

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

DATE: FRIDAY, SEPTEMBER 27, 2013
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Dr. Sam Gon
Reed Kishinami

Shawn Smith
David Goode
James Gomes

STAFF

Dan Quinn/ PARKS
Barry Cheung/ LAND
Maria Carnevale/ NWHI
Scott Fretz/DOFAW

Ian Hirokawa/ LAND
Larry Pacheco/ LAND
Alyson Yim/ ENG
Lisa Hadway/DOFAW

OTHER

Linda Chow, Deputy Attorney General
Burt Lau: D-10
Dan Purcell: D-10
Shaun Moss: L-1

Ross Smith DOT: M-1
Paul Noble: D-10
Sam Kahng: F-1
Marjorie Ziegler: C-3

- Item A-1 June 28, 2013 Minutes**
- Item A-2 July 12, 2013 Minutes**
- Item A-3 July 26, 2013 Minutes**
- Item A-4 August 09, 2013 Minutes**
- Item A-5 August 23, 2013 Minutes**

Chairman Aila deferred Minutes, items A-1 through A-5 due to transition of the new Board Secretary.

Items C-1 and D-13 are withdrawn.

Item M-1 Issuance of a Direct Lease to Air Ambulance Specialists, Inc. Honolulu International Airport, TMK: (1) 1-1-72: 22.

Mr. Ross Smith, Department of Transportation (DOT) – explained that Air Ambulance Specialist, Inc. is asking to amend term of lease from 5 years to 10 years. The submittal includes an increase of 15% for the second 5 years of the lease.

Unanimously approved as amended (Gon, Gomes)

Item D-4 After-the-Fact Consent to Assignment of Grant of Easement No. S-4553 from Owens Mortgage Investment Fund, to Savio Waiakea Village LLC, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-31: por. for landscape easement and Road Lots A and B adjacent to parcel 12.

After-the-Fact Consent to Mortgage, Grant of Easement No. S-4553, Savio Waiakea Village LLC, Grantee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-31: por. for landscape easement and Road Lots A and B adjacent to parcel 12.

Mr. Ian Hirokawa-DLNR Land Division provided an overview of Item D-4. Purchaser of a private parcel was also conveyed easements as part of a foreclosure sale. No changes recommended.

Unanimously approved as submitted (Gon, Smith)

Item D-11 Request for Mutual Termination, Leki, Incorporated, Lessee, General Lease No. 3983, Waialeale, Koolauloa, Oahu, TMK (1) 5-8-001:051.

Mr. Ian Hirokawa-DLNR Land Division and Mr. Barry Cheung-DLNR Oahu District Land Agent presented this item. Mr. Hirokawa provided background. D-11 involves Crawford Convalescent home on the North Shore of O‘ahu. Lessee has run into financial difficulties and is requesting the Board agree to a mutual cancellation. Staff is okay with the recommendation for cancellation, but would like a condition that the lessee clean up debris on the property and provide phase one environmental site assessment. Staff requests the board make the condition a part of the termination agreement.

Member Sam Gon asked what the usual cost for a site assessment on a property this size.

Mr. Hirokawa responded by stating that they may run in four, maybe the low five figures, but doesn't expect the costs to be that high.

Member James Gomes asked if the state will get the property back immediately if the termination takes effect.

Mr. Cheung explained that if the board does approve the termination, they work with the tenant to make sure that they meet any termination conditions and will do a property check.. If the mutual termination is granted, staff expects to take possession shortly after the termination. Terminations are usually faster than an eviction.

Member Gon asked to confirm that that the tenant's insurance expired in August 2013. Mr. Cheung confirmed that the lessees insurance expired, and that they are in the process of getting an extension of the insurance.

Chairman Aila called the lessee to the table.

