

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

DATE: FRIDAY, OCTOBER 26, 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 9:06 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Jerry Edlao
David Goode

Rob Pacheco
John Morgan
Dr. Sam Gon

STAFF

Ed Underwood/DOBOR
Sam Lemmo/OCCL
Nelson Ayers/DOFAW
Dan Quinn/PARKS
Steve Soares/PARKS

Russell Tsuji/LAND
Paul Conry/DOFAW
Eric Kawashima/DOFAW
Curt Cottrell/PARKS
Carty Chang/ENG

OTHER

Julie China, Deputy Attorney General (AG)
Rick Fried, D-11
Mark Roy, D-6
William Milne, D-5
Ted Hong, D-2
Sena Short, D-2
John Thatcher, D-2
Jeffrey Kalani Gomes, D-2
Bill Cooper: K-1, K-2
Andrew Nelson: K-1, K-2

Bill Wynhoff, Deputy AG
Gary Oda, D-11
Peter Young, D-6
Steven Lim, K-3
Tedd Selden, D-2
Dakota Helfrich, D-2
Susan Lee Loy, D-2
Dewey Kim, D-2
Wendy Wichman, K-1

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

Item A-1 September 14, 2012 Minutes

Member Gon recused himself from item A-1.

The September 14, 2012 Minutes were amended since it was mailed to the Board members. On pages 2 and 20, there were corrections made on the Board members who moved and seconded items A-1 and K-1.

Unanimously approved as submitted (Pacheco, Morgan)

Item A-2 September 28, 2012 Minutes

Item A-2 was not available.

Unanimously approved as submitted (Gon, Goode)

Item J-1 Petition of Gordon Leslie for the Issuance of a Regular Mooring Permit for Kealakekua Bay, Hawaii

Ed Underwood, Administrator for the Division of Boating and Ocean Recreation (DOBOR) requested to defer item J-1 since the petitioner requested more time to prepare and staff will bring this back at a later meeting in November.

Deferred (Pacheco, Gon)

Item D-11 Consent to Merger of Hilo Hawaiian Associates, Lessee, General Lease No. S-3961, into TN Group Hawaii, Inc. (whose name later changed to Hilo-Hawaiian Associates, Inc.); Agreement in Concept for an Extension of Lease Term, Hilo-Hawaiian Associates, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-03:05.

Russell Tsuji representing Land Division distributed the executive summary of the appraisal that was provided by Hilo Hawaiian Hotel and he briefed the Board on item D-11 which is a 37 year extension request and has 18 years left for a total of 55 years. With the Board's approval they will proceed with the development agreement and staff will come back with the final approval. Staff believes the executive summary meets the requirements of the Act. In the preamble of the Act if the hotel had not been sold or transferred within the last 5 years ...although this bill was an administrative proposal they did comment that if the hotel was sold they didn't want the new Lessee to benefit from the low price. Here this is not the scenario with substantial time remaining and the merger was not a significant transfer of interest in that respect, like in industrial leases.

Member Goode asked you may or may not have a 50 percent threshold. Mr. Tsuji confirmed that they are willing to commit \$200,000 per year set aside for the continued maintenance of the hotel. If you have 55 years and in just 10 years you would be able to have a couple million dollars or so. Member Goode asked whether they would qualify the 50 percent – maintenance versus improvements and Mr. Tsuji said for maintenance.

Member Pacheco asked whether there is some use planned for that or is it an on-going basis. Mr. Tsuji said they hope to nail down the specifics in the development agreement. What staff was told was there would be a set aside and will not be an automatic spend \$200,000, but will be put into a separate account to hold for expenditures when needed. The applicant is here and this is something being proposed and they've been doing something similar.

Member Gon asked whether this will come back to the Board again when this is put into place and they will have another opportunity to look at it and Mr. Tsuji acknowledged that. He understands the applicant is looking forward to starting as soon as possible.

Rick Fried testified and introduced himself and Gary Oda representing Hilo Hawaiian Associates the reason why the bill was passed for Banyan Drive was pressure from the Hawaii Tourism Authority (HTA) to improve this area. The thought was if the lease was extended then it would justify putting in a lot of money into the hotel and a nicer place for people to stay. The agents are eager to get this started and hope to get the Board's approval to get these improvements underway by summer. Of the \$5 million for improvements \$200,000 will be set aside for maintenance.

Mr. Oda testified that they have a 10 year plan on what to spend that money on and there has been a lot of deferred maintenance in the Banyan area. The community is pushing for this because Banyan Drive used to be the focal point in terms of tourism and activities and they want to bring it back up. They want to do this project. The employees said instead of giving them raises use that money to renovate the hotel. \$200,000 is a lot, but there is a lot to do with the hotel. The \$5 million they will spend the hotel needs it. The HTA is pushing for the flights to stay and want more direct flights, but there is no higher level lodging or accommodations for these flights to come in. If they have the flights come in they want to be able to keep those flights. They hope to keep that going for the community.

Member Gon said he was glad to hear of the 10 year plan for improvements and be on a good track for the development plan to come back to the Board on a timely manner.

Member Pacheco said he is in full support of the Banyan properties and asked that he is hearing from them that the FFE account that Act 219 is specifically for renovation, remodeling and he heard maintenance and he wanted to make sure those monies are not.... Mr. Oda said they have a budget every year for maintenance and is totally separate and is an FFE account. They are upgrading the furniture in this go around. That money will be targeted to things improving the lobby, doing the roof, actual large capital items and is really a capital account. They have a separate maintenance account for the on-going hotel operation.

Mr. Tsuji said when staff met with the applicants they looked at that carefully and that they are not looking for an entire 55 year term. They have so many years and wanted 37 years from the time of extension plus the \$200,000 commitment and the furniture.

Unanimously approved as submitted (Pacheco, Goode)

Item D-6 Grant of a Term, Non-Exclusive Easement to the Puamana Community Association for Five (5) Shoreline Encroachment Areas, and Assessment of a \$500.00 Fine and \$940.00 in Administrative Costs Against the Puamana Community Association for Shoreline Encroachments, Puamana, Lahaina, Maui, Tax Map Key: (2) 4-6-028: seaward of 001.

Mr. Tsuji conveyed some background on item D-6 for various encroachments and staff is asking that administrative costs be assessed of \$940 and a fine of \$500. He reminded the Board that every time they have one of these to add the administrative cost and staff has done so.

Mark Roy representing the Puamana Community Association testified reiterating the background Mr. Tsuji just presented and introduced Richard Stark who is the General Manager. They seek the granting of 5 easements for encroaching portions of existing non-conforming sea walls as well as revetment footings and an historic pool that was built in the 1930s. These encroachments were identified from a shoreline certification process. He suggested removing some minor encroachments and to secure approvals for sea wall structures that cannot be removed as they provide protection for the Puamana Community.

Member Gon asked whether he was fine with the recommendations before us and Mr. Roy acknowledged they were.

Peter Young testified that he wasn't hired by anyone that he supports the easements, but thinks there should be some amendments because of unintended consequences following policy. He related how in 1999 the Land Board adopted the Hawaii Coastal Erosion Plan Map and in that policy one of the strong recommendations was to minimize and prohibit shoreline hardening. In 2003 we adopted the Integrated Shoreline Policy and talked about erosion based setbacks in the future instead of fixed setbacks. They have land owners following the policy, but are suffering the consequences because of it. Mr. Young distributed some photos and related the history on this property. His concern is the Land Board is asking landowners to follow the policies and not harden their shoreline and then natural processes happen. The Land Board then brings the same landowners who are following the policies, fines them and makes them pay for land they already own. All of the encroachments were part of the property and the landowners paid for that before. The Land Board needs to look at unintended consequences referring to 2 previous Board items where the landowners were fined, but at least the Board said that they may need to change the law. First we need to recognize these are not encroachments and with natural erosion they become exposed. That is a policy question the Board will be facing more and more. Mr. Young recommended the Board should create the easements and authorize the issuance of the easements now. Delete the fines, penalties and fees. These landowners are following the Department's policies and shouldn't be penalized for that - either eliminate, reduce, defer, or do nominal rent. The landowners waited 2 years to do a shoreline certification and the he thinks the Board should

allow authorizing the Chairperson to sign it so they can move forward with their construction. Mr. Young distributed a SOES study at UH – Manoa which he described. The property owner has to do some mitigation now before they have to come back to the Board again for violations or before it gets into an emergency situation. Direct or authorize the staff to work with the landowners to find some solutions. He related the same situation at Ka'anapali, but there is a pedestrian walkway there and with a significant barrier the landowner knows if it erodes to a certain point it stops there. You are letting the natural processes happen and giving the landowner some security. Mr. Young recommends approving this with amendments – delete the fees and penalties, these are not encroachments but things exposed that are privately owned. If there is a definition that authorizes the Land Board to grant an easement at a nominal rate he would suggest doing that. If there is going to be an easement fee and the submittal says fair market value, but these landowners paid fair market value and lost the use of the land that they had because of erosion. It doesn't seem reasonable to charge them twice. Eliminate, reduce or defer the rent, authorize the Board to sign the shoreline certification and authorize or direct staff to work with the landowner to resolve their future problems.

