

APPROVED
BY THE BOARD AT ITS
MEETING HELD ON
APRIL 12, 2019 *da*

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

DATE: FRIDAY, DECEMBER 7, 2018
TIME: 9:15 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

MEMBERS

Suzanne Case
Tommy Oi
Stan Roehrig
Keone Downing

Jimmy Gomes
Chris Yuen
Sam Gon

STAFF

Russell Tsuji-Land
Maria Carnevale-DAR
David Nielson-DAR
Megan Statts-DOBOR

Carty Chang-Engineering
David Smith-DOFAW
Emma Yuen-DOFAW
David Sischo-DOFAW

OTHERS

Bill Wynhoff/AG
Daniel Morris/D2
Micah Doane/E1
Jonathan Doane/E1
Corinne Chang/L1
Dixon Doane/E1
David Frankel/D2

Ross Smith/DOT-AIR
Tim Holland/F2,3,4
Leimana DaMate/E1, J1
Jayson Shigeta/L1
Bryon Ho/F1
Randy Cates/J1
Yvonne Izu/D2

181206_0092/00:00:14

Chair Case called the meeting to order at 9:17 a.m., and Member Oi read the contested case statement.

181206_0092/00:02:14

ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustees: the U.S. Department of the Interior, U.S. Fish and

Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and the Office of Hawaiian Affairs for Access to State Waters to Conduct Conservation and Management Activities and Authorize General Conservation and Management Activities by the Department of Land and Natural Resources, Divisions of Aquatic Resources & Forestry and Wildlife.

Maria Carnevale, Division of Aquatic Resources presented the submittal and the,

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

181206_0092/00:03:28

ITEM F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Collin Little, National Oceanic and Atmospheric Administration (NOAA) Ship HI'IALAKAI, for Access to State Waters to Conduct Shipboard Support Activities.

ITEM F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer Hector Cassanova, National Oceanic and Atmospheric Administration (NOAA) Ship OSCAR ELTON SETTE, for Access to State Waters to Conduct Shipboard Support Activities.

Maria Carnevale, Division of Aquatic Resources presented Items F-3 and F-4 together. Applicants are present to answer any questions.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Oi, Gon) unanimous.

181206_0092/00:04:47

ITEM L-1 Delegation of Authority to the Chairperson to Enter into a Project Collaboration Agreement with the Hawaiian Electric Company, Inc. for the Dredging and HECO Cable Removal Project within the Hawaiian Electric Easement in the Ala Wai Canal, O'ahu, Hawai'i.

Carty Chang, Engineering, presented the submittal. Representatives from HECO are present to answer any questions.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Gon) unanimous.

Carty Chang, Engineering, presented the submittal. Representatives from HECO are present to answer any questions.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Ol, Gon) unanimous.

181206_0092/00:05:52

ITEM L-2 Delegation of Authority to the Chairperson to: (1) Procure, Award and Enter into Contracts and Sign Necessary Related Documents to Implement and Administer Projects and Activities in Support of and Required by the Cooperating Technical Partners (CTP), Grant and/or the Community Assistance Program- State Support Services Element (CAP-SSSE) Grant; (2) Declare a Project Exempt from the Preparation of an Environmental Assessment, or Approve an Environmental Assessment and Issue a finding of No Significant Impact, if appropriate.

Carty Chang, Engineering, conveyed he had no changes to the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

181206_0092/00:06:00

ITEM D-1 Consideration of Court-Ordered Management Plan in Civil No. 14-1-1085-04, CLARENCE CHING and MARY MAXINE KAHAULELIO v. SUZANNE CASE, in her official capacity as Chairperson of the Board of Land and Natural Resources and State Historic Preservation Officer, BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATUARL RESOURCES.

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. (No Staff Submittal)

Daniel Morris, Deputy Attorney General this was put on the agenda as a litigation matter to allow Council to consult with the Board to make a decision by the end of December. By placing this on the agenda it allows the for Public Testimony.

Board Discussion-None

Public Testimony

David Frankel representing Clarence Ching and Maxine Kahauelio. Submitted written testimony, does not feel the process they are following is legal or appropriate.

Motion by Gon to go into Executive Session was second by Gomes. Unanimous.

09:25 a.m. Executive Session

10:00 a.m. Back in Session

181206_0093/00:02:46

Chair Case noted that Item D-1 is a non-action Item and they will continue their discussion in Executive Session during lunch. There was no follow-up during this meeting.

181206_0093/00:05:07

ITEM C-2 Request to Restrict access to portions of the 'Āhihi-Kīna'u Natural Area Reserve, Maui, for a period of up to two years (November 9, 2018 - November 8, 2020), pursuant to Hawaii Administrative Rules § 13.209-4.5, Tax Map Keys: 2-1-4:073 (portion) and 2-1-004:113.

David Smith and Emma Yuen, Division of Forestry and Wildlife. There were no changes to the submittal.

Board Discussion

Has there been any request for permits to enter the area? Yuen replied there have not been any request.