Mr. Burt Lau, Representative for Leki, Incorporated- Mr. Lau made everyone aware that Mrs. Lu, President and Mr. Masutani, Assistant Administrator of Leki Inc., are present. A correction to the staff report was made, that Mr. Lau initiated the lease and is not a shareholder. Mr. Lau gave a very detailed description of Leki Incorporated. In the 1956, Mrs. Lu's mother, Mrs. Kim was asked to take over the property after Mr. Crawford died suddenly. Efforts have been made to keep the business alive and keep the people employed. Mr. Lau expressed his concern and confusion about the staff report. Mr. Lau is getting mixed interpretations of the report language. If staff is asking for mutual termination and they reserve their claims, Leki understands the request. If staff is only asking for a Phase I environmental site assessment, that's fine, but since part of the building is burnt Leki believes that staff is then going to ask for a Phase II assessment. Leki Inc. is asking for termination without condition. They would like the bond to be reduced from \$84,000.00 to \$13,000.00, which is the amount of the original lease. They are willing to turn over any assets that they have left.

Member Gomes and Mr. Lau discussed the property being a "historical site." Member Gomes asked why there was no attempt to take the burnt building off the property, since it is not used. Lau stated that Leki was willing to give that portion back.

Member Gon asked staff to clarify their recommendation. Member Gon explained that based on the wording he believes the lessee has no obligation for further action beyond a Phase One assessment. Mr. Cheung explained that if the consultant finds something in Phase One then they may request a Phase Two. If everything comes back okay with the Phase One assessment, then there is no problem. However, because of the burnt building, most likely it will go to a Phase Two.

Member Gomes asked what will happen to the site historically if the building has to be torn down. Mr. Hirokawa responded by stating that they need to follow up with the State Historic Preservation Division.

Chair Aila asked about the bond amount. Mr. Hirokawa explained that they would like to keep the bond amount high so there are assurances on their end, but it's a secondary issue. The main priority is getting the Phase One assessment and finishing up the cleanup.

Member Shawn Smith asked Mr. Lau how he can make the Board comfortable that the cleanup will get done and what amount of money will get the cleanup done. Mr. Lau responded by stating that he cannot answer that. Neither he nor DLNR staff know the total amount at this time. Mr. Lau said that almost everything except the burnt building has been cleaned or cleared off the property. Mr. Lau doesn't think the burnt building should be removed.

Mr. Lau reiterated his request that the lease be terminated today, and Leki Inc., is given 30 days to go back to the site to cleanup, that the bond be reduced to \$13,000. If they do not get these terms they will either give up the corporation or they will have to declare bankruptcy.

Member Gomes made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded that.

9:48 AM EXECUTIVE SECESSION
10:08 AM RECONVENE

Member Gon noted that the focus will not be on the burnt building, but on the area that was utilized. If the phase one and the cleanup are satisfied, then the bond will be released.

Unanimously approved as amended (Kishinami, Goode)

The Board approved staff's recommendation for mutual termination of the Lease pursuant to the following conditions:

- 1) The performance bond shall remain in the amount of \$84,000.00;**
- 2) Lessee shall provide a Phase I Environmental Site Assessment, but is not obligated to provide anything beyond that, such as a Phase II environmental site assessment;**
- 3) Lessee shall meet all lease requirement obligations, including clean-up of the property and removal of equipment (metal recycler, etc.); and**
- 4) Authorize a gratis sixty (60) day right-of-entry to the Lessee in order for them to continue their clean-up of the property.**

Item D-10 Impose a \$1,000.00 Fine and \$580.00 in Administrative Costs Against Maui Kayaks Inc., for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Olowalu, Lahaina, Maui, at TMK: (2) 4-8-003:001.

Mr. Ian Hirokawa along with Mr. Larry Pacheco, Maui Land Agent, reviewed the item with the Board. Mr. Hirokawa notified the Board that even though this is the first enforcement action, Maui Kayaks has been sited many times in the past. Staff feels that it's time to take action after years of unauthorized activities.

Mr. Paul Noble, owner of Maui Kayaks came to the table and gave some history on his company. In 2008 Mr. Noble spoke with someone from DLNR and was told that he cannot block the beach and needs to traverse the area quickly and cannot be operating on land. Mr. Noble claimed that he was not and has not been using state land for any business activity, just parking and moving kayaks into the water. Mr. Noble expressed his frustration about the complaints and fines being held against him because every time he talks to DLNR he is being told the same thing: to traverse the area quickly. However, when Mr. Noble asked, "How quick is quick enough," no one ever gives him an answer. Mr. Noble's concern is safety. Maui Kayaks guides tourist and Mr. Noble feels like tourist need to be guided, otherwise liability will go up. Mr. Noble wants to work with DLNR to come up with a solution that is respectful to locals and will help tourist have great experiences. He believes this may require a permit process.