Member Gon said given what is shown in the erosions maps this situation is not going away and will occur more in the future. The best way to do this is the ocean is moving in at a known and predictable rate that one cannot plan with the boundaries one has now, but needs to anticipate over the course of the next half century or whatever time frame is necessary for these kinds of things. We didn't have these tools before us at the time the property was purchased and these improvements were made, but we certainly do now. These kinds of situations are what we are dealt with now with current policies. Each time these situations occur he sympathizes. It's turning into one of those natural hazards that need to be taken into account. Mr. Young said it has been confrontational and the landowners shouldn't have to continue paying for their own land.

Chair Aila pointed out that the Department recognizes what he is saying and in their Legislative package this year is a bill to give the discretion to the Board to allow the Board to offer a nominal fee in the reconciliation of these issues. Mr. Young said that is one answer suggested changing what you call is an encroachment since the ocean encroached on their land at no fault of their own. The Chair said he thinks all the Board members agree with him. It's just the current interpretation of law. Mr. Young reiterated his earlier suggestion of deferring payment at least to 2013 or at least until legislation gets passed.

Mr. Tsuji said as noted in the submittal that the 2 previous issues staff knew what they were bringing before the Board. This is not the same situation. A photograph is not good enough that staff did research the original sub-division map and knew exactly how much square footage the private property was with an aerial photograph and they knew where the shoreline was. Encroachments were built within the record boundary and nowhere near the shoreline. It is common law that anything seaward of the shoreline is owned by the government and that is an encroachment. He made references to the 2 previous issues (Mr. Young talked about) with encroachments and cited a Gold Coast case. In the Federal 9th Court of appeals where you have a structure built entirely on private property, but over the years erosion occurred and the structure existed seaward of the shoreline. The 9th Circuit held that structure was an encroachment and needed to be removed by the private landowner at his own cost. The Supreme Court decided not

to hear this case which means in the 9th Circuit Court that is the law of the land. Hawaii has not addressed that particular case yet, but Land Division staff is following how they interpret the law consulting with the AG's office. If the applicant has more information staff is willing to look at it, but they would have to really study to be convinced that the structures they are talking about was built within the private record boundary, but nowhere close to the shoreline at the time it was built. That is the bill staff is proposing as a condition and there is no question that the shoreline was not even close to the structure. He only has the information in the submittal. The problem with authorizing the Chair to sign the shoreline certification is later on they will say they don't want the easement and referred to a previous case with TLM. Resolve the encroachment first before the shoreline certification and it does say that in the rules to resolve.

Mr. Young said that it takes a while and it's already been 2 years for some of these land owners that he doesn't think it's fair to delay the shoreline certification. The pictures speak volumes. In 1960 there were fast lands on the side of the pool and now erosion is exposing all of this.

Member Goode asked what improvements are proposed on the property that requires the shoreline certification. Mr. Tsuji said what is triggering the shoreline certification. Mr. Roy said the Association is moving forward with that primarily to undertake some repair actions to the historic swimming pool. It is an existing non-conforming structure.

Member Morgan asked what other projects he anticipates. Mr. Roy said he doesn't anticipate anything else at this time. He says primarily because this is a planned development in Lahaina that anything that would trigger an SMA approval would trigger a need for the shoreline certification.

Member Goode asked whether he knew if the Association has looked at building a new pool in land. Mr. Roy said they have looked at all options and they are faced with limited budget constraints. The structure there today is a valuable historic asset for the Puamana Community and wants to undertake the renovations to save the historic pool and it has some emotional attachment to the community.

Member Gon said he understands the historical significance and that it flies in the face of a planned retreat near the sea and anticipates any improvements that are made if the rate of erosion continues it will be an island surrounded by seawalls and revetments. It is the kind of thing to anticipate that would have problems in the future which is why he appreciates plans to move this to another location. That particular point will see accelerated erosion from the ocean. Both City and State need to reform their laws and policies regarding developments right along the shore. It is something you can't only deal in legal measures such as recognition of the power of the sea and the natural processes that are occurring and deal with them in an intelligent manner. He just wants to say to anticipate for the future. Mr. Roy said to clarify some of the erosion rates the structures requested for the easement from the Association's standpoint are well performing and are in good condition. Further down the shore is experiencing some erosion and the Association is looking at that to identify a long term solution to that specific issue.

Mr. Tsuji said to what Member Gon talked about it came about in item D-5 discussions and not in D-6 submittal that in D-5 the applicant told him that the applicant intends to re-build within

the record boundary and he wasn't sure is that was a condition the Board would entertain for both of these properties, but the issue of the shoreline comes in further at some point and then what. Member Gon said that it is true that the whole idea of the planned retreat from the sea recognizes that there is a continual reassessment of whether improvements should be allowed or not.

Member Edlao said he understands what Mr. Young is saying, but based on what the Department presented on the now the applicant accepts that fact. Until things change we will have to look forward based on the interpretation of the law now. It's unfortunate, but based on the future changes will have to be made to correct these kinds of things. He made a motion to approve as submitted. Member Goode seconded that.

Member Gon said with your discretion he does look at the recommendation at what this may mean in the future for the applicant and when you see you were fined for illegal encroachments puts a negative mark on the landowner that arguably did nothing in violation of the law at the time those structures were placed. As suggested by Mr. Young to call it something different Member Gon sympathizes with that. If he was the landowner and later had a proposal before the County and he was fined for encroachments by the BLNR for denying his....he doesn't like the consequences of this act from decades ago at a time when the laws did not violate and come to put a mark on their name. He is not sure what they can do about that except maybe in the communication to them as a resolution of this some sort of indication of our acknowledgement of ...Chair Aila clarified as illegal in terms of ...Member Gon said in terms of current State law that this is a complex issue.

Member Morgan agreed that they are accepting the recommendation because it's like a lawsuit that it's cheaper to settle and is the expectations of other situations.

Chair Aila said the suggestion from Board Member Gon is in the communications that goes out referencing the Board decision have an explanation as to why according to the current law is behind this encroachment, but some sort of discussion that this land was once fast lands and now because of climate change according to the Statutory Rules its described as an illegal encroachment. It is not admitting to an encroachment. Mr. Tsuji suggested taking out the word "illegal". Member Gon said that would be better.

Member Pacheco said he heard Mr. Tsuji say he wasn't absolutely clear it was erosion as to other cases they did. Mr. Tsuji agreed and said otherwise staff's submittal would have gone into that. Staff tried to be fair and this was a simple encroachment. Member Pacheco said he was fine with taking out the word "illegal."

Member Edlao agreed to make that amendment and go with encroachment.
All voted in favor.

The Board:

Approved as amended. The Board amended Recommendation No. 1 by deleting the word "illegal" to read: "Impose a \$500 fine for encroachments, and assess \$940 in administrative costs against the Applicant, pursuant to HRS Section 171-6."

Unanimously approved as amended (Edlao, Goode)

Item D-5 Grant of an After- the-Fact Term, Non-Exclusive Easement to Association of Apartment Owners of Leilani Kai, for Pool and Pool Deck, Encroachment Purposes, Assess Administrative Costs of \$590; Waiohuli-Keokea, Kula, Maui, Tax Map Key: (2) 3-9-008: Portion of 001.

Mr. Tsuji reported that item D-5 is clearly an encroachment on a beach reserve which is our land. There is a pool and pool deck encroaching on the outside boundary of the property. After speaking to the applicant, the pool will be pulled back from the easement area. He wasn't sure whether the Board needs to make that a condition.

