

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

DATE: FRIDAY, FEBRUARY 10, 2012
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 9:00 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Jerry Edlao

Ron Agor
John Morgan

STAFF

Kevin Moore/LAND
Sam Lemmo/OCCL
Randy Kennedy/DOFAW

Ed Underwood/DOBOR
Irene Sprecher/DOFAW

OTHER

Colin Lau, Deputy Attorney General
Walter Liew, D-5
Mike Tosatto, J-1
Greg Barbour, M-2
Mary Alice Evans, M-2

Enver Painter, D-5
Sandy Gillis, M-1
Kitty Simonds, J-1
Brian Yee, M-2
Deepak Neupane, K-1

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

Item A-1 January 13, 2012 Minutes

The Board members had the January 13, 2012 minutes before them, but the Chair deferred it.

Item D-6 Issuance of Construction and Management Right-of-Entry to Honolulu Authority for Rapid Transportation for Elevated Guideway Purposes; Waipahu, Ewa, Oahu, Tax Map Key: (1) 9-4-008;por.025. SUBMITTAL TO BE DISTRIBUTED.

Written testimony from the Outdoor Circle was received and distributed.

Kevin Moore, Assistant Administrator for the Land Division presented item D-6 that this project has been under environmental review and staff's recommendation is to allow HART to begin construction at the Waipahu High School site.

Member Edlao queried whether this was the pillars for the rail and if this was on school property. Mr. Moore acknowledged that it will be the railway and will be on a portion of the school property. Chair Aila said they aren't compensating, but are making arrangements with DOE to deal with that situation.

There was discussion about a park and ride, but no one was here from the County to describe it.

Chair Aila noted written testimony from the Outdoor Circle objecting to this.

Unanimously approved as submitted (Edlao, Morgan)

Item D-5 Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessees; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003.

Mr. Moore related some background on item D-5 noting that some conditions to the recommended approval requires the Lessee to renew un-permitted houses on the property. Staff recommends approval.

It was asked by Member Morgan whether they were allowed to consolidate houses and they are allowed to per Mr. Moore which is an option and referred to Exhibit A.

Enver Painter, counsel for Ann and Walter Liew testified that the houses are about 15 to 20 feet apart and the option discussed with staff was to build a covered/enclosed walkway between the two (2) houses. One house is to be removed.

Member Morgan asked whether there was ag going on the property and there is per Mr. Painter that Mr. Liew grows miniature bonsai trees for sale.

After Member Edlao's inquiry about the law suit Mr. Painter explained that the U.S. Attorney General's office and I were able to negotiate a resolution of the U.S. District Court case which was resolved in a release of the \$200 something thousand dollars mortgage of the U.S. Department of Agriculture. Linda Chow who was counsel for the State Court matter and I have negotiated a resolution and this is part of that resolution.

Member Edlao asked whether it was the State's responsibility to follow up and make sure they are in compliance. Mr. Moore said Land Division should be conducting periodic inspections, especially determination of the lease. If there are un-permitted improvements we would note in the file if corrected action is needed. Mr. Painter said he has copies of a 1995 letter written to the land agent and the loan officer from the U.S. Department of Agriculture memorializing their July 1995 site inspection of the property that noted the violations including all the structures constructed without permits. There was knowledge of this when releasing it to the Lieus.

Member Edlao asked whether putting in the breezeway will suffice. Mr. Moore said it is a County permitting issue, but if the State considers that as one dwelling it's satisfactory. Mr. Painter said that all structures are subject to all building permit requirements.

Unanimously approved as submitted (Morgan, Agor)

Item M-1 Amendment No. 1 to Restaurant and Lounge Concession Agreement No. DOT-A-11-0006, to Host International, Inc., Lihue Airport, Lihue, Kauai, TMK: (4) 3-5-01: portion of 8

Sandy Gillis representing Department of Transportation – Airports Division conveyed that item M-1 is for a concession at Lihue Airport. The State requested they help us by putting in improvements and that we don't charge for the space, but we'll get gross receipts.