Chair Alia asked staff to clarify that the violation is in fact the conducting of a safety briefing on state unencumbered land.

Mr. Pacheco confirmed the violation. Mr. Pacheco also noted that Mr. Noble is claiming that his business is not a land based operation, however if someone is setting up kayaks and conducting a briefing, taking up public space for their business operation, then they are in fact operating their business on unencumbered land. Mr. Pacheco explained that there is a rule that prohibits commercial activities on unencumbered lands. Signs have been posted for years, but they are ignored. Mr. Pacheco also explained that as far as time, there is a commercial recreational activity permit that allows operations to do briefings; however that permit is issued by the county and is for operations in a designated county park facility, not on unencumbered lands. Mr. Larry Pacheco then brought up complaints from surrounding property owners. One major complaint is that 20 something tourist vehicles park their cars at 7:00 am and the car horns beep every time they lock their doors. Mr. Pacheco gave a description of the area detailing why this is not a good area to have a business operation. Safety is an issue and the DLNR Land Division is looking at clearing the area out and prohibiting commercial recreational activity of all types. Mr. Pacheco explained that he never told Mr. Noble he had a time limit to traverse the area. Mr. Pacheco stated that traversing the area is defined as the process of taking your kayak, dragging it and putting it into the ocean.

Chair Aila asked for public testimony.

Mr. Dan Purcell came forward to encourage the Board to be fair and to maintain fines.

Member Gomes made motion to accept staff recommendation to have Mr. Noble pay the fine of \$1,000 and administrative fee of \$580.00.

Unanimously approved as submitted (Gomes, Kishinami)

Oral request for a contested case hearing was made prior to the end of the meeting.

E-1 Request Authorization for the Department of Land and Natural Resources to Enter into a Memorandum of Understanding with the Lunalilo Trust, Queen

Lili'uokalani Trust, Queen's Health Systems, Trustees of the Estate of Bernice Pauahi Bishop, Charles Reed Bishop Trust, and Abigail K.K. Kawânanakoa Foundation for the Purpose of Maintaining, Renovating, and Repairing the Royal Mausoleum at Mauna 'Ala, Nu'uaniu, O'ahu; TMK: (1) 2-2-021: 012.

Mr. Dan Quinn-DLNR State Parks Administrator came forward and gave an overview of Item E-1, detailing the submittal and explaining that this request is a positive step toward formalizing informal agreements. The Charles Reed Bishop Trust coordinated projects, did an asset management plan and took the lead at the Mausoleum. Representatives of the Charles Reed Bishop Trust were present. Mr. Quinn requested that the Board approve with the conditions attached.

Member Gon expressed his appreciation to the Charles Reed Bishop Trust and acknowledged the request as great and momentous.

Unanimously approved as submitted (Gon, Gomes)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Mr. Na'alehu Anthony, Paliku Films, for Access to State Waters to Conduct Filming of Natural and Cultural Elements Activities.

Ms. Maria Carnevale-DLNR North West Hawaiian Islands Monument Co-Manager gave a brief description of Item F-2 explaining that the purpose of the filming is to support the creation of a new cultural video that will help educate applicants and the public on areas within the monument. Filming takes place October 2013- September 2014. After being sent out for review, all scientific, cultural and public review supports the filming.

Na'alehu Anthony, Paliku Films presented the Board with a CD of filming from last year that he wanted to share. Mr. Anthony noted that once the cultural briefing video is done, then he would bring that in for that in for the Board as well.

Unanimously approved as submitted (Gon, Gomes)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Drs. Christopher Winn and Samuel Kahng, Hawai'i Pacific University, for Access to State Waters to Conduct Seawater Carbon Research Activities.

Ms. Maria Carnevale gave an overview of Item F-1 explaining that this has been a long term study, in which seawater will be collected and sampled for carbon. This will also help in the planning of climate change and understanding the marine areas and carbon in the monument. This was endorsed by consensus at the monument board. This is a continuation project that has been ongoing for five years.

