

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

DATE: FRIDAY, SEPTEMBER 28, 2007  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

**MEMBERS**

Ms. Laura Thielen  
Mr. Tim Johns  
Dr. Sam Gon

Mr. Ron Agor  
Ms. Taryn Schuman

**STAFF**

Mr. Russell Tsuji, LD  
Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, SP  
Mr. Roger Emoto, DOFAW  
Mr. Curt Cottrell, DOFAW

Ms. Charlene Unoki, LD  
Ms. Tiger Mills, OCCL  
Mr. Michael Constantinides,  
DOFAW  
Mr. Ken Kawahara, CWRM

**OTHERS**

Mr. Ross Smith, DOT  
Mr. Chris Sadayasu, Item D-1  
Mr. Wally Englis, Item D-2  
Mr. Philip Davies, Item D-5  
Ms. Christina Lucas, Item D-5

Ms. Julie China, AG's Office  
Mr. Mike Donoho, Item C-3  
Mr. David Whatmore, Item D-5  
Mr. Earl Yamamoto, DOA  
Mr. Dennis Ferm, AG's Office

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

**Item A-1 Minutes of September 14, 2007**

**Unanimously approved as submitted. (Agor, Schuman)**

**Item M-1 Amendment No. 1 to State Lease No. DOT-A-95-0012 Additional Space and Extension of Original Lease Term Kamaka Air, Inc., Honolulu International Airport**

Mr. Ross Smith representing Department of Transportation (DOT) conveyed submittal background.

**Unanimously approved as submitted. (Schuman, Agor)**

**Item M-2 Assumption of Sublease by State of Hawaii Department of Transportation, 3239 Ualena Street, Honolulu International Airport**

Mr. Ross Smith of Department of Transportation reported lease background.

**Unanimously approved as submitted. (John, Gon)**

**Item K-2 Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case OA 08-04 Regarding Conservation District Use Application (CDUA) OA-3414 for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge Located at Kahuku, Koolauloa, Island of Oahu, TMK: (1) 5-6-001:010**

**Deferred. (Johns, Agor)**

**Item D-1 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Wahiawa, Aiea and Honolulu, Oahu, Tax Map Keys: (1) 7-3-12:15; 7-3-13:9; 9-9-44:20; 9-9-44:24; 1-7-41:2; 2-2-13:4; 2-2-13:14; 2-2-13:96; 2-2-13:101.**

Mr. Russell Tsuji administrator for Land Division reported nothing to add.

Member Johns asked regarding comments that OHA seeks meaningful discussions on appropriate compensation to OHA. Mr. Tsuji replied there is no charge to other government agencies on set asides. Plus they are on trust status. Member Johns affirmed.

Mr. Chris Sadayasu of Hawaii Housing Finance and Development Corporation (HHFDC) asked Board's favorable consideration for set aside. He explained HHFDC's executive manager and branch chief are discussing with OHA representatives on moving forward with these ceded lands.

**Unanimously approved as submitted. (Schuman, Gon)**

**Item D-3 Approval in Principle of Direct Lease to Honolulu Community Action Program for Preschool and Related Programs Purposes, Kunia, Oahu, Tax Map Key: (1) 9-2-5:12.**

Mr. Russell Tsuji of Land Division reported no changes to submittal.

**Unanimously approved as submitted. (Johns, Schuman)**

**Item K-1 Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case OA 08-03 Regarding Conservation District Use Application (CDUA) OA-3412 for a Portion of the Kaloi Gulch Drainage Improvements Located at Oneula, Ewa, Island of Oahu, Makai of TMKs: (1) 9-1-011:007 & (1)9-1-012:025**

Mr. Sam Lemmo administrator for Office of Conservation and Coastal Lands (OCCL), seeks approval to move forward.

**Unanimously approved as submitted. (Johns, Agor)**

**Item E-1 Request for Approval of Aqua Engineers Inc. as the Selected/Sole Bidder and to Execute a Contract for Services to Operate and Maintain the Water System at Kokee State Park, Water System at Polihale State Park, Wastewater System at Kokee State Park, Sewage Pump Station at Kokee State Park, and Sewage Pump Station at Wailua Marina on Kauai.**

Mr. Dan Quinn, administrator for State Parks, informed the Board this is a maintenance contract for Koke'e water and sewer system. Bid amount is \$146,852, 77 and includes emergency call outs.