Unanimously approved as submitted (Agor, Edlao)

Item J-1 Request for Approval to Enter into a Grant Agreement Between the Board of Land and Natural Resources and the National Marine Fisheries Service for \$100,000 in Federal Funds for Improvements to Division of Boating and Ocean Recreation's Online Vessel Registration System and Data Sharing Agreement

Written testimonies from Neil Kanemoto, Pacific Islands Fisheries Group, NOAA's National Marine Fisheries Service, and Western Pacific Regional Fishery Management Council were distributed to the Board.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) indicated that item J-1 is an agreement between the Land Board and NOAA where NOAA will provide DOBOR with a \$100,000 upgrade to DOBOR's vessel registration system to include data collection and in exchange staff will provide NOAA contact information on non-commercial boaters that fish. Staff consulted (with the AG's office) on whether they can disclose this information and found they can. The information is only on activities of fishermen for survey purposes and will not be given out.

Mike Tosatto representing NOAA testified that the fishery service supports this by funding it because they believe it is a mutual benefit for both of them. They understand that personal information is important to safeguard and this allows them to target the users of recreational

resources which benefits the State since this State doesn't have a recreational fishing license system. Access to this information is all they need.

After Member Edlao's inquiry Mr. Tosatto explained they currently go through the phone book to survey people, but it's a low return rate.

Kitty Simonds, Executive Director of the Western Pacific Fishing Council testified that they submitted written testimony in support and they believe everything should be done regionally and locally. This grant is a step in the right direction so the State can collect this information and that our fishermen do not have to report to the National government.

Unanimously approved as submitted (Agor, Edlao)

Item M-2 Request for Approval to Enter into a Joint Agreement with the Natural Energy Laboratory of Hawaii Authority in Conjunction with a Grant from the U.S. Department of Commerce, Economic Development Administration for \$3 million to Renovate an Existing Building as an Alternative Energy and Biotechnology Demonstration Incubator on Lands Covered by General Lease S-5619 Covering a Portion of Government lands of Hamanamana, Kalaoa 1st-4th, and Ooma 1st & 2nd, North Kona, Hawaii as Identified by Tax Map Key: 3rd/7-3-09: and 7-3-43. *SUBMITTAL TO BE DISTRIBUTED.*

Staff's submittal was distributed to the Board members and Life of the Land's request for a contested case hearing.

Greg Barbour, Executive Director of the Natural Energy Laboratory of Hawaii (NELHA) introduced Brian Yee, Deputy Attorney General and Mary Alice Evans, Deputy Director of Department of Business, Economic Development and Tourism (DBEDT). Mr. Barbour thanked the staff for allowing them on this agenda and informed the Board that NELHA has a master lease with DLNR for 870 acres at their Ocean Science and Technology Park on the Big Island. They are applying for Federal money to renovate the main office building and DLNR is a co-applicant to those funds. We are requesting approval for the Board to enter into a joint agreement with NELHA for the purpose of this grant award. It is a requirement of the U.S. Department of Commerce as we have a long term lease on the land until 2046. Because the owner is DLNR it is a requirement for all projects. We have finished the competition phase and were selected for the award. We were notified January 31st of the selection and this joint use agreement is due next Friday to get into the funding cycle of the U.S. Department of Commerce which ends on March 1st. Mr. Barbour distributed his handout to the Board members and went over it saying they want to renovate the building into incubator office space which is what these funds are for. They've completed an EIS, two supplemental EISs and a Pre-Feasibility Study. There was support from NELHA, Big Island Mayor Kenoi and many Federal agencies. They did receive approvals from State Historic Preservation and U.S. Fish and Wildlife. Mr. Barbour then went over the joint agreement.

Mr. Yee said on behalf of NELHA the documents are adequate to perform.

Ms. Evans said DBEDT strongly supports this. Getting this grant will fulfill their mission at NELHA.

Chair Aila noted a written request from Henry Curtis of Life of the Land for a contested case hearing on this matter. He has 10 days to file his petition and suggested staff call him.

Mr. Yee said he met with Mr. Curtis and explained this project to him and all these existing developments at their park, but Mr. Curtis did not mention this. Chair Aila suggested calling him.

Unanimously approved as submitted (Agor, Morgan)

Mr. Curtis withdrew his request for a contested case that morning via e-mail and in person.

Item K-1 Conservation District Use Application OA-3610 for the Kewalo Basin Harbor Repair and Improvements Project by Hawaii Community Development Corporation, at Kakaako, Kona District, Oahu, TMK: (1) 2-1-058: portions of 002, 035, 095, 128

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background on item K-1 referring to exhibits 3 and 4A site plans. In the report it says the EIS was accepted by the Governor and referred to Exhibit 4 – the fuel tank which is no longer part of the approval. Staff is seeking the Board's approval with the standard conditions.

