer acknowledged that it is in their lease with Hawaiian Memorial Park. Member Goode said if it is in the lease it wouldn't hurt to make it a condition. Member Agor noted there will be new technology in the future. Member Morgan pointed out that the applicant isn't doing anything new. Mr. Lemmo said that it is private land and the land owner is responsible that staff could compel them to take certain actions. The amendment is optional. Member Edlao said he wants some assurance that some monies be available.

Member Morgan clarified as part of the permit be a clause that says "Should this tower ever be abandoned that it would be removed." Mr. Lemmo suggested "If the subject tower is no longer in use or abandoned then the landowner or applicant shall remove the facility in its entirety." The applicant agreed to that.

The Board:

Amended the recommendation by adding the following condition: If the subject tower is no longer in use or abandoned then the landowner or applicant shall remove the facility in its entirety. Otherwise, the submittal was approved as submitted.

Unanimously approved as amended (Morgan, Edlao)

Item D-6 Amend Prior Chairperson's Action dated February 22, 2011; Consent to Assignment and Assumption of Contract (Mt. Kaala: Hawaiian Telcom License Agreement); General Lease No. S-4223, Kahuku Wind Power, LLC, Assignor; Hawaiian Electric Company, Inc., Assignee; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:portion of 024.

Russell Tsuji representing Land Division explained once you have an executed lease or easement and there is a request for approval or sublet the premises that are normally handled through a request through Division and staff will analyze and normally it goes to the Chair and not to the Board. The staff write up previously had recommended no participation in the sublease rent. It was approved as is which is normally the case, but DOFAW staff, Michael Constantinides approached Land Division questioned whether that was appropriate or not. After all these years, Mr. Tsuji thought this needed a re-evaluation on a case-by-case basis. His agents met and went through the prior assignment policy that was set by the Board previously. What happens to certain cases is when you read the whole transaction in the sub-lease context it doesn't make sense to do nothing. One of the languages in the Board approval was an amendment made when it was reviewing the policy initially which is quoted on the first page, last paragraph that the Board recognized that this is generally a conceptually general policy to follow. However, it also recognized it is just the general principle and authorizes staff to use their discretion in representing the State's interest in applying these formulas to address the various sublease arrangements that may not fit into the formula. Which is how Mr. Tsuji viewed it and staff discussed it and decided they are going to take a closer look at all these sub-lease transactions that come before us. There are some that stand out like this

one that they should carefully evaluated it and make a decision on what the recommendation is which they did. The red flag was their ground rent was \$31,000 and the sub-lease rent was \$33,000 and this is not the first that they've seen this. When you go back and see the underlying transaction, the improvements made by Hawaiian Telecom which is a building and antenna they have been operating for 40 years and this new sub-tenant is not going to negatively impact any of those operations and continue to operate as normal. The use of the facilities the sub-lessee under transaction paid for all of the additional improvements and equipment that they brought in including additional antennas on the site including using some unused land that was available. The only part taking up existing footage is the Hawaiian Tel building which is 80 square feet. Staff went through the assignment policy and wrote this submittal with their recommendation that they think under these circumstances the State should participate at least 50% of the sub-lease rents collected by Hawaiian Tel. This is not an indication of Hawaiian Tel's operations, it's just the transaction. Mr. Tsuji said he knows Hawaiian Tel doesn't agree with this transaction, but has nothing to do with the company.

There were more discussions about the policy and the transaction where Mr. Tsuji said that Hawaiian Tel will continue operating. It was space not in use and was available. The rent Hawaiian Tel was receiving from the sub-lessee was exceeding what Hawaiian Tel was paying the Department annually. The rent will be paid by the sub-lessee.

Member Morgan pointed out it was staff's mistake and questioned whether it was legal or right to do it. Mr. Tsuji said it is legal that the policy directed staff that he didn't like how it was implemented in the past, but has been coming up more on commercial and industrial type situations with a greater impact on the State. This is a test case and it should be since that is what the Board amended. It's not staff's fault because they didn't understand it either.