William Milne, Treasurer of Leilani Kai AOA introduced himself and Dick Taylor as well. Mr. Milne testified that they are fine with the recommendations that they are a new board and learning what's right. They did take out the irrigation and trees relating the old way of determining the property line. Their plans and drawings show no indication of a pool and show no information. They plan to move the barbecue back on their property and cut the concrete out to the mauka side of their property line. Also hiring a landscape architect to lay out a new pool and they are setting aside monies for that and asked for the easement.

Mr. Tsuji said it was his understanding was everything that was to be moved has been and the only thing left is the pool and pool deck. Mr. Milne said there is the grill which they will move and the slab of sidewalk will be cut off with a concrete cutter. Chair Aila asked how much of the sidewalk and Mr. Milne said 10 feet and pointed it out in the photos describing what they will do.

Member Goode asked about the drawing of the easement and Mr. Milne said that wasn't the current drawing and that staff has the full size survey of the property.

Mr. Tsuji said that if it stays it typically needs an easement that they didn't discuss this. He asked if Mr. Milne would be willing to have a condition in the easement that the barbecue and the sidewalk be removed within 2 years and would he be willing to have staff contact the appraiser to determine how much the value would be if they added an additional area for a 2 year period that way we will be compensated for a shorter period in this area. Mr. Milne agreed saying they want it done by then or sooner noting they are a small AOA. He asked when the signing of the easement would be. The Board members said 6 months. Mr. Tsuji asked whether they had a survey and Mr. Milne confirmed they have a complete survey drawing and wasn't sure if they have to redo it based on the condition wording. Mr. Tsuji noted there will be additional cost for the appraiser and for the additional 2 years. There was more discussion of the drawing.

Member Goode moved to approve staff recommendation as amended to include this additional easement for 2 years which covers the removal of the sidewalk and barbeque. Member Edlao seconded it. All Board members voted in favor.

The Board:

Approved as amended. The staff submittal throughout and the recommendation section were amended to reflect that the approved easement area is to be increased to include the existing barbeque station and sidewalk area for a two year period only though the remaining easement area will run for a total of 55 years; the survey and metes and bounds description would need to show the added the barbeque station and sidewalk area at Leilani Kai's costs; and the appraiser shall value the additional barbeque station and sidewalk area for a 2-year period, together with the remaining easement area for a total of 55 years, at Leilani Kai's costs.

Unanimously approved as amended (Goode, Edlao)

Item K-3 Conservation District Use Application (CDUA) HA-3630 For the Queen Ka'ahumanu Highway Frontage Road: Hulikoa Drive to Kohanaiki Way and Subdivision of Land by Kohaniki Shores, LLC Located at Kohanaiki, North Kona, island of Hawai'i, portion of TMK: (3) 7-3-009:018

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background on item K-3. Staff ran this through the CDUA process and this will hook up with Queen Ka'ahumanu Highway. The Kohanaiki Resort people are paying for it and will be turned over to the County when it is completed. Staff ran a cultural impact assessment and was consistent with Kapa'akai analysis and comes with recommendations and standard conditions.

Steven Lim representing Carlsmith Ball introduced himself, Tom Schnell and Joe Rupert and he testified that they would appreciate approval of their project. They will build it to County standards and dedicate it to the County. This is for a segment of the road between the airport and Kailua-Kona town which would alleviate some of the traffic. They agree with the conditions.

Member Pacheco asked referring to the National Park Service comments that they are in line with what is in the SMA. Mr. Lim acknowledged that was correct that the SMA commission addressed those comments and that condition #8 on the SMA permit addresses those concerns which he read.

A motion to approve was made by Member Pacheco and was seconded by Member Edlao. All voted in favor.

Unanimously approved as submitted (Pacheco, Edlao)

10:23 AM RECESS

10:31 AM RECONVENED

Item D-9 Issuance of Construction Right-of-Entry Permit to Department of Transportation Relating to Replacement of Maipalaoa Bridge under Federal Aid Project No. BR-093-1-(21), Lualualei, Waianae, Oahu, Tax Map Key: (1) 8-7-005:portion of 004.

Mr. Tsuji presented item D-9 and said he had nothing to add that Department of Transportation (DOT) was here.

The DOT representative didn't have anything to add.

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

Unanimously approved as submitted (Morgan, Gon)

Item D-2 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Land Clearing, Construction of Perimeter Fence and Removal of Ohia Timber by Connections New Century Public Charter School, Kukuau, South Hilo, Hawaii; TMK (3) 2-5-06:141 portion.

Written testimony from Jan Yokoyama; Allen Novak; Patsy Iwasaki; Henry Lee Loy, M.D.; Nadezna Ang, M.D.; Melvin Yokota; Layne Novak and Elise Yamamoto submitted written testimonies to the Board members.

Mr. Tsuji reported that item D-2 is an enforcement action against a charter school which this Board had previously gave final approval of a lease to be issued for use of public lands. The lease has not been executed. There was some delay of staff receiving the documentation of maps and when it was received, currently, the request for a legal document or a lease is with the Attorney General's (AG) office. He discussed the submittal with his staff and we did not actually receive a complaint that this was a self-report situation. Staff got a call from Ted Hong who represents the School and reported the incident to us. Staff went out and inspected the site noting the grading and fence and some work that appears to be evidence other than what is in the submittal had been done over the cave. Mr. Tsuji noted in the environmental assessment (EA) that makes certain representations about a buffer of 100 foot from the entrance of the cave and the cave was not damaged. After discussing with his staff, Mr. Tsuji didn't think the facts they had before us warranted a maximum fine of \$5,000.00 for a first time offense and recommended the fine be reduced to \$500.00 and still proceed with the administrative costs. Mr. Hong and some of the students are here. Staff and the Board received a flood of testimonies from residents in the Kaumana community and his take on their testimonies is they are asking that the Board not approve the lease, but what is before the Board is an enforcement action and not the lease.

Member Pacheco said he thinks they are asking to rescind the lease from what he has read. Mr. Tsuji said again, that is not before the Board right now.

Member Morgan asked how he feels about sticking to the recommendation of the removal of the fence. Mr. Tsuji said he discussed that with staff as well and he described the fence. His question was if they had a lease and had gone through all the departments IE plans and specs, would it have been approved and the comment was yes. He wants to take out that recommendation. It sounds like hearing from the community maybe the fence is better to be around there and he thinks the applicant would want to retain the fence.

Member Gon asked the staff said the lease even though it was ...Mr. Tsuji said was waiting for it to come back from the Department of the Attorney General (AG). When it was submitted to the AG's office for a final exclusion they had to wait for the leaps and bounds on the map to be prepared.

Member Pacheco asked when the lease was in affect what would they have to do with the Department to build the fence. Mr. Tsuji said anything they build would need plans to be submitted to the Department; staff would review it, comes to his desk, to the Chair's desk and would recommend a signature. Member Pacheco asked whether that would not normally be a Board action. Mr. Tsuji said no, staff tries to handle that administratively on the staff level and they make sure it complies with the lease and the intended use of the lease.

Member Edlao asked why are you reducing the fine. Mr. Tsuji said #1 this was a self-reported incident. Number 2, he knows a large part of this submittal was talking about the construction and grading that occurred apparently over the Kaumana Caves. His manager Gordon Heit went out there and the submittal was written from his viewing that it looks like the grading occurred over the Kaumana Caves and that is the extent of the evidence staff got, but the Kaumana Caves were not damaged. On the representation on the EA that they would provide a 100 foot buffer from the entrance of the cave, Mr. Tsuji did not see looking back on the Board submittals that in the approval of such a lease that they comply with all representations and warranties made in the environmental document. He doesn't believe we are the ones to enforce if representations and warranties were made in the EA if something was not complied with, he doesn't believe they are the ones to enforce it. Not for the Land Division to bring forward on something like that. Member Pacheco asked who would. Mr. Tsuji said good question.

Member Edlao pointed out that they (the Charter School) proceeded even without the lease. Mr. Tsuji said they did proceed without the lease; they did not have a construction right-of-entry...

Member Pacheco asked whether they had a grading permit from the County. Mr. Tsuji said they did not have a grading permit and what he understands, his staff checked it out, there is a violation pending for grading. Member Pacheco said it is significant grading for a fence line. As far as the Kaumana Cave which he knows really well, other than busting through the top the other damages are the biota which he described unless the fence line happened to run along on top of the cave. Crossing the top of the cave would be minimal effect to the cave and he can't imagine this project having any impact on the cave.