Public Testimony-None

MOTION

Approved as submitted (Gomes, Gon) unanimous.

181206_0093/00:06:59

ITEM C-3 Request Approval of Statewide Forest products price list for Resources sold from lands managed by the Division of Forestry and Wildlife. (Attached).

Board Discussion

The interest in the different types of trees were discussed and how they manage the resources. The money goes into a special fund for Forestry.

Public Testimony-None

MOTION

Approved as submitted (Gomes, Gon) unanimous.

181206_0093/00:22:00

ITEM E-1 Establish a Volunteer Agreement with Protectors of Paradise at the Makua-Keawa'ula Section of Ka'ena Point State Park, Wai'anae, O'ahu TMK: (1) 8-1-001:004, por.006, and por.007 and 8-2-001:001, 022.

Curt Cottrell, Division of State Parks. Had nothing to add to the submittal. The Applicant's would like to testify. He is thrilled to be bring this partnership to the Board.

Board Discussion

The Board was very supportive of the volunteer work and appreciate what they do. They would like State Parks to support them in any way they can. They are an asset. Maybe try to do a Grant-in-Aid to encourage the 501C's to participate.

Public Testimony

Micah, Jonah, Dixon Doane, Leimana DaMate testified in support of the submittal. They have a connection to the land and appreciate the help to take care of the land. They are going into the community to teach the youth to care for the land and have them come out and help us clean.

MOTION

Approved as submitted (Gomes, Gon) unanimous.

181206_0093/00:55:09

ITEM C-1 Request Approval for selection of the Competitive Sealed Proposal process and Authorize the Chairperson to Award, Execute, and Extend Contracts for a Feasibility Study on using tracker dogs to detect Endangered Hawaiian Tree-Snail predators in forest areas;

and

Request Approval of Declaration of Exemption from Chapter 343, Hawai'i Revised Statutes, Environmental Compliance Requirements for the subject project.

David Smith, Division of Forestry and Wildlife, presented the submittal. David Sischo, provided the background on tree-snails.

Board Discussion:

Have the dogs been used before to search and who would take care of the dogs? Sciscal replied that they would use a conservation group who know how to do this kind of work.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

181206_0093/01:00:01

ITEM C-4 Request for Approval for Selection of a Competitive Sealed process for a Carbon Certification project in Kahikinui Forest Reserve and Na Kula Natural Area Reserve, Hana, Maui County, Tax Map Keys: (2) 1-8-001:006 portion.

David Smith, Division of Forestry and Wildlife presented the submittal.

Board Discussion

Would like to see fire breaks between DHHL and Forestry.

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

181206_0093/01:03:49

ITEM J-1 Request Approval to Initiate Rule-Making Proceedings, Including Public Hearing, to Amend and Compile Title 13, Hawai'i Administrative Rules (HAR), Chapters 13-234, Fees and Charges, and 13-253, Catamaran Registration Certificate, Other Registration, and Commercial Use Permit Fees for the Purpose of Revising Fee and Charge Requirements and Increasing Boating and Ocean Recreation Fees and Charges, Including, but Not Limited to, Mooring Fees, State Boating Facility-Related Fees, Commercial Use Permit Fees, Ramp Decal Fees, and Passenger Cruise-Related Fees.

The proposed rules can be reviewed in person at a Division of Boating and Ocean Recreation (DOBOR) district office from 8:00 am to 3:30 pm, Monday through Friday, except state Holidays as follows: Hawai'i District: Honokōhau Small Boat Harbor 74-380 Kealakehe Parkway Kailua-Kona, HI 96740; Kaua'i District: Nāwiliwili Small Boat Harbor 2494 Niimalu Road Līhu'e, HI 96766; Maui District: Mā'alaea Small Boat Harbor 101 Mā'alaea Boat Harbor Road Wailuku, HI 96793; O'ahu District: Ke'ehi Small Boat Harbor 4 Sand Island Access Road Honolulu, HI 96819.

The proposed rules can be reviewed online at: <http://itgov.hawaii.gov/the-office/administrative-rules>. The proposed rules can also be viewed online at: <http://dlnr.hawaii.gov/dobor/draft-rules>.

Location and contact information for DOBOR offices is available online at: <http://dlnr.hawaii.gov/dobor>

Megan Statts, Division of Boating and Recreation. They have diligently worked on this and are available to answer any questions.

Board Discussion

There were questions regarding CIP at Ala Wai Boat Harbor and Finn McCall (DOBOR) addressed the Board and answered questions regarding that harbor. Another concern is that if you raise the fees how are you going to be fair in allocating fixing up the different harbors. Each Member had issues on the different islands. They raised other concerns as to whether or not which end users would be able to pay the new fees. A lot of the users want to see the harbors fixed before the fees are raised. There was a robust discussion among the members.

Public Testimony

Randy Cates, Boat owner. He understands the need to raise the fees and the concerns he has start with the different type of uses the boaters have. You have commercial fishermen, recreational boaters and then you have the commercial tours. He provided a solution on how they can raise fees that could benefit all.