Member Morgan asked if we had asked for the 50% at that time would the lessee acted any different and he thought they would act the same way. Mr. Tsuji explained the sub-lessee paid a lot of money for the improvements to be made. Sometimes businesses lease out because they want to pay DLNR. He apologized to Hawaiian Tel that it's nothing against them.

There was some discussion about the policies and the lease rent between Member Goode and Mr. Tsuji.

Julianne Hughes, a Hawaiian Telecom Administrator testified that they received the submittal on July 19th and would like an opportunity to respond to this. She confirmed what Member Morgan said that they would act the same whether there was a 50% or not and asked the Board to defer this.

Member Morgan said that anybody caught in this be given the opportunity to present themselves. Mr. Tsuji said that staff has been in conversation informing Hawaiian Telecom that this will be taken back to the Board. Staff's recommendation is not to participate and the applicant knew that. Ms. Hughes agreed they knew that, but they did

not know the arguments behind it and there are a few misstatements that they want to clear up.

Member Goode asked in 30 days and Ms. Hughes said that was fine. Mr. Tsuji said that would be the second August meeting.

Phil Hauret, Director of Land and Rights of Way for Hawaiian Electric (HECO) testified that they are the assignee for Kahuku Wind Power and explained that Hawaiian Tel has the master lease and Kahuku Wind Power got the sub-lease to install telecom equipment and then it was going to be assigned to us (HECO) which is what the assignment is for. The telecom equipment is for integrating Kahuku Wind Power's farm's connection with HECO. They support the deferral and time to review the staff submittal. In confirmation of the Chair's statement because of the fluctuations in the wind, the way the wind farm is set up it has battery capabilities to even out the flow and all of that has to be controlled remotely. This is one of three sites.

Mr. Tsuji asked whether HECO is now taking over the sub-lease that was issued so the rent that was suppose to be paid to Hawaiian Telcom of \$33,000 will be taken over by HECO. Mr. Hauret acknowledged that. Mr. Tsuji said they are not taking over as a public utility; they are taking over a private sub-lease agreement. Mr. Hauret said we are acting as part of our public utility business and this is not a commercial telecom site. It is a HECO system. Mr. Tsuji explained what he said before about the rent transaction. Ms. Hughes said that in their agreement there is a provision that allows Hawaiian Telcom to do that. Mr. Hauret agreed and asked for more time.

Deferred to the second Land Board meeting in August 2011. (Morgan, Agor)

Item D-9 Grant of Perpetual Non-Exclusive Easements and the Issuance of a Management Right-of-Entry to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. and for Telecommunication and Electrical Transmission Purposes, Honolulu, Oahu; Tax Map Key: (1) 2-1-024: 001 portion.

Mr. Tsuji related background on item D-9 and had no changes to this item.

Unanimously approved as submitted (Morgan, Pacheco)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Dr. Kelly Gleason for Access to State Waters to Conduct Maritime Heritage Activities

Written testimony from KAHEA was received and distributed.

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) conveyed item F-1 background that the activity site is from Nihoa to Kure Atoll from August 1 –

September 30, 2011 which involves 1) non-invasive wreck site surveys, 2) non-invasive remote sensing and snorkeling of high potential wreck site areas, 3) monitoring of know shipwreck and sunken aircraft sites with the purpose of understanding impacts to maritime heritage sites, and 4) removing beta recorder from knows shipwrecks and sunken aircraft sites for the purpose of monitoring habitat conditions. The only suggestion was from the scientific community, but the applicant will not use a magnetometer which won't attract sharks. Native Hawaiian recommends acceptance and there was no public comment. There were no significant cumulative impacts and the Monument Management Board agreed with DAR's recommendations and to approve this permit.

Chair Aila referred to KAHEA's written testimony deferring items F-1 and F-2 until the environmental assessment is completed.