Member Gon said unless large ohia trees were removed from over the cave entrance, but over the course of the cave. Member Pacheco agreed and said that was only if the line of the bulldozing ran along the line of the cave. If it transected the cave it would be a minimal amount. There are areas in that cave where dense roots are coming in, but in most cases it's not. It would be difficult to quantify the damage. Mr. Tsuji said for recommendation #4 it does reserve the right to impose additional fines if they should have additional information upon further investigation. His staff thought there was some urgency to bring this before the Board because there was no right-of-entry, there was no lease in place and this was an entity that got final approval for a lease and there was significant grading and construction on the site. Again, you could go with the maximum fine. He is just saying he has seen more egregious situations in the past where

staff wrote letters and the letters are ignored and they continue on, but here they self-reported. As he knows everything has stopped and issued a cease and desist, but he will leave the fine situation to the Board. Staff has had situations where they get complaints or they had to hunt them down which wasn't the case here as to the School.

Ted Hong representing Connections Public Charter School introduced himself, Principal John Thatcher, Eric Boyd – Executive Assistant for the School, Ted Seldon, Shawna Short, Dakota Helfrich, Halau Lokahi under the instruction of Kumu Hina and Dewey Kim the former Executive Director for Charter Schools. On behalf of Connections Public Charter School we want to apologize that we are here before the Board on this violation. We want to accept responsibility for what had happened and what was done on the cave on the property. Keep in mind we are talking about 2 separate properties. There is a mauka parcel divided by a road and the lower parcel. The fencing was done on the lower road. When we talk about any bulldozing over the caves it was probably done on the southernmost lower portion toe of that particular property. It did not follow the Kaumana Caves on the lower part of the property. The Kaumana Cave ends on the mauka parcel at Adeja Street and when they constructed Adeja Street they blocked off the rest of Kaumana Cave. And, we agree with the amended recommendations. Mr. Tsuji mentioned the \$500 assessment and administrative costs and they would like to keep the fence up. Mr. Hong said that they brought a bound version of their submittal with supporting exhibits for the Board members.

Ted Seldon testified that he is a 14 year old 8th grader who is here to support his school so he can have a better education. He related his sister's health situation where the teachers at Connections Public Charter School worked with her so that she could continue her education in the hospital on the mainland that the school fund raised for them and welcomed them back home. When he was in kindergarten no school would accept him because he had autism and only Connections got him help at the school. It makes him sad that the Kaumana residents don't trust their students because they come from poor families, but they deserve a better school. He is here to fight for his school.

Sena Short testified that she represents the 6th grade. They at Connections thought they had permission to build the fence around the property because they already had the lease and Connections did not know the fence company was chopping down the ohia trees and did not inform them that they would do that. As soon as the principal found out the trees were cut down he notified the police immediately. She asked to reduce the School's fine from \$5,000 to \$500.

Dakota Helfrich testified that she is a senior at Connections. A fenced was placed at Kaumana because of the concerns of trespassers' and the possibility of future students wandering off campus. Connections administration was not aware that those contracted to build the fence intended to clear away an unnecessarily large portion of the forest. Now that it has been done there are plans to replant what has been destroyed. The fence was the single alteration made at the property simply as a precautionary measure and not as a claim for entitlement. The Kaumana community is against this Charter School being built because of their concerns that their students are from Puna and are thieves and will break into homes. She takes great offense of people accusing her and her peers that they are unworthy of a new campus because they are not trust worthy. Their school has the most creative, intelligent and minded students because Connections

is one of the few schools where individuality is a treasure to be nurtured. They are not bad kids and have no intention to vandalize the homes of others. Their school is trying to provide them better facilities. She noted that the opposing party vandalized their school in the Kress Building last week and made personal attacks on their principal questioning him. This campus would be an asset to our community and she wished the Kaumana community would give them the chance to prove that.

Mr. Hong said in terms of the circumstances regarding the fence the primary reason for putting it up was to protect the asset and that property. The reason was when the lease was first granted and Mr. Thatcher walked the property line he noticed and reported people growing marijuana on State land. He testified at the Hawaii County Grand Jury to prosecute these individuals. When they walked the property line a lot of trash was found on State land – used tires, construction stuff all dumped on State land. They noticed some neighboring property owners encroaching on State land using it for their own purposes – kennels, fighting chicken coops and things like that. They had 4 community meetings; they walked the neighborhood door-to-door with our conceptual plans of our development and talked to anybody that we could. In those community meetings several community members said you should fence the property to protect it and they did that. They acknowledge and accept that responsibility and apologize. One of the questions they had of staff was reforestation within 60 days and they wanted to know whether they had to start within 60 days or complete it within 60 days because they engaged David Miranda in Hilo and he says it will take 4 to 6 months for him to propagate a similar ohia species and other native plants so they can start the reforestation project. Connections will use this reforestation project as part of their curriculum. Mr. Hong introduced Sue Lee Loy from his office who is working closely with Connections.

Member Gon noted that recommendation #3 has been amended to say to remove the fence line and/or restoration work is clear to him when restoring the land to satisfaction of the Department it's speaking of restoration of the plant species of that area. No one could expect to restore a forest within a 60 day time period, but it is unclear on what the parameters would be and asked him to elaborate more on the whole situation in breach of process. Anytime you deal with leased or even owned land in the conservation district it requires a great deal before a fence is built and to explain how that happened without the permits. Mr. Hong said their motivation was based on the all of the factors they told them in his presentation on the last page which lists the mitigation factors discussed. How did we do this without any permits? We were given the final lease and doing all the leaps and bounds and everything else based on the community input. We freely did it without the permits because they thought they were lease holders that they could proceed to protect that asset and they went ahead and did that. Granted, referring to Ms. Helfrich's testimony that they hired this individual and their contract said only a 10 foot wide at the maximum to help them put up the fence. If you look at the photographs that is not 10 feet and that is not even close and as soon as that was discovered to what was going on Mr. Thatcher went up to the property, confronted the individuals where there was physical confrontation and from there they filed a police report. They reported to the DLNR, they filed a complaint with this individual with DCCA regarding his contractor's license and Mr. Hong sent him a letter from the school saying to cease and desist and if there is any fine they intend to go after them. Based on their response from their attorney we are on the door step of litigation, but we consider this as much as an affront as anybody in the Department or the Board. They did not have

permission to go onto the property to build the fence. We acknowledge accepting that responsibility and apologize.

Member Pacheco pointed out that the work on the fence was not put up in a day or a week, it was an on-going project, and it looks like it was pretty much completed then this all happened. For me there is a gap. If I hired someone to build a fence for me on my own property I would be checking on the progress and expecting immediately that this is what we signed up for. Where is that gap? John Thatcher explained the gap was more coincidence than anything. I would be supervising the construction with whatever was going on. It is my responsibility as the head of the school. I had to go to Texas because of a death in the family. While he was gone Mr. Boyd was monitoring the project, but his wife had complications and had to come to Oahu to have their baby. During that time period Mr. Thatcher's wife called saying someone is up at the property bulldozing and shaking some houses. He was on his way home and his son called saying a truck was going down the street with ohia posts and he thinks it came from the property. His son asked some friends near there and said yes those guys were taking logs off the property. Mr. Thatcher told his son to call the police right now and his son made the police report as soon as they knew what was going on. Seeing that they were gone maybe he should have had somebody else up there watching the construction everyday but he is in the business of running a school and he was naïve about going through these kinds of processes. Since that time we have gone through our associated non-profit and asked them to support Ted Hong and Sue Lee Loy to make sure we are doing everything right on this project. I wanted to personally apologize also that he is not trying to give excuses, but in the future we will be following the lead of Sue and Ted in everything we do.

Member Pacheco asked whether the contract from the fence company was in here because he didn't see that. Mr. Hong said no, they neglected to put that in, but they have it here with us and could make copies – its 2 pages. Member Pacheco said one of the difficulties for us is when we have a leaseholder who has a contractor and the contractor who's responsible. For me in one way he would like to lessen the fine to your school, but in another way I am struggling with finding a way to create some pain to the contractor who did the work in the place. Another thing on condition #3 on the fence removal, he supports that and there is a need for the fence if the school is going to be stewarding that land and could benefit from the fence. Would you be amendable to changing #3 to require submitting a restoration plan to the Department within 60 days? Mr. Hong said they have one already. David Miranda and his wife Snookie Mello, David put together a proposal for the School for restoration to propagate the ohias in the area.

Member Pacheco said he would like to look at that contract. Mr. Hong handed it over to the Chairperson who passed it to Member Pacheco.