Member Gomes asked if this type of research has been done around any of the other main Hawaiian Islands.

Mr. Sam Kahng, Hawaii Pacific University, came forth and gave details about the program. HPU has about five (5) marine science graduate students doing thesis research. Studies have been done around Oahu and have enhanced research collecting water samples, working with the Hawaii Undersea Research Laboratory. HPU is trying to develop a way to characterize the system so that they can detect change across time. Mr. Kahng presented the Board with a recent publication made by a former graduate student, involving a technique using carbonic chemistry to monitor costal metabolism. HPU is trying to create a baseline by collecting data over different times and in different types of locations so change can be detected.

Unanimously approved as submitted (Gon, Gomes)

Item L-1 Approval to Enter Supplemental Contract for Grant-in Aid Agreement With The Oceanic Institute for Feed Mill Laboratory, Hawaii.

Ms. Alyson Yim-DLNR Engineering Division went over Item L-1, a request by the Oceanic Institute for a two-year cost extension.

Mr. Shaun Moss, President of the Oceanic Institute spoke about his company and company goals, which include using locally available byproducts from the agricultural industries and fisheries to use as added feed ingredients so that the Oceanic Institute can produce both terrestrial and aquatic feeds here in Hawaii. Oceanic Institute is undergoing an environmental assessment, a firm is designing the facilities and ground breaking is expected next fall. Oceanic Institute is asking for continued support in extending grant-in-aide which will help fund construction of this project.

Member Gomes questioned the feed byproducts, how much protein is in the feed and would it only be produced from Big Island by-products

Mr. Moss responded by stating that the feed will serve terrestrial agriculture, such as pigs, chickens, and cattle. This is an intermediate scale step which is to be able to produce quantities of different feed for a variety of animals at a commercial scale and to explore locally available low cost ingredients; formulate them, process them and then do feed trots to see if these ingredients enable the target species to perform well. The next step would be investors coming in and investing in a commercial scale feed mill. Most of the ingredients will be non GMO, mostly natural ingredients. The quantity will be limited and a wide variety of stakeholders will benefit.

Unanimously approved as submitted (Goode, Gomes)

Item D-3 Consent to Extension of Lease Term Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3624, 69 Railroad, LLC, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-12:26.

Mr. Hirokawa reviewed Item D-3, telling the Board that Lessee has met all minimum requirements to extend the lease and staff recommendation is consent to the extension subject to the terms and conditions of the submittal.

The Lessee is satisfied with the recommendations.

Unanimously approved as submitted (Goode, Gomes)

Item C-3 Request Approval of the Pu‘u Maka‘ala Natural Area Reserve Management Plan, Acceptance of the Final Environmental Assessment for the Subject Plan and Issuance of a Finding of No Significant Impact for the Proposed Project, TMKs 1-8-12:03, 1-99-01:1, 2-4-8:19, 2-4-8:25 (portion), and 2-4-008:09 (portion).

Mr. Scott Fretz-DLNR, Division of Forestry and Wildlife presented Item C-3, Lisa Hadway-DLNR, Division of Forestry and Wildlife, Hawaii Island was present for technical support.

Member Gon and Gomes expressed their excitement about seeing this item on the agenda.

Ms. Marjorie Ziegler, Executive Director for the Conservation Council for Hawaii, went to the stand and gave an overview of the Conservation Council for Hawaii. Their mission is to speak for native wildlife and ecosystems. The NARs is very important to the Conservation Council for Hawaii; they have a long history of supporting the NARs and will continue to support them. Ms. Ziegler supports the management plan approval and the EA, as well as implementing the management plan as written. Ms. Ziegler feels like not enough is being done for the reserves, that 10% of water management needs to be doubled to 20%. Ms. Ziegler urges the department to move forward and think bigger because of the other 80% that is not being protected. They feel like some of the DOFAW rules are not consistent and urge them to align their policies. One example is bag limits. Ms. Ziegler concluded by offering her help along with the help of the Conservation Council for Hawaii.

There was discussion about the use of volunteers and labor force programs. Ms. Ziegler's program does not use volunteers; they use a work service program. Forestry uses labor force programs.