Unanimously approved as submitted (Pacheco, Morgan)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Oscar Valenzuela, Hawaii News Now, for Access to State Waters to Conduct Filming Activities

Dr. Nishimoto related background on item F-2 for the same area and dates noted in item F-1 that this was activity previously approved and conducted. There were no comments from the Native Hawaiian community and the public. There are no significant cumulative impacts. DAR and MMB recommended approval.

Member Edlao asked if this program is about a specific action or research or is this done with several. Oscar Valenzuela said it's always been a flexible thing. Whatever is available for him to record and report stories on and they will be working with the NOAA ship. Member Edlao said he would appreciate seeing what was filmed and coming back with a 20 minute presentation. Mr. Valenzuela agreed and said it will be broadcast. Chair Aila said the application meets the philosophy of the Monument which is to bring the place to the people. Dr. Nishimoto agreed that the Board should see the video.

Unanimously approved as submitted (Edlao, Pacheco)

Item F-3 Request for Approval of Special Activity Permit 2012-4 for Dr. Cynthia Hunter, University of Hawaii at Manoa, Department of Biology, to Conduct Research on State Regulated Stony Corals on Oahu

Dr. Nishimoto related that the collection site is Lanikai and the dates are from July 30, 2011 to July 30, 2012. Dr. Hunter intends to take 12 core samples each of common regulated marine coral species not more than 1 inch in length and only taken from corals with bleaching condition. This is to understand that bleaching process which was done previously in 1990. There is no serious or major disturbance, no significant impacts, and

he read staff's recommendation that this activity is exempt from an environmental assessment.

Unanimously approved as submitted (Morgan, Pacheco)

Item C-1 Request Approval for Issuance of a Wildlife Sanctuary Right of Entry Permit to the Army Corps of Engineers, Honolulu District for the Construction of the Kawainui Marsh Environmental Restoration Project.

Randy Kennedy representing Division of Forestry and Wildlife (DOFAW) reported on item C-1 reading from staff's submittal. The cautionary agreement was signed yesterday and read staff's recommendation for the Board to approve this permit. He thanked Jason Misaki and Ati Fabrao of Oahu Branch who were here to answer any questions.

Unanimously approved as submitted (Morgan, Agor)

Item C-2 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contracts for the Implementation of Watershed Partnership Management Plans for FY2012 and Request Delegation of Authority to The Chairperson to Determine and Approve Chapter 343, HRS Environmental Compliance Requirements, Including Approval of Declarations of Exemptions, for Watershed Partnership Program Project.

Mr. Kennedy conveyed item C-2 and staff's recommendation.

Unanimously approved as submitted (Goode, Pacheco)

Item D-2 Forfeiture of General Lease No. S-5414, Mathew Hauanio, Sr., Lessee, Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-43:14.

Ms. Unoki related that Mr. Hauanio passed away in 2004 and staff has being working with the family to do probate, but no one seems to want to do it. Staff needs the Board's permission to start forfeiture.

Member Pacheco asked if the Board approves this how will this go back out to the community. Ms. Unoki explained that the lot will be un-encumbered State land and will probably go through an auction process. Member Pacheco asked whether this is one of those special leases and Ms. Unoki confirmed that for the first and second phases staff had to get special legislation to offer them directly to the victims. Staff would work with the Board in coming up with some kind of qualifications criteria because there is no legislation in place.

Member Pacheco asked whether there were people who weren't allowed to get a direct lease and would the Legislature be able to give to someone on that list. Ms. Unoki said there is a committee and there are people out there as far as going out to auction. Normally there is more than one lot that staff works on. The family is having a hard time with probate and it becomes unencumbered State lands. Staff would work with the Board for a long term solution.