Member Goode said from an education standpoint having sat on the Board of a private school they had fencing issues too. It's supporting keeping the kids in a certain area and to keep people out and he understands the need. He wants to see the contract, too. Another thing that keeps coming up is talk about a lease, but there is no executed lease is that correct? Mr. Hong said that is correct. Member Goode said they had somebody trespass on our property and maybe you had some kind of contract with them and maybe giving them some go ahead, but in some respect Mr. Chair we should be going after the contractor, the person who actually did the violation. We

didn't have an executed lease. We had given authority to enter into a lease and there is a lot of paperwork associated with that and maybe you guys wanted to move this along, there may have been funds that were lapsing and maybe something we have to talk to our Deputy AG about, but as far as I can tell we didn't have a lease and somebody trespassed on the property, but it was the contractor and maybe another legal proceeding related to all that. Mr. Hong said he agreed with him speaking on behalf of his friends at the AG's office and would be more than happy to take on that litigation regarding the contractor. It is something they are not taking very lightly. He noted that any assessment comes out of school operating funds whether it's \$500 or \$5,000. Member Goode said either way it takes away from the kids.

Member Pacheco asked you are saying there may be a way to pursue the contractor. Mr. Hong acknowledged that. Member Goode said that is something they could talk to their Deputy AG about in moving forward. What he is concerned about and he knows his (Mr. Thatcher) job is to make sure everything is going smoothly with these kids. Your job is not project manager. When charter schools do a major project which this is and you've only done the first bit of work and it didn't go well. When a school does a project they have DAGS who does everything. DAGS has people who have been doing this for hundreds of years and knows this process. It sounds like you don't have a DAGS and this is all going to you. If there is a way it's important that you hire a project manager. Maybe Mr. Hong has some folks. There are people out there who prosecute complex construction projects that deal with a lot of legal entanglements, permitting issues, dealing with neighbors, all kinds of stuff and they do that for a living and I think it would be the wisest dollar you'll spend and I would rather see any fine money go towards a future project manager. Mr. Thatcher said that they are already talking to people who say they would like to be the project manager and he said that they would like to get through the rest of the process.

Member Goode said although there is the issue of doing the lease and you can't move forward until you get a special use permit from the County. Evidently, that is coming up for a hearing rather soon with the Planning Commission. Mr. Hong said November 9th. Member Goode said they would have final authority as to the use.

Mr. Tsuji said as noted in the submittal there is an on-going investigation based on the information that we have right now and that is why staff thought it was urgent to bring to the Board to resolve for now, but they reserve the right for further information and to impose additional fines and yes. If an investigation shows we can point to another party, but right now I don't have that. Mr. Tsuji cited the koa logging case where there was a long investigation giving an accurate number of trees logged and a fine based on that, but we don't have that.

Member Morgan asked whether you talked to the fencing contractor at all. Mr. Tsuji said no, that staff got the self-report and he doesn't know what DOCARE (Division of Conservation and Resources Enforcement) has. Chair Aila said according to the submittal Hawaii Island Police has started an investigation and may turn it over to DOCARE for further follow-up.

Susan Lee Loy, attorney for the School confirmed that is accurate Chair Aila that the Hawaii Island Police Department is doing the investigation and turned it over to DOCARE because of the ownership of the property. They did initiate a review with the Regulated Industries office to take a look at what they believe is gross negligence on the part of fencing company. She referred

to item 11 in their binder that they initiated that complaint. It is their understanding is they have been assigned an investigator and have been coordinating information with the School's coordinator.

Chair Aila asked Mr. Thatcher in his discussions with the contractor at no time did you indicate with the contractor that they were welcome to take any trees on the property. Mr. Thatcher said no.

Member Goode said he is glad to hear that its on-going and something else may come to us. He asked whether this is ag land. Mr. Tsuji confirmed that it is. Staff said to get this done for now and if there is more evidence later they could take further action to proceed. He pointed out the extent in the koa logging case and here we don't have much which is why he recommends a minimal fine. We do have unauthorized grading and putting up the construction and when he saw that the School reported the incident to the police it lead him to believe that they weren't in cahoots with the contractor.

Member Morgan said that this is not to give any kind of allowance to the contractor, but it's almost impossible to clear anything with the length of one blade. You have to push it to the side. It's the intent of it. It would have to be a blade wide or it would all pile up. Member Pacheco said you've seen the pictures and I had seen the site it's a large swath. Member Morgan said its' a 150 feet.

Jeffrey Kalani Gomes testified that he is a retired navy veteran and lives directly across the area that was destroyed and lives next to the area that was going to be built on. He related reading in the paper that a barn will be built next to their house and questioned how that happened. He left messages and e-mails with the School and none were returned. Mr. Gomes questioned how a School is allowed to come into Kaumana because the roads are tight and related his concerns with traffic. He asked why they didn't ask him because he lives there and that John Thatcher is his neighbor. People are not aware and are asking when this happened. His wife is a teacher and they are not against schools, but they told one of the teachers they are against his school being built next to his home. Everyone in the Community supports the School and asked to read that e-mail.

Chair Aila said he will read the e-mail since it pertains the issue before the Board today, but whether or not the School remains in place or the lease remains in place that is not the subject of today's meeting. This e-mail is from Bill Thorpe responding to Mr. Gomes offer to use his shop. Mr. Thorpe's response was Connections Public Charter School meets on Saturday and he is the lead teacher on a project and they are interested in harvesting and use the trees from the property. We are interested in working with you. The Chair commented that whether or not Mr. Thorpe has the authority to speak on behalf of the School in terms of harvesting trees he was not sure, but it pertains to our discussion. If you could, keep your comments to the violation because that is the subject of the Board action today.

Mr. Gomes testified that they witnessed the bulldozer, some neighbors have video, people witnessed the trees being removed, but nobody reported anything because they thought it was their (the School's) property and their trees. At the meeting John Thatcher said they would be

hand clearing the trees to lesson environmental impact and will not come in and bulldoze everything, but the first thing they did was bring in a bulldozer. Mr. Gomes checked out everyone and he introduced himself to them and these guys looked familiar. Come to find out that the contractor is Chad Soares a known drug dealer and John Gonzalez another drug dealer. They may be reformed, but they don't want them in their neighborhood citing his family's fears. The School has a rule that states you got to do background checks. Did you read the contract? Does it say the students are going help anywhere in there? Chair Aila said your point is they hired a contractor the contractor based on your documents are not the most trustworthy and that contractor has since been rescinded. Mr. Gomes said they are pretending to not know the area was bulldozed. Chair Aila pointed out that they admitted the area was bulldozed. Mr. Gomes said right, but referred to a newspaper article that they are trying to slander us for opposing the school saying they had no knowledge of what was going on. The Chair reiterated whether or not the school is there is not today's discussion. It is really about the violations that have occurred and how we are going to adjudicate the violations. Mr. Gomes asked about the barn being built next to his home and a Barbara Jean said that the plans have changed and that is not going to happen, but his concern was when somebody has access to the property they start doing what they want without permits and without permission which is what happened. He related an issue with the School regarding another project in Puna where the community complained, but they got permission after-the-fact. They are dividing the community and Mr. Gomes had signs made.

Chair Aila reminded Mr. Gomes to confine his testimony to the violation. Mr. Gomes related a lava tube/cave that had smoke coming from it where the Fire Department checked it out and couldn't find where it was coming from. They bulldozed with disregard that there might be a cave under that property. The Chair said their staff went out there and determined there was no damage made to the cave. Mr. Gomes said not yet because the cave is still sealed and needs to be inspected. Chair Aila said they will take that advice. He asked whether he had specific testimony on the violations other than what he has presented. Mr. Gomes said he and his neighbor saw vehicles laden with trees throughout the process. They saw Eric Boyd. He has video he would like to show of the bulldozing. Chair Aila said they would like to have our conservation officers contact you for access to DVDs and photographs you have regarding the bulldozing and any illegal removal of trees. Are you comfortable with that? Mr. Gomes said he would also like to leave some photographs with you which he described was taken by one of his neighbors – a PhD at the University of Hawaii, this is his statement with Callas after reading the newspaper article. The Chair asked whether he thought he and his neighbor would be willing to talk to investigators and Mr. Gomes confirmed he would. Chair Aila said they will follow-up and have the Hawaii Island Division of Conservation and Resources Enforcement contact you and your neighbor and asked Mr. Gomes to leave his contact information which he did. Mr. Gomes asked to tell your tenant to stop spreading lies about us that they don't hate the School or any school. They are not intimidating anyone. When they (the School) fired the contractor they didn't pay him and now we have angry drug dealers in our area and they need to settle that with them that we as a community shouldn't have to worry about when they might come back to try and collect. Chair Aila said he is sure they tried to contact the contractors that there is legal action pending action against the contractors right now.

