

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

DATE: FRIDAY, AUGUST 24, 2007
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Ms. Laura Thielen
Mr. Tim Johns
Mr. Rob Pacheco

Mr. Jerry Edlao
Mr. Ron Agor
Ms. Taryn Schuman

STAFF

Mr. Russell Tsuji, LD
Ms. Kimberly Mills, OCCL
Mr. Paul Conry, DOFAW

Mr. Sam Lemmo, OCCL
Ms. Kaleo Paik, HP
Mr. Ed Underwood, DOBOR

OTHERS

Mr. Vince Kanemoto, Office of the Attorney General
Mr. Max Graham, Jr., Item K-1
Mr. Moses Haia, Item K-2
Ms. Alicia Maluafiti, Item K-2
Mr. John Dooling, DOT Harbors
Ms. Dannielle Ululani Beirne, Item D-7

Ms. Yvonne Izu, Item K-2
Ms. Mary Serrao, Item K-2
Ms. Dawn Chang, Item H-1
Mr. Donald Beirne, Item D-7
Mr. Rogers, Item H-4

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

Amended Agenda of August 24, 2007.

Item D-8 was deleted and Item D-9 became Item D-8.

Unanimously approved as amended. (Johns, Agor)

Item A-1 Minutes of August 10, 2007

Member Schuman and Member Pacheco recused themselves.

Unanimously approved as submitted. (Johns, Agor)

Item K-1 Enforcement File No. KA-07-24 Regarding Alleged, Unauthorized Cutting of Non-native and Native Trees, and Road Grading, Landowner B. Midler, Subject Parcel TMK: (4) 5-9-003:008, Haena District, Island of Kauai, C/O Max W. J. Graham, Esq., BELLES, GRAHAM, PROUDFOOT & WILSON, LLP, Watumull Plaza, 4334 Rice Street, Suite 202, Lihue, Kauai, 96766-1388

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL), reported subject parcel was almost completely cleared of vegetation. Staff ordered cease and desist orders. Mr. Max Graham, owner's agent, worked with staff to resolve this by providing a botanical report and restoration plan. Staff proposes fining \$2,000 for clearing of non-native trees, \$2,000 for cutting of hau grove, \$2,000 for road work and \$500 for administrative work for a total of \$6500.

And, a request for the owner to submit an after the fact conservation district use application for the unauthorized uses.

Member Johns asked whether there was a policy of fining per tree as opposed to one big violation. Mr. Lemmo replied yes for native trees, but policy has changed in the past. Non-native trees are looked at as one violation. Owner is willing to work with staff to restore area.

Mr. Max Graham representing Bette Midler conveyed Ms. Midler's apologies and Ms. Midler takes full responsibility for her actions. Her intention was to make the property more consistent with the original botanical species that were in Limahuli Valley. Mr. Graham is requesting that the citation for "grading of a road" be changed to "landscaping" to accurately reflect what happened on the property. Ms. Midler has no objection to the recommended fines and does intend to return to the Land Board with a proposal for the restoration plan. She has retained the Limahuli National Tropical Botanical Garden to 1) assist in preparing a botanical inventory of the species removed and list recommended replacement materials; 2) prepare a landscaping plan showing the types, numbers of materials and locations on the grounds and 3) provide a plan for the restoration of the upper lo'i area where the hau bush is. Ms. Midler will file a CDUA

with the Board, which will be consistent with the Botanical Garden's efforts to control non-native species and reintroduce native species.

Member Agor asked whether staff would have a problem changing the citation from "road grading" to "unauthorized landscaping?" Mr. Lemmo replied that there would be no problem as long as the fine is paid.

Unanimously approved as amended. (Agor, Johns)

Moved to change road grading to unauthorized landscaping with recommended fine.

Item K-2 Amendments to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Hawaii by HASEKO on State Submerged Land Located at Honouliuli, Ewa, Oahu, Makai of Plat (1) 9-1-012:

Letters of testimony were provided by Morihara, Lau & Fong and Native Hawaiian Legal Corporation.