Unanimously approved as submitted (Gon, Gomes)

Item C-2 Approval of Memorandum of Understanding Between the Division of Forestry and Wildlife and the Ke‘anae Ko‘olau Sportsman Club for Management of a Traditional Agriculture and Cultural Demonstration Project at Ke‘anae Arboretum, Ko‘olau Forest Reserve, Maui, Tax Map Key: (2) 1-1-002:Portion 002.

Request Approval of Declaration of Exemption from Chapter 343, HRS Environmental Compliance Requirements for the Project.

Request for Delegation of Authority to the Chairperson to Negotiate, Approve, and Execute Memorandum of Understanding, Right-of-Entry and

Release of Liability Agreements, for Ke‘anae Ko‘olau Sportsman Club for Management of a Traditional Agriculture and Cultural Demonstration Project at Ke‘anae Arboretum

No Changes to Item C-2.

Member Gomes expressed his excitement about this Item and how much he wants to get involved.

Unanimously approved as submitted (Gomes, Gon)

Item D-2 Consent to Assign General Lease No. S-5411, Helena K. Andrade, Assignor, to ‘Oli Kawahine’aukai Yamada, Assignee, Kikala and Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-043:011.

Mr. Hirokawa’s only change is that the Board adopt the proposed staff amendment to require Assignee to provide acceptable evidence of insurance to the Land Division and AGs prior to the execution of the Assignment.

Unanimously approved as amended (Goode, Gon)

The Board adopted proposed staff amendment to require Assignee to provide acceptable evidence of insurance to LD and AGs prior to the execution of the Assignment.

Item D-7 Rescind Prior Board Action of June 9, 2006, Item D-4, Consent to Assignment of General Lease No. S-5136, Felisa S. Kaniho, Assignor, to Leonard Naboa, Sr., Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014:022.

Consent to Assign General Lease No. S-5136, Felisa S. Kaniho, Assignor, to Olana Halena Kaiwi, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014:022.

Staff requested the same change as Item D-2, that the Board adopts proposed staff amendment to require Assignee to provide acceptable evidence of insurance to the Land Division and AGs prior to the execution of the Assignment.

Unanimously approved as amended (Goode, Gon)

The Board adopted proposed staff amendment to require Assignee to provide acceptable evidence of insurance to LD and AGs prior to the execution of the Assignment.

Item D-1 After-the-Fact Issuance of Right-of-Entry Permit to The Waipa Foundation on Unencumbered Lands for Cultural and Educational Purposes, portion of

Hanalei (makai), Hanalei, Kauai, identified as the beach makai of TMK (4) 5-5-001:009.

- Item D-5** Consent to Lease Term Extension Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3603, Jieyu Shepard, Lessee; Amendment of Terms and Conditions Regarding Allowed Use, Assignment and Sublease Provisions for General Lease No. S-3603; Lot 41, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:015 & 016.
- Item D-6** Cancellation of Governor's Executive Order No. 3244 and Reset Aside to Department of Education for Teachers' Cottage Purposes, Paalaea 1 & 2, Hamakua, Hawaii, Tax Map Key: (3) 4-5-001:011.
- Item D-8** Issuance of Right-of-Entry Permit to Envisions Entertainment & Productions, Inc., Hawaii Representative for Pyro Spectaculars, Inc. for Aerial Fireworks Display Purposes at Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.
- Item D-9** Issuance of Right-of-Entry Permit to T.J. Gomes Trucking Co., Inc. for the Installation of Temporary Shoreline Erosion Protection Measures at Kaanapali, Lahaina, Maui, Tax Map Key: (2) 4-4-013:008.
- Item D-12** Issuance of Right-of-Entry Permit to Department of the Army, by its Family Morale Welfare and Recreation Program for Beach Activities Purposes to be held on October 5, 2013 at Haleiwa, Waialua, Oahu, Tax Map Key: (1) 6-2-003:Seaward of 010

No Changes to Items D-1, D-5, D-6. D-8, D-9 or D-12.

Unanimously approved as submitted (Gomes, Gon)

Adjourned (Gon, Gomes)

There being no further business, Chairperson Aila adjourned the meeting at 11:24 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,



Kuulei Moses
Land Board Secretary

Approved for submittal:



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