Deepak Neupane, Director of Planning and Development for HCDA testified thanking the Board and was here to answer any questions.

Chair Aila asked whether arrangements were made for NOAA and Fish and Wildlife Service to go somewhere else to load their boat because it will be difficult to use the loading dock during the building of the piers. A gentleman from the audience said they can load from the ewa loading dock. Mr. Neupane said where Honolulu Marine is at the makai dock.

In answer to Member Morgan's question about additional parking, Mr. Neupane said there is parking on the side streets and at the lot across Ahui Street.

Unanimously approved as submitted (Morgan, Edlao)

Item D-1 Consent to Assign General Lease No. S-4956, Antonio Makaena Akiu, Assignor, to Annie K. Tai See, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 001.

Mr. Moore reported on item D-1 that staff's recommendation is to approve the assignment.

It was asked by Member Edlao whether this will come back to the Board and Mr. Moore acknowledged that. This is only to transfer and will come back later to the Board. The \$632 will change and will be retroactive.

Unanimously approved as submitted (Edlao, Agor)

Item D-2 Amend Prior Board Action of December 9, 2010, Agenda Item D-6 (Copy Attached), Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control, and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1)3-1-30, 31, 32: Various.

Chair Aila said that staff asked to withdraw this item because of potential Sunshine issues raised.

WITHDRAWN (Morgan, Agor)

Item D-3 Quitclaim of State's Interests, if Any, in Forest Ridge Way to the City and County of Honolulu, Honolulu, Oahu, Tax Map Key: (1) 2-5-015: adjacent to 014 & 018.

Mr. Moore related background on item D-3 that this is a road remnant and historically the County has taken responsibility for this land. Staff's recommendation is to approve the quitclaim conveyance.

Member Morgan said he was uncomfortable of the Board adjudicating ownership and questioned whether we do that referring to condition #1. Will the outcome be the same if they eliminate #1? Mr. Moore said that when the Department of Attorney General (AG) goes to prepare the quitclaim deed they will look at the record title to some degree and make that determination. It may not be a necessary determination by the Board. Deputy Attorney General Colin Lau explained when you are quitclaiming something you are making that determination. Member Morgan said from the principle point of view it doesn't seem like the Board's kuleana (responsibility) to adjudicate land ownership. Mr. Lau asked you are going to move to remove #1 and Member Morgan acknowledged that and asked if that approval has the same affect. Mr. Moore said he understands what he is saying, but it's a legal determination. If we have the Department of Attorney General do the documentation I think that's fine. Mr. Lau asked whether he wants to suggest some substitute language subject to determination by the Department of the Attorney General...and Member Morgan added "that the State doesn't own any." and agreed to that.

Member Morgan made a motion to approve as amended. Member Edlao seconded it. All voted in favor.

The Board:

Approved as amended. The Board amended staff recommendation no. 1 on page 3 to read as follows:

“Subject to a determination by the Department of the Attorney General, find that the State does not own the subject property or any interest in it.”

Approved as amended (Morgan, Edlao)

Item D-4 Sale of Remnant to City and County of Honolulu, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to parcel 001.

Mr. Moore noted that this item has to be re-worked and staff asked this be withdrawn as well.

WITHDRAWN (Morgan, Edlao)

Item C-1 Issuance of Special Use Permit No. FW-2012-H-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3) 7-4-002: por. 007 and

Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirement for the Project

Irene Sprecher representing Division of Forestry and Wildlife (DOFAW) presented item C-1 for continued grazing operations. The Division is working with Palani Ranch to slowly reduce their grazing presence to restore the native forest.

Mr. Lau asked because the conditions of the permit aren't attached this is for a 1 year permit, right? Ms. Sprecher acknowledged that's correct.

Unanimously approved as submitted (Morgan, Edlao)

Item C-2 Request for Approval of Hono O Na Pali Natural Area Reserve Management Plan, TMKs (4) 5-9-001:001 and (4) 1-4-001:003, Kaua'i

Randy Kennedy, Native Ecosystem Program Manager with DOFAW conveyed item C-2 that this is an update from the previous 1989 Management Plan. They've gone out for environmental assessment, a public meeting on Kauai, published in the newspaper, and the comments were either technical or positive. They now have a strategic plan with a set of different activities and they have corresponding action so there is accountability.

Unanimously approved as submitted (Agor, Edlao)

Adjourned (Edlao, Agor)

There being no further business, Chairperson Aila adjourned the meeting at 9:50 a.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