Mr. Tsuji said that Engineering Division had put in a significant amount of improvements into this lot which has all the County utilities and hook-ups with a beautiful view. What is being paid is by legislation. Not everyone has complied with the building requirement and don't have the extra cash. They want to hold onto it until they can re-build.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-4 Set Aside to Department of Accounting and General Services for Addition to Keelikolani Building and Tax Office Annex Purposes, Issuance of Management Right-of-Entry; Honolulu, Oahu, Tax Map Key: (1) 2-1-026:001.

Ms. Unoki related some background on this item.

Item D-7 Amend Prior Board Action of April 23, 1982, Item F-12, Request to Relocate Existing Easement and Immediate Construction Right-of-Entry, Wahiawa, Oahu, Hawaii, TMK:(1) 7-4-007:006 (Portion).

Item D-8 Grant of a Perpetual, Non-Exclusive Water Meter Easement to the Board of Water Supply, Halawa, Ewa, Oahu, Tax Map Key (1) 9-9-075:028(portion).

Ms. Unoki said there were no changes to the above items.

Unanimously approved as submitted (Edlao, Goode)

Ms. Unoki talked about being hired by the Land Board.

Item M-1 Issuance of a Replacement Lease U.S. Federal Aviation Administration Lihue Airport

Chair Aila described item M-1.

Unanimously approved as submitted (Goode, Agor)

Item L-1 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. F35B632C, Park Improvements, Akaka Falls SP, Hawaii

Item L-2 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. F58B631B, Wailoa River SRA, Hawaii - Wailoa Center Lighting and Electrical Improvements

Item L-3 Approval for Award of Construction and Declare Exemption from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawai'i Administrative Rules for: Job No. F15C675B, Royal Mausoleum, Mauna'ala Repair Ornamental Ironwork, Honolulu, Hawai'i

Carty Chang representing Engineering Division said he had no changes to the above submittals and related that declarations are needed for all the projects to be executed.

Unanimously approved as submitted (Pacheco, Morgan)

Item J-1 Informational Briefing Regarding the Administrative Citation Process Under HAR Section 13-256-73.13, "Ahu O Laka Safety Zone".

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) introduced Rebecca Alakai as the new Rules and Regulations Officer who is compiling their rules on the internet. Mr. Underwood reminded the Board that in June 23, 2011 staff came and asked the Board to do the emergency rule making for Ahu O Laka where you approved the rule, staff implemented it, and staff established the H-2 zone which was ready for July 4th. During that process the Attorney General's office put together an Administrative Citation because of an issue dealing with the County. Staff will come back to you on August 12th. The buoys are installed. Tons of media outreach. Lots of DOCARE presence, the Coast Guard was notified and it went really well – it was mellow on the Sandbar or Ahu O Laka. Mr. Underwood worked it on Sunday of the 4th of July weekend and at noon there were 21 boats which is un-heard of. During that weekend there were three administrative citations issued primarily for people having alcohol on board. They weren't noticeably intoxicated, but they had the alcoholic beverage out there. Those three people were noticed on the Administrative Citation to appear before the Board on August 12th. Staff would like to defer to the Board as to what type of penalty to issue which is between a \$50 to \$1,000 fine for being in this area as well as privileges for operating a boat. In the recommendation, staff would leave it open and let the Board decide what it should be and staff could give you the guidelines. Otherwise, it worked really well. What staff noticed was people went elsewhere and he reported a flotilla off of Waikiki which is something staff needs to look at too, but this worked well at Ahu O Laka. Now we have to figure out whether they want to keep this particular rule as it is and adopt it permanently or tweak it that there was some talk to amend the EO and put it back under Land Division so its unencumbered lands and they have the alcohol provision there.

Member Pacheco asked what would be a quicker process going through Land or the other way is to go through the whole rule process right? Mr. Underwood confirmed that and

said the rule process with Rebecca on board could go quickly because we are only dealing with one area and one island. We don't have to go to statewide hearings and have them only here and there. The Board authorizes it, the Governor signs off to go to public hearing, get the 30 day notice, have the public hearing, go before the Regulatory Review Board before and after, then back to the Land Board and then back to the Governor and suggested maybe in 90 days they could realistically do it, but we are going to be pushing it with the 90 day. The EO process Mr. Underwood wasn't sure since Land Division helps them with that.