Mr. Gomes asked to have someone inspect that cave to protect the animals and Chair Aila said that he will be contacted by enforcement.

Dewey Kim testified that he is the First Deputy Director of the Charter Schools and was a Deputy AG for 20 years. Connections is a wonderful charter school and culturally sensitive that he was there when they were looking at the property originally. One of the first things they talked about was protecting the caves, protecting the ecosystem. He related having taught at Punahou and knows these are good, smart kids, but a lot of them don't have any money and they don't have nice facilities. Connections is in the old Kress Building in Hilo. What the State did here is encourage Connections. Mr. Kim spoke of Halau Lokahi's wrestling team winning 4 OIA championships for a first year program and couldn't go to State because they didn't have the \$900. The reason why he works with these kids is if you give them anything they will take it to the max and that is why he congratulates this Board for supporting putting a school in a beautiful location set in a location where they are already learning about the eco-system, about love of the land, about protecting each other and these are communities. He related the hardships and negatives these kids face, but they practice by themselves without any adults and aren't out causing trouble.

Mr. Kim said that schools are hard to run which is why they don't have any principals at these schools and the reason why he is there that it's difficult for one person to deal with the special education law, special permits, codes, etc. He knows John (Thatcher) for 12 years and if he made a mistake it isn't on purpose. In fact, this is contrary to everything John has preached to him over the years. Mr. Kim related buying lunch for the kids at McDonald's and how one brother saved some lunch for his brother knowing he didn't eat lunch without making a big deal. They don't have electricity and Mr. Kim knows these boys will go to excellent colleges that they are going to be incredible people that people on the Big Island will be happy to know and to support them in any way possible. Two things you need to protect in Hawaii is the land which the Board is doing effectively and the other is the kids. In protection of the land, the caves should be accessible to everyone and leave it in its natural form and should allow the School to put in their school as you already permitted that is culturally and ecologically sensitive. You give anything to these kids and they will run with it because they have very little. He thanked the Board for allowing the permit to go through that this is the way education will go. Punahou will always be Punahou because they have tremendous resources and will always be good. But, schools like Halau Lokahi and Connections these are the schools we got to watch because they are doing a lot of stuff with nothing.

Chair Aila asked whether he had anything specific to the violation. Mr. Kim said the only thing specific to the violation is he knows John and he knows the School. Every word is cultural sensitivity, no gmo's, on and on. For them to have taken down the ohia trees I think was the fault of the contractor as stated by the investigative people.

Member Pacheco said that they heard a fair bit of testimonies that was related to our pending lease to Connections and he wanted to communicate that when they give a lease to a property they have to come back with all their entitlements from other agencies such as the County that's where those issues having to do with the surrounding area are dealt with. Is that fair to say Russell? Mr. Tsuji said in this case they do have final Board approval subject to the plan. Member Pacheco asked but, if they can't get their SMA or their stuff from the County then they can't do the school and the lease comes back to us. Is that correct? Mr. Tsuji said actually, the lease document is being prepared and will be executed in due time. If there is construction of a

building our lease would require compliance with the County zoning, etc. and require a building permit. We don't necessarily bring back the lease unless there was some default under the lease such as construction without a permit, etc. Member Pacheco said he wanted to make clear that us approving the lease doesn't mean that the permission to actually build structures relies solely with this Board. Mr. Tsuji said our lease relies on County ordinances, rules, etc., State policy and if completed they had the EA done and was published. As far as he knows it has not been contested.

Ms. Lee Loy said they did submit their special permit application to the County of Hawaii and they prepared a recommendation which is contained in the Board's packet as Exhibit A. There were a number of conditions for approval that they are supporting which also addresses some of Mr. Gomes concerns regarding sidewalks or easements. Some traffic mitigation measures and a few other things that came up in the process.

Chair Aila suggested the School work with the neighbors to clear up the misinformation on both sides and the community should be working with the school too. Talk about what the real facts are. Obviously something went wrong and doesn't appear to be entirely the fault of the School and there appears to be a lot of misinterpretation of who is doing what, when where. Increased communication would be a big help the relationship in the community which will take you a lot further.

Member Morgan said he wanted to say that he supports the staff's amended recommendations.

Member Pacheco made a motion to approve with the following amendments to recommendation #2 by reducing the fine to \$500 and assess the administrative fees to the amount of \$540 and condition #3 require Connections New Century Public Charter School to submit a restoration plan to restore the land to the Department within 60 days from the date of this Board action. Member Morgan seconded that.

Member Goode said he supports where we are going with that he had made mention earlier of a project manager and wasn't sure it was appropriate to add that as a condition, but to him that is key. The language he has is "Hire a professional project manager to execute the project in accordance to all applicable laws, rules and act as a facilitator to the immediate community." We are still involved here, but he can't see how you can run a school and try to execute this project. The Chair said as a friendly amendment. Member Goode said if it's appropriate.

Member Edlao asked if we put that in as a condition are we responsible to vet this guy. Member Morgan said it should be a recommendation, but he doesn't think it's necessary. Maybe should add the word "hire" maybe.

The Chair asked he recalls that they are on their way to do something similar, is that true. Ms. Lee Loy confirmed that they are through the process of the permit application with us moving on to the State land use. There is going to be a number of conditions of approval and that becomes the road map for us to develop the campus. At that point they will be moving to hire a bunch of engineers, water, traffic - we have all those sub-consultants on board already through the EA

process and are familiar with the concept we just need the road map with the conditions of approval and they will be moving in that direction.

Chair Aila asked whether there is someone similar in the role of a project manager that they are considering right now. Ms. Lee Loy confirmed saying yes they are currently looking at that right now. Mr. Hong said that we made a mistake and he thinks Member Goode's amendment we would encourage the Board to adopt that. We are going to show you that we are not going to be back before the Board on this kind of violation, again. Ms. Lee Loy said this process helped us develop those protocols. There was a lot of miscommunication going on at the school and when their office got on board she put together a check list for them on what they needed to do. For example the right-of-entry, we initiated that process from our office. We initiated letting Gordon Heit know what was going on. Those protocols are now in place.

Member Edlao asked whether they will see this whole project through with the School or only this. Mr. Hong said he would like to. Right now he is the attorney for this charter school and for this project. Our office supports Connections and charter schools on the Big Island. We are trying to gather the naughty children and bring them into compliance, not only with the State, but with County land planning laws. We aren't making a lot of money off of it. Member Edlao said he wanted to make sure that they (Connections) had somebody to look at the legal aspects of going through the process. Mr. Hong said absolutely. Member Edlao said it's comforting to hear that.

Mr. Gomes asked whether to add in the language that background checks be done on people coming into their neighborhood. Mr. Hong said they can't do that. Neither the State nor we can do that because that would be employment discrimination and there is a statute specifically about hiring. Chair Aila said we can't make it a requirement, but you certainly could choose your contractors more carefully. Mr. Hong said absolutely.

Member Pacheco said as far as amendments, he would rather not do that, but if the applicants are fine with that he is fine adding that condition. He'd rather not get into the business of messing with their business and executing their project, but...Chair Aila said it appears they are doing it anyway. Member Goode said he was fine with it reflected in the minutes. Chair Aila said we have a motion and second. All voted in favor.

The Board:

Approved as amended. Recommendation No. 2 was amended to reduce the fine from \$5,000 to \$500. Recommendation 3 was amended to delete the removal of the fence requirement and revise the provision to complete restoration within 60 days; recommendation 3 to read in its entirety: "Recommend Connections to submit to the Department a Restoration Plan within 60 days from the date of this Board's action at Connections' expense;"

Though not as a condition of the Board's approval, Board member Goode had wanted the minutes to reflect the Board's encouragement (and Connections' concurrence) that the school retain a project management to oversee all facets of the permitting and construction of the school improvements.