Leimana DeMate, Aha Moku Representative, is in support of the going out to Public Hearings on the Boating fees.

MOTION

Approved as submitted (Gon, Gomes) Passes

(2) Nay (Roehrig, Gomes) Roehrig would prefer to defer until they can look at the fees and adjust them according in lieu of raising the fees across the board. Gomes felt that he would like to see a win-win for everyone. They both felt it was unfair to the commercial fishermen.

11:56 a.m.: Break

12:05 p.m.: Back in Session

181206_0094/00:00:04

Bill Wynhoff, AG noted that a contested case has been filed for Item F-1.

Brian Ho for TWOL, LLC would like to withdraw his contested case petition without prejudice and provide testimony. Reserves the right to reinstate his request for a contested case before or after a decision is made.

ITEM F-1 Enforcement Action against TWOL, LLC for Stony Coral and Live Rock Damage Resulting from the October 10, 2017 CFV Pacific Paradise Grounding within the Waikiki-Diamond Head Shoreline Fisheries Management Area, O'ahu.

Brian Nielson, David Sakoda, Paul Mirakawa, Division of Aquatic Resources. Provided pictures and the reasons for the enforcement action as stated in the submittal.

Board Discussion

Roehrig and Downing had a robust discussion with Ho regarding the fines recommended. Mirakawa gave a brief history on how live rock grows as requested by Gon and if any fines have been previously issued.

Public Testimony

Brian Ho, the crew that was on the boat were brought up for other long-line boats. He did not know which boats they were going to. There are legal and practical reasons to deny this petition. The salvage process was difficult, and they tried to mitigate any damage to the reef. He argued that the fines were not appropriate.

Randy Cates, has been involved in many coral issues as a marine salvage operator. He worked on this project to remove the vessel from the reef. To TWOL's credit, they decided to go with the plan that would cause the least amount of impact, but the most expensive. He offered his thoughts on accessing coral damage and live rock. That impacts anything we do in the ocean and that could be very costly.

Roehrig made a motion to go into Executive Session, Gon seconded the motion.

1:13 p.m.: Executive Session

2:10 p.m.: Back in Session

181206_0095/00:04:09

ITEM F-1: Continue

Amendment:

Reduce Public Use Fine to \$7,835.00

MOTION

Approved as amended (Oi/Gon) unanimous.

After the Motion was made, Brian Ho, reinstated his request for a contested case. He was reminded to follow-up with a written request in 10-days.

181206_0095/00:09:48

ITEM D-2. Decision making regarding Sierra Club's Petition Requesting a Contested Case Hearing regarding the Holdover of Revocable Permits S-7263 (TMK (2) 1-1-001:044), S-7264 (TMKs (2) 1-1-001:050, 2-9-014:001, 005, 011, 012, and 017) and S-7265 (TMK (2)-1-1-002: por. 002) to Alexander & Baldwin, Inc., and S-7266 (TMK (2) 1-2-004:005 and 007) to East Maui Irrigation Company, Limited, for Water Use on Maui.

The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

(No Staff Submittal)

Member Gomes recused himself, his employer is involved with A&B. Member Oi, disclosed that he has done consultant work on Kauai for a company who works with A&B

Blue Kahele, Land Division. Summarizes the submittal. The Attorneys are present.

David Frankel, representing the Sierra Club, presented his arguments for a contested case. He felt it was the best means to protect the Public Interest. BLNR procedures have failed to protect streams, a contested case proceeding would allow for a factual record to be developed, many of the streams that Sierra Club members use in the area covered by the revocable permit were not addressed by CRWM's proceedings, setting minimum instream flow standards, CWRM did not impose a burden of proof on any of the parties, that show the diversions will not injure the rights of others. A&B continues to divert water from Hanehoi stream when they were instructed to fully restore it.

Yvonne Izu and David Shulmeister, representing A&B, presented their analysis and argument to deny the contested case. Sierra Club's petition wrongly assumes that a contested case hearing is the exclusive "Mechanism by which the Board fulfill its duty to the public under the Public Trust Doctrine, the petition fails to establish a "Property" interest in alleged recreational water uses by the Sierra Club members, Sierra Club does not have a constitutionally cognizable property right (Article XI, Section 9 of the Hawaii Constitution), a Property Interest alone does not mandate a contested case, there are

adverse impacts if the RP is not continued during a contested case proceeding, public health and safety are jeopardized, as well as keeping Central Maui in agriculture and portable water supply to Upcountry Maui.

Motion to go into Executive Session made by Gon, Yuen second the motion.
Unanimous.

3:10 p.m.: Executive Session

3:35 p.m.: Back in Session

181206_0096/00:00:40

Yuen made a **MOTION to DENY** the contested case, Roehrig second the motion.
Unanimous.

There being no further business, Chairperson Suzanne Case adjourned the meeting at 3:41p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira
Land Board Secretary

Approved for submittal:



Suzanne D. Case
Chairperson
Department of Land & Natural Resources