Member Pacheco said the question is where this property should be. Chair Aila said that it's the Department's view that it shouldn't be in Boating because it's not an island and it's not submerged. The two more logical choices are either in Land Division which is unencumbered or State Parks. Staff is doing the analysis to figure out which division has the best rules to provide us the best management tools. The Chair asked Member Morgan what he has heard in the community and Member Morgan said he hasn't heard any negatives about the whole thing - just positives.

Member Edlao mentioned that there was talk about making it a monument. Mr. Underwood acknowledged that Senator Hee wanted to do that and what he recalled it did become a monument, but somehow it limited the access to the area and that got people wound up which is why it didn't pass the Legislature. Member Pacheco said it was access by permit. Mr. Underwood said that is what he (Senator Hee) was trying to do. Chair Aila said designating as a state monument restricts access to responsible people. The Board members had some discussions on this.

Member Pacheco asked whether there were any natural resources there that needs significant protection. Chair Aila said its managing human behavior. Member Morgan said those who want to be at a flotilla will be there, but Ahu O Laka is completely different and is a resource for the whole public.

Mr. Underwood said staff has been doing a lot of discussion on that describing how beautiful this is in the middle of the bay, but it rolls back to the problem of what are we going to do with the flotillas and everything else. I think it's unrealistic to designate an area in each location throughout the state. I think whether it takes a meeting with the Mayor or something to push the County to start taking the BUI cases. We don't do BUI cases in Hawaii and DOCARE has been working with the County for 2 or 3 years and haven't been successful in getting them to take them. All throughout the United States that's what they do. They set-up two buoys, every fifth boat through the buoys is going to get a check, the fifth boat gets checked that takes 3 minutes to go over safety gear, an on-water test and then they are on their way. If you pop a couple guys that are DUI that message will get out there - somebody has got to be a designated driver and that will go a long way to curtail the activity. As it stands now there is nothing preventing anybody to do a flotilla, to have alcohol and have a great time, but you can't operate the vessel while under the influence which makes it difficult for the DOCARE office, unless you have something in place.

Chair Aila asked whether the Coast Guard enforces DUI. Mr. Underwood confirmed that and this is what was told to him that the U.S. Coast Guard would board the vessel, they will give them the breathalyzer, and if somebody turns out to be operating under the influence they will ferry them to the shore, and then they will hand them off to HPD. The County declined and said there is a jurisdictional deal where you are taking a case from a Federal entity and giving it to a County entity and issues that the County refused to take it. They are in this stalemate right now with the County. Member Pacheco said that it seems like our kuleana that it is our waters and responsibility. I can't see asking HPD to be on the water. Mr. Underwood said as part of the Recreational Boating Safety Grant they have sent DOCARE officers to the mainland to be trained for BUI. They can do it, but the County is the one that prosecutes the cases. The other way if we do it as a State level is bringing the BUI cases before the Board. Member Edlao said if the State would do that you could develop penalties – suspend their license or take away their license and I believe we could do that. Mr. Underwood said it's tied to their driver's license right now. Member Pacheco said the Statute has it tied to the driver's license and so the County just doesn't want to do it.

Member Morgan said he thinks it's too far a reaction to a problem and he isn't sure whether we need to go everywhere else that has a problem. If you are a boater and see a flotilla and you don't want to be there it's easy not to go there. There are real problems out there that needs to be addressed and he is convinced whether they need to go that far. Also, he is thinking of the push back by the community and we don't know if all the perpetrators are the drivers of the boats, but it could be the passenger. Chair Aila said staff's inclination before coming before the Board for some sort of permanent set of rules we want to go through the Labor Day experience at Ahu O Laka to fine tune recommendations.