Unanimously approved as amended (Pacheco, Morgan)

Item K-1 Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Regarding Enforcement File KA 13-10 Unauthorized Use of a Single Family Residence For Transient Rental Purposes by David Kuraoka Located at Ha`ena, Hanalei, Kaua`i, Tax Map Key: (4) 5-9-002:059

Item K-2 Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Regarding Enforcement File KA 13-08 Unauthorized Use of a Single Family Residence For Transient Rental Purposes by Gary D. Stice, Paraluman Stice, Ligaya Stice, Apolina Stice Located at Há`ena, Hanalei, Kaua`i, Tax Map Key: (4) 5-9-002:022

Mr. Lemmo said that both K-1 and K-2 are similar and will stand on staff's recommendation which is a routine step in the contested case hearing process seeking the Board's approval to appoint a hearing officer to run a contested case on both matters and to authorize the Chairperson to select a hearings officer and have the hearings officer run these matters.

Chair Aila asked whether they are consolidating to one hearing officer. Mr. Lemmo explained that is the idea that the hearings officer would look at both cases and determine whether both cases could be consolidated. If the attorneys for both of these cases are not comfortable with that then the issue could be brought before you, but he would leave that up to the discretion of the hearings officer to decide.

Chair Aila asked that one of the recommendations that the Board could do is recommend the hearings officer make or review that determination. Mr. Lemmo said you can do that. It will happen naturally as an outcome of this process or you could add language specifically. The Chair asked whether it makes more economic sense to do both cases at once since they are both similar. Mr. Lemmo said he would be more practical for the hearings officer to run both contested cases simultaneously, but if you want to make that condition to make the process more efficient by consolidating the two cases to do that now.

Deputy Attorney General Bill Cooper suggested following Mr. Lemmo's recommendation to go to the hearings officer and will be able to flush out the facts and make it clear.

Wendy Wichman testified that she and her brothers own property within the limited sub-zone in the conservation district at Haena and belong to the Haena-Hanalei Community Association. She knows this is only a decision on the hearings officer, but the last time the hearings officer appointed would only notify people who have an expressed interest ahead of time. She related their support of the State's conservation district use conditions including no commercial use which was agreed by the violators to build their homes within the limited sub-zone and makes the property valuable. Ms. Wichman continued testifying the purpose of the limited sub-zone and to give something to the hearings officer to consider for standing.

Andrew Nelson representing Case Schutte disclosed that he was here as a consultant to the Kuraokas and the Stices. It is their position that they oppose the consolidation of both matters to one hearings officer.

Deputy Attorney General Bill Wynhoff said in this matter because it's likely to be a contested case he represents staff and not the Board. The Department's position with respect to this is we think it's appropriate that there be one hearings officer and for that hearings officer to decide whether the two cases should be consolidated as they had requested.

Member Pacheco asked whether staff is asking to appoint one hearings officer for both cases and just hear both cases. Mr. Wynhoff said he doesn't know myself whether it will be more economical or to do it together or to do it separately, but since you are appointing a hearings officer it makes more sense to appoint one hearings officer to decide whether to consolidate if that's appropriate within different parties. Member Pacheco asked if they did consolidate them would one hearings officer run 2 contested case hearings simultaneously. Mr. Wynhoff said sure. A consolidation is the same as simultaneous, but there is no reason why you couldn't have the same hearings officer for both.

Member Morgan said the recommendation is appropriate. They approve the recommendation and that would be allowed to happen. Mr. Wynhoff confirmed that he thinks the recommendation as is fine.

Member Morgan made a motion to approve staff's recommendation. Member Gon seconded it.

Member Pacheco said to wait because we are taking 2 agenda items and taking them as 1 and appointing one hearings officer.

Member Morgan said his motion was to approve staff's recommendation for items K-1 and K-2 because from what he is hearing the hearings officer could be appointed as the same person and subsequent to that the same hearings officer could make the determination to have them as 1 hearing. Mr. Wynhoff said the recommendation before the Board is to grant the contested case hearings to both and authorize the Chair to appoint a hearings officer. It is staff's view that there be no modifications to staff's submittal. Member Gon seconded that motion. All voted in favor.

Unanimously approved as submitted (Morgan, Gon)

Item C-1 Request to Declare Axis Deer on Hawaii Island to be Destructive to Agriculture, Native Plants, and Wildlife; and

Request to Authorize the Destruction of Axis Deer on Hawaii Island, Without Limitation on the Number Taken, for a Period of Five Years from September 14, 2012, Through September 13, 2017, Without Requiring Permits, Pursuant to Section 13-124-7(g), Hawaii Administrative Rules

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) reported on item C-1 that anyone can do this without a permit or have to report. There will be no need of a rule

amendment and they can implement this as soon the Board takes action on it. This is continued efforts to totally remove axis deer on the Big Island and a series of actions have been taken both policy wise and legislatively and in concert with our partners to eradicate these deer before they become established. He wasn't sure whether to amend the title date of September 14, 2012 to today for 5 years or if that would create problems with the title.

Member Gon asked when the first deer were taken that were detected. Mr. Conry said they were removed several months ago. Member Gon said to pre-date it to then. Deputy AG Julie China said she had no problem with it. If you want to move it to today's date for 5 years that would be ok. Mr. Conry asked whether that is a substantive change to the title and Mr. China said no, it's not a substantive change. You would have to amend the recommendation. Mr. Conry said he would recommend an amendment from the dates to October 26, 2012 to October 26, 2017.

Member Pacheco asked whether there was something in the Statute or Rule that limits the timing to 5 years. Mr. Conry said the actual language says for a period. The provision allows them to declare a pest in a specific area for a period of time.

Member Gon said he loved the fact that the deer will be declared a pest and asked whether that was the case on any other island. Mr. Conry said no that we had questions on how about Molokai, Lanai and it is their policy to hunt there to provide the sustaining economy. On Molokai and Maui they had no bag limit or season limit for deer which is taken care of through the hunting regulations.

Chair Aila noted that he had a number of testimonies preferring we not kill the deer, but provide some sort of birth control for them and asked if they was practical and Mr. Conry said he does not believe that is practical. The only case is tightly controlled urban setting with cats and even then they stick around for years until they expire continuing to contribute to the degradation to the environment and it's (birth control) not going to be a long term effective tool. It would be difficult to implement them and it's difficult enough to dispatch them.

Member Gon moved to accept staff's recommendation on item C-1. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Morgan)

Item C-2 Request for Approval of the Division of Forestry and Wildlife Placement of Act 82, 2003 Session Laws Hawaii, Warning and Management Signs at Ohai Loop Trail and Waipoli Road on the Island of Maui; Mauna Loa Observatory Road, Manuka Loop Trail, Mauumae, Ala Kahakai, Muliwai Trail, Onomea Trail and Road, and Pololu Trail on the Island of Hawaii

Mr. Conry related how much Na Ala Hele contributes on a daily basis towards the recreation of all our citizens and introduced Nelson Ayers who introduced Eric Kawashima, Glenn Chang and Moana. Item C-2 provides liability to the State in implementing the signs. The duty of the Board is to approve the signage and with that action extends the protection for the Department of hazardous conditions that exist. As part of the process is consultation with the working group

that provides comments – the County, State Parks, Attorney General’s office and the working group makes recommendations. A policy that came up was the location: 1. On Maui, Waipouli Road in the Kula Forest Reserve which identifies hazardous falling trees due to a fire that occurred there. 2. The other item was signs on the Big Island, Muliwai Trail where there are a lot of trails going over streams to designate the hazardous situations. Fewer signs could protect an area rather than having one at every crossing. He recommends the Board approve the sign locations.

Member Pacheco said he had a problem having the signage go before the Board since they don’t go out to these areas and have to depend on staff. As an aesthetic wilderness experience being impacted by signs in relation to the State’s liability he has no problem with it. Member Gon agreed that there are all kinds of people on our trails and they need reminders that it’s not always safe. They had a discussion about the Muliwai Trail.

Member Pacheco moved to approve and was seconded by Member Gon. All voted in favor.

Unanimously approved as submitted (Pacheco, Gon)

Item C-3 Request for Authorization to Negotiate and Sign a Contract(s) to Furnish Helicopter Transportation Services for Department of Land and Natural Resources Division of Forestry and Wildlife, Oahu; and

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for This Procurement

Item C-5 Request to Issue an Invitation for Bids and Award a Contract for Construction of a Bathroom and Installation of a Septic System for the Olinda Rare Plant Facility, TMK: (2) 2-4-13:05, Makawao, Maui; and

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for This Procurement

Mr. Conry conveyed some background on items C-3 and C-5 and had no changes asking for the Board’s approval.

Member Morgan made a motion to approve. Member Edlao seconded that. All voted in favor.