Mr. Sam Lemmo representing OCCL reported the marina is not in the conservation district, only the entrance channel and the shoreline to be dredged. Haseko is asking staff for flexibility in condition #11 because of changes in TMK numbers.

Member Johns asked if the CDUP gets denied by the contested case process will condition #22 still apply? Mr. Lemmo replied no because HASEKO can't do it.

Member Johns asked whether there is a violation or is this the first time you are aware of these allegations? Mr. Lemmo replied this is the first time he was made aware of any disturbance to an archaeological site.

Ms. Yvonne Izu representing HASEKO presented maps of Hoakalei Marina's reconfigured plans and related history of project. The City doesn't want HASEKO to touch the sewer outfall. HASEKO planned to reduce the size of the marina with the drainage going through the Oneula Park. She reported HASEKO will provide areas for recreation and cultural activities per community request.

Member Johns, referring to Melanie Chinen's (of Historic Preservation) letter, asked whether there was a violation of the condition of the CDUP? Ms. Izu explained because the marina required a Federal 404 permit from the Corp of Engineers as a condition of the permit HASEKO entered into a Memorandum of Agreement (MOA). The signatories to the agreement were OHA, Corp of Engineers, Historic Preservation Division, The National Preservation Council and HASEKO. Under the MOA were 6 archaeological sites to be preserved in place. HASEKO came up with a preservation plan which was approved by Historic Preservation. HASEKO was to provide buffer zones around these sites and construct a fence around the area. Before the fencing contractor could begin,

the grading contractor started work on the area. It was discovered that the bulldozer destroyed a portion of one of the sites, therefore all activity was stopped and the Corp. of Engineers and Historic Preservation were notified. Member Johns asked whether Historic Preservation decided not to pursue this as a violation? Ms. Izu replied that's correct. Per Ms. Chinen's testimony, Historic Preservation was satisfied with the steps made after the discovery of the destruction. She also confirmed there was never a violation filed in respect to that incident. HASEKO does not deny that the bulldozer did go over that archaeological site. Member Johns asked whether a valid permit was issued for the grading. Ms. Izu answered yes.

Chairperson Thielen asked (referring to condition #10 in exhibit 2) if you are on notice in a MOA what would OCCL's response be? Mr. Lemmo explained when one of OCCL's conditions is tied to one of the functions of another division and there is a question of violation of that division's rule then OCCL will be directed by that division. He was never notified by Historic Preservation about the violation and they are not pursuing it.

Member John asked about condition #10 and how does the MOA come in? Mr. Lemmo replied it is condition #26 that says "the applicant shall comply with the provisions contained in the MOA."

Mr. Moses Haia, staff attorney with the Native Hawaiian Legal Corporation, for Kimo Frankel reported that the agreement to establish buffers was entered in 1993 and the destruction occurred on January 20, 2006. Mr. Haia feels this was no accident and referred to the violation of the MOA.

Chairperson Thielen stated that the preservation plan was not in place and you are looking to the Board to enforce the condition that the preservation plan is in place. If it is in place now is that satisfactory to Native Hawaiian Legal Corp.? Mr. Haia replied the conditions of the MOA to preserve historic sites. Member Johns interrupted the Board cannot take up a violation today because it was not properly noticed per Sunshine law. He asked what remedy would he propose? Mr. Haia explained it would be a monetary penalty and referred to Item K-1.

Chairperson Thielen stated there were destruction of a feature and no pending investigation of a violation, but warrants further action by OCCL staff. The Board should move forward with the reduction of the marina because there is no pending violation. Member Johns reported staff could pursue an investigation afterwards. There is no connection with the violation and what the applicant is asking for today. Mr. Haia feels when conditions are placed on a permit to protect historic sites and the applicant agrees, the Board should consider whether or not that should be a condition of the permit. He sees it directly related to going forward on any request to alter or amend this current permit.

9:50am - Member Johns left for court.