Member Edlao said make sure you come with rules with penalties as well, not just rules. Mr. Underwood said the rules now are the discretion between \$50 and a \$1,000. Member Pacheco asked is there room for operating a boat privileges suspension. Mr. Underwood said yes, it's 214-5 increases the penalty to \$5,000 and you could suspend the operating privileges up to no more than 30 days which is in Statute and we would have to follow that anyways.

Ms. Alakai said if you do implement fines they could ask for a contested case hearing. Member Edlao said if that happens that happens. We do need to get the word out that we are serious. If you want to go forward and spend your money then that is fine. We can't back down on that because maybe we need to test that. If it becomes too much then maybe we need to back off, but until that happens we have to take the ground. Ms. Alakai said there could be 400 contested cases. Member Edlao said then they might need to rethink the fines and we would need to test it. We aren't doing that and at least they are moving forward with something rather than sit back. Chair Aila said we will have the opportunity with three cases coming up. Member Edlao said and we will fine them then. Member Agor asked whether there were any impacts from the 3-day weekend. Mr. Underwood said none that they were aware of. It's pretty mellow on the regular weekends.

Chair Aila said that he had at least three calls from other groups asking if they could use the emergency rules for other locations out there – South Kona, Kaena Point and he couldn't remember the last one. He related the situation at South Kona which is similar to problems with off roaders at Kaena Point. When the Ahu O Laka media blitz was occurring they had those calls to adopt emergency rules in those areas, too. It has to do with the rights of public safety.

Member Edlao related the situation in Honokohau Bay, Lahaina with commercial operators. Chair Aila said the question is do we have the authority to balance the need of protecting a place because it's a refuge for honu versus commercial activity coming in interrupting...Mr. Underwood and Member Edlao talked about concerns of the condo owners whether commercial can come in and they can because it is not a designated area. Is the complaint because the condo owners don't want these guys in their back yard or are they truly tearing up the natural resources. DOCARE is involved and staff is looking into it now.

Chair Aila asked do we have the ability to manage where people navigate especially if it's inter-state commerce. Mr. Underwood said he doesn't think staff can tell the commercial boater they cannot operate there, but they could say you can't anchor there. The issue is referring to Kealakekua Bay was what if they drift in. Deputy Attorney General Colin Lau wrote an opinion on that. Staff is going to come back this next meeting to adopt the Hanalei Bay and Kaneohe Bay rules on August 12th.

Chair Aila asked how quickly can an executive order transferring Ahu O Laka from one division to another. Mr. Tsuji said it has to be taken to the Board and if the lease has already been prepared, but he doesn't think Ahu O Laka is the case. It will have to be surveyed and will take some time. The Chair said at a minimum a couple months and Mr. Tsuji acknowledged that at least. With transferring to another division like State Parks there is a prohibition of no drinking at all, but this allows drinking.

Mr. Underwood said that if we go that route staff would like to put in better markers and make it decent out there. Chair Aila said that we are still analyzing what the solution is.

Keola Lindsey representing Office of Hawaiian Affairs (OHA) testified that we do have the Kaneohe Bay Regional Council as an entity and within there are representatives from a wide group of the community – neighborhood boards, recreational fishers, commercial fishers and they still hold annual meetings if you ever want to hold a forum in Kaneohe to present from. Hi'ilei Kawelo is the chairman. Member Morgan asked whether he still attends those meetings and Mr. Lindsey said he does. Member Morgan said he used to be the chair for a long time. Mr. Lindsey said they met quarterly, but the last legislation delegated us to yearly, but they informally meet three out of the four times.

Mr. Underwood said per Statute they are required to have a boating rep. and a park resource staff there. Staff always forwards any rules pertaining to boaters to all the Council members so that they know.

Adjourned (Morgan, Pacheco)

There being no further business, Chairperson Aila adjourned the meeting at 11:00 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:



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