Unanimously approved as submitted (Morgan, Edlao)

Item C-4 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contract(s) to Install Ungulate-Proof Fencing Within the Ewa, Kaipapau and Hauula Forest Reserves and Sacred Falls (Kaluanui) State Park, and Adjacent Lands Contingent on Landowner Approval, TMKs (1) 5-2-01:01 por., 5-3-11:01 por., 5-3-11:09 por., 5-4-06:01 por., 6-3-01:01 por., 7-2-01:06 por., and 7-6-01:01 por., Oahu; and

**Request Approval of Declaration of Exemption to Chapter 343, HRS,
Environmental Compliance Requirements for This Project**

Mr. Conry recognized staff for working hard in implementing the “Rain Follows the Forest” initiative. This is one of the projects identified to use the current year’s appropriation. The fencing at Poamoho will use CIP funds provided by the Legislature and is also a great partnership both with the Army and Kamehameha Schools in the Watershed Partnership. Also, this area is under lease with the Army that there is a letter submitted by the Army Environmental office supporting constructing the fence. They are also discussing the lease with the Army to get more active with conservation efforts as part of the watershed. There is the Chapter 343 provision utilizing the exemption for fencing that was approved for the Department and he recommends the Board approve this.

Member Gon asked whether the Kaluanui area was the same place approved for a NARS (Natural Area Reserve System) and Mr. Conry confirmed that.

Member Gon moved to approve as submitted and was seconded by Member Edlao. All voted in favor.

Unanimously approved as submitted (Gon, Edlao)

Item D-4 Cancellation of Governor’s Executive Order No. 3706 to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation and Reset Aside to DLNR, Division of State Parks for park purposes, Ka’awaloa, Kealakekua, Kiloa, Waipunaula, Kalama 1, 3, 4 and 5, Liloa and Kahauloa 1, South Kona, Hawai‘i; TMKs: (3) 8-2-04:15; and seaward of: 8-1-10 and 11; and 8-2-02, 04, 05 and 06.

Mr. Tsuji briefed the Board on item D-4 and said Dan Quinn, Steve Soares and Curt Cottrell from State Parks are here. He had nothing to add that this is an attempt to try to regulate the kayak activities and other activities out there.

Chair Aila said the purpose of the cancellation and the reset aside back to State Parks is the jurisdiction of the area to make the management and enforcement action move forward seamless.

Dan Quinn, Administrator for State Parks informed the Board that at one time the underwater portion of was an underwater State Park. When Boating became part of our Department that jurisdiction was transferred to them. The other jurisdiction is the landing at Napo’opo’o which was encumbered land prior to Boating coming on board. What happens now is the lands at Ka’awaloa is under State Park the water and its jurisdiction is under Boating as well as the landing at Napo’opo’o. It’s an unsavory situation at Napo’opo’o and we are looking for changes there in order to make it more efficient and effective according to our existing administrative rule the decision was to have it all under State Parks at least for the near future.

Member Pacheco approved as submitted. Member Goode seconded it. All voted in favor.

Unanimously approved as submitted (Pacheco, Goode)

Item D-8 Extending the Cure Period for Notice of Default, General Lease No. 5376; Shawn C. Kadooka and Dominic K. Kadooka, Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-008:079.

Mr. Tsuji said he has to withdraw item D-8. Other than that he has no changes for the remaining submittals

WITHDRAWN

Item D-1 Amend Prior Board Action of August 10, 2012 Agenda Item D-2, Consent to Assign General Lease No. S-4308, Hilo Sheet Metal, Inc., Assignor, to Kalawe's Auto Repair, LLC, Assignee, Consent to Mortgage but Deny a Request for an Extension of Lease Term, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-58:02, by Changing the Approved Assignee and Mortgagor to KAR Property, LLC.

Item D-3 Rescind Prior Board Action of August 12, 2010, Agenda Item D-8, Agreement in Concept for the Issuance of a Direct Lease to North Kohala Community Resource Center, Kahei, North Kohala, Hawaii, Tax Map Key:3rd/5-5-03:25.

Item D-7 After-the- Fact Approval for Aerial Fireworks Display on October 5, 12 and 19, 2012 and Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on Every Friday From October 26, 2012 to September 27, 2013, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 (Portion).

Item D-10 Sale of a Lease at Public Auction for Industrial Use Purposes, Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:006.

Unanimously approved as submitted (Gon, Morgan)

Item E-1 Request for Approval of the Placement of Act 82, SLH 2003 Signs at Wailuku River State Park-Boiling Pots and Rainbow Falls Sections and Lava Tree State Monument, Hawaii

Mr. Quinn conveyed item E-1 that they have had water related incidents there including deaths and pointed out on the maps where the signage will be to catch people at all entry points. There are several big cracks at Lava Tree State Park and in an abundance of caution they will have signs up.

Member Gon asked what the abbreviation was on the Lava Tree one. Mr. Quinn said there are 2 different kinds of signs: Notice Area Closed and Warning Hazardous Cliff which is the WHCS which will be affixed on the fence around there.

Unanimously approved as submitted (Pacheco, Morgan)

Item L-1 Approval to Execute Supplemental Agreement #3 to Contract for Professional Services, Contract No. 58307, for Job No. D00AO67A, Kawai Nui Marsh Levee Project, Oahu, Hawaii, TMK: (1) 4-2-16:1

Item L-3 Approval of an Application for a DLNR DAM Safety Construction/Alteration Permit for Maunaolu 530 Non-Potable Reservoir Drainage Improvements (OA-0149) Makaha, Oahu, TMK: (1) 8-4-29:135

Carty Chang representing Engineering Division said he had no changes to items L-1 and L-3.

Unanimously approved as submitted (Morgan, Gon)

Item L-2 Request Approval and Adoption of the Dam Safety Penalties Schedule for Processing of Minor Civil Resource Violations of the Hawaii Revised Statutes Chapter 179D and the Hawaii Administrative Rules Chapter 190.1; And Request Delegation to the Chairperson of the Administrative Processing of Minor Civil Resource Violations Under the Civil Resource Violation System in Accordance with the Dam Safety Administrative Penalties Schedule

Member Goode recused from item L-2.

Mr. Chang presented some background on item L-2 for Civil Resource Violations System (CRVS) which will handle the minor civil violations. The initial rules required the Department to develop a penalty schedule, obtain Board approval and comply with this penalty schedule and issuance of civil resource violations and allow the Board to delegate proceedings decision making authority to the Chairperson and or hearings officer of the Department. The Department currently has penalty schedules established for the Division of Boating, State Parks and the Division of Aquatics and establishing one for Dam Safety is consistent with the Department's to move to the CRVS. It's important citing the Kaloko Dam incident resulting in a stringent Dam Safety Rule with a fine increased from \$500 a day to \$2500 per day. Administrative Rules were passed in 2012 to ensure these water resources are maintained and brought into compliance for agriculture, recreation, habitat and recharge and other aspects of the Dam Safety provision. Exhibit 1 is the penalty schedule that staff is asking approval for and their Deputy AG approved it. If they do approve the CRVS it does not relinquish the violators' right if he doesn't agree with the violation to bring it to the Board. Also, if the Department feels there is major or chronic type of violations they can bring it before the Board to decide. There is flexibility to how they will handle it.

Member Gon asked whether anything on Exhibit 1 could be pursued under the CRVS and Mr. Chang confirmed that.

Unanimously approved as submitted (Pacheco, Gon)

Chair Aila asked Mr. Chang to explain the constitutional amendment that will be on the ballot. Mr. Chang said Private landowners could come to the State for the issuance of these bonds, but

it's not the State's proceeds that fund it. It's coming to the State as the underwriter and will vet the State application and is still private money. They come to the State for a low interest rate on that money. The importance of that is to provide a vehicle for owners to bring their dams into compliance. Because of the new Dam Safety Law it's very costly for some dam owners to make their dams consistent with the new law. The administration wants to provide a special revenue bond and is a viable option. He explained the process. If a dam fails or is non-compliant it will affect the broader community – recreation, habitat, Rain Follows the Forest which are other opportunities than public safety. This vote is important for the welfare of the general public.

Chair Aila said to vote yes and any blank votes count as a no vote. Mr. Chang said that there will be press releases going out to the media where Member Goode noted that KSSK was saying to vote no and Chair Aila said they will work on that.

Adjourned (Goode, Edlao)

There being no further business, Chairperson Aila adjourned the meeting at 12:43 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