Ms. Mary Serrao of Hoakalei Foundation and resident.

Ms. Alicia Maluafiti, board member of Hoakalei Foundation, testified the residents and kupuna are working with HASEKO to ensure they are under cultural advisement. She reported HASEKO is taking responsibility to preserve the culture. Ms. Serrao explained Hoakalei Foundation will teach the younger generation their Hawaiian culture and HASEKO is providing a place. HASEKO has always notified the community on issues. Ms. Maluafiti added HASEKO's intentions are honorable and the community holds them to a high standard.

10:08am Adjourned for Executive Session to discuss its legal rights, duties, privileges, and obligations relating to this matter with our attorney. (Agor, Edlao)

10:20am Reconvened.

Deferred and instructed staff to investigate a possible breach of MOA and bring this back to the Board by the next couple meetings. (Pacheco, Schuman)

Item H-1 Request for Approval to Enter into an In Situ Burial Agreement with FRC Waikiki, LLC for Unmarked Burial Sites Located on their Property at Waikiki Ahupua'a, Kona District, Island of Oahu [TMK (1) 2-6-13:1,3,4,7,8,9,11,12]

Ms. Kaleo Paik representing Historic Preservation Division reported these requests are to ensure burials are protected in perpetuity. To form an agreement is to convey it as an encumbrance onto the property and to give visitation rights to descendents. Chairperson Thielen asked whether this was a new type of agreement. Ms. Paik explained these have been long standing, but only a few have come this far.

Member Pacheco asked if the ownership of the property changes is the burial plan voided? Ms. Paik replied it doesn't necessarily void because if there is a burial site on the property the landowner must look it up otherwise they are in violation of State law. Mr. Vince Kanemoto, of the Office of the Attorney General, explained it would only be a violation if the land owner knowingly violated. Ms. Paik added these have been passed with the land owners themselves.

Ms. Dawn Chang, cultural consultant for the applicant, gave a brief background of the property and reported contact between the owner and families. She described the design of the buffer zone of 20 feet. She asked that the buffer in the staff submittal be amended to be consistent with the burial treatment plan.

Unanimously approved as amended. (Schuman, Pacheco)

Item M-1 Issuance of Direct Lease and Construction Right-Of Entry to GLP Asphalt, LLC at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu

Mr. John Dooling, property manager for DOT Harbors Division, reported there is a need for liquid asphalt.

Unanimously approved as submitted. (Agor, Pacheco)

Item M-2 Amendment to Issuance of a Direct Lease Together with a Construction Right-Of-Entry to Sause Bros., Inc. Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-14:24 (POR) and (1) 9-1-74:37 & 38 (PORS.)

Mr. John Dooling of DOT Harbors reported there are no changes.

Unanimously approved as submitted. (Schuman, Pacheco)

**Item D-8 Set Aside State Lands to County of Kauai for Public Park and other Recreational Purposes, Portion of the Hanalei River between Tax Map Key: (4) 5-5-01:004 and Tax Map Key: (4) 5-4-04:01.
*Submittal to be distributed***

Deferred until further moved on by staff. (Agor, Pacheco)

Item C-1 Review of Legacy Land Conservation PGM Application & Timeline for Fiscal Year 2008

Mr. Paul Conry, administrator for the Division of Forestry and Wildlife (DOFAW) asked the Board to approve submittal and referred to previous approvals. He reported Ms. Molly Schmidt, coordinator of DOFAW was here to answer questions.

Unanimously approved as submitted. (Pacheco, Schuman)

Item D-7 Request to Extend the Cure Period for the Notice of Default on General Lease No. S-4908, Francis Daniel Beirne and Dannielle Ululani Beirne, Lessees, Maunalaha Homesites, Makiki, Oahu, Tax Map Key: 2-5-24:03.

Mr. Russell Tsuji, administrator for Land Division, reported no changes.

Ms. Dannielle Ululani Beirne, applicant, introduced her son, Donald Beirne and welcomed Chairperson Thielen. Ms. Beirne explained the liability of upper roadway and gave some background. She would like the State to fix it.

Unanimously approved as submitted. (Schuman, Agor)

Item H-4 Request for Approval to Enter into an In Situ Burial Agreement with Hana Beachfront Associates for Unmarked Burial Sites Located on their Property at Haneo'o Road, Hana District, Island of Maui [TMK (2)1-4-08:01]

Ms. Kaleo Paik of Historic Preservation reported a change from a 20 feet buffer to 10 feet which is not a problem because it is a marked grave site.

Mr. Rogers, landowner, was here to answer any questions.

Unanimously approved as amended. (Edlao, Pacheco)

Item H-2 Request for Approval to Enter into an In Situ Burial Agreement with Thomas and Patricia Foley for the Human Skeletal Remains Found on their Property at Ha'o'u Ahupua'a, Hana District, Island of Maui [TMK (2) 1-5-004:005]

Item H-3 Request for Approval to Enter into an In Situ Burial Agreement with Larry Wayne Latham for Unmarked Burial Sites Located on his Property at Kaunala Ahupua'a, Ko'olauloa District, Island of Oahu [TMK (1) 5-8-006:046]

Ms. Kaleo Paik of Historic Preservation stated no changes.

Unanimously approved as submitted. (Pacheco, Edlao)

Item D-6 Forfeiture of General Lease No. S-4899, Ronald Lopes, Lessee, Maunalaha Homesites, Opu, Makiki, Oahu, Tax Map Key: 2-5-24:32.

Mr. Russell Tsuji of Land Division requested to defer for 60 days.

Deferred for 60 days. (Schuman, Edlao)

Item D-1 Set-Aside to County of Kauai, Board of Water Supply for 0.5 Million-Gallon Water Storage Tank, Accessory Facilities and Drainage Purposes, Kapaa Homesteads, 1st Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-003:10 and 12.

Item D-2 Sale of Remnant to Lynette Emi Umetsu, Calvin Sunao Umetsu, Carol Yoshie Aceret, Gail Marie Umetsu-Lee and Lisa Naomi Kimura; Wailua Homesteads, First Series, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-06: through parcel 19.

Item D-3 Issuance of Right-of-Entry Permit to Aina Site Construction Inc. on Lands Encumbered by Revocable Permit Nos. S-7366 to Monsanto Company and S-7195 to Kenneth K. & Sylvia K. Yasutake, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-02:45 and 14.

Item D-4 Grant of Term, Non-Exclusive Easement to Henk Rogers and Akemi Rogers for Improvements and Weed/Vegetation Control Buffer Purposes, Puu Waawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-1:portion 6.

Member Pacheco asked Mr. Tsuji was this known by the previous owner or was this recently discovered? Mr. Paul Conry of DOFAW answered this is a situation with the previous owner. He explained it is transitioning to the forest reserve and staff wanted all the easements cleaned up.

Item D-5 Issuance of Right-of-Entry Permit to the United States Army Corps of Engineers onto Encumbered State Lands at Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-13: portions of 2 & 153

Unanimously approved as submitted. (Pacheco, Edlao)

Item J-1 Request for Preliminary Approval to Amend Hawaii Administrative Rules, Section 13-241-25, as they Relate to Vessel Registration Fees. *Submittal to be distributed.*

Mr. Ed Underwood, administrator for Division of Boating and Ocean Recreation, requested that this item be deferred. He amended the statute instead of presenting the rule.

Deferred. (Pacheco, Edlao)

Item L-1 Certification of Election and Appointment of Soil and Water Conservation District Directors

Unanimously approved as submitted. (Pacheco, Edlao)

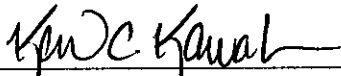
There being no further business, Interim Chairperson Laura Thielen adjourned the meeting at 10:56 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



for LAURA H. THIELEN
Interim Chairperson
Department of Land and Natural Resources