**Unanimously approved as recommended by staff. (Agor, Gon)**

**Item C-1 Amend Board Action of April 27, 2007 (item C-1), Addition of approximately 142 acres (TMK (4) 1-2-002: portion 001) to the newly designated Mana Plains Forest Reserve, Waimea District, Kauai.**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) requested to amend.

**Unanimously approved as submitted. (Agor, Gon)**

**Item C-2 Acceptance of Hearing Officer's Report on a Public Hearing for Four Proposed Additions to the Forest Reserve System on Hawai'i Island,**

**and Approval and Recommendation to Governor for the Issuance of Four Executive Orders: Addition of Approximately 1,371 acres (Pending Final Subdivision) to Ka'u Forest Reserve, Ka'u District, Hawai'i; Addition of Approximately 1,500 acres (Pending Final Subdivision to Hilo Forest Reserve, South Hilo District, Hawai'i; Addition of Approximately 37,901 Acres to the Newly Created Pu'u Wa'awa'a Forest Reserve North Kona District, Hawai'i; and Addition of Approximately 25, 856 Acres to the Newly Created Wao Kele O Puna Forest Reserve, Puna District Hawai'i.**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) summarized each of the four proposed additions and public hearing responses. There was concern with semantics or wording used in documentation. Staff's principle action is to add the lands to the Forest Reserve and the details on how to manage them would come later. There was a concern of degradation of resources. Staff felt this will protect these resources. The division will be working closely with the community and partners in developing management strategies. Concern with Hawaiian gathering rights which DOFAW supports.

Member Gon expressed his approval. Member Johns was impressed by the acreage addition. Chairperson Thielen stated there is potential for OHA to becoming land managers and look forward to that.

**Unanimously approved as submitted. (Johns, Gon)**

**Item C-3 Annual Progress Briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) noted no report was given last year and apologized. This report is covering two years. He was assured by the Oahu and Big Island offices that this won't happen again.

Mr. Mike Donoho, coordinator for Pu'u Wa'awa'a, reported status of the Pu'u Wa'awa'a Advisory Council with one vacancy. Staff underwent a strategic planning exercise and will present the management plan to the Board. A three person field crew will be established to further the objectives of the management plan. This will be achieved through State watershed and Dept. of Interior grants. Three additional staff will be sought in the next year. There are partnerships with 501C3 organizations and U.S. Army Pohakuloa to assist with endangered species plantings and enclosures. He explained highlights of the objectives. The budget is over 1.2 million dollars over the last 2 years. Projected over \$500,000 for the coming year.

Member John stated staff did a good job, but a million dollars is not enough to manage. Mr. Donoho agreed and he believes the stewardship will get them through.

**Unanimously approved as submitted. (Johns, Schuman)**

**Item D-2      Reconsideration of Rent under General Lease No. S-5223 to Coalition for Specialized Housing, for Low or Moderate Income Housing for the Elderly and Disabled Purposes, Pearl City, Oahu, Tax Map Key: (1) 9-7-19:49.**

Mr. Russell Tsuji of Land Division asked to reduce rent in 2009.

Mr. Wally Englis, president of the Coalition for Specialized Housing, came forward and testified on the history of the property when Hansen's disease patients were living there and the contentious issue where patients were forcibly evicted from the land. A 210 unit senior citizen housing was built. He explained the coalition is a small non-profit organization paying \$20,000 a year lease rent. Mr. Englis indicated it would help them if the Board reduced their rent.

Member Johns asked in the past reduction in rent were denied. Mr. Tsuji noted a soccer group had a portion of the property and there was a law suit. Because the coalition is a non-profit that benefits the public the rent may be reduced. Part of the settlement was for the coalition to pay the rent. Staff thinks it is a worthwhile project.

**Unanimously approved as submitted. (Schuman, Gon)**

**Item D-5      Termination of Revocable Permit No. S-6240, Kilauea Irrigation Co., Inc., Permittee, Hanalei, Kauai, Tax Map Key: (4) 5-1-1:2.**

Written testimony from the following organizations, businesses or individuals was received via fax or e-mail: Kauai Sunrise Farms, Sandra Lee Kunimoto – Chairperson, Board of Agriculture, Kauai County Farm Service Agency, U.S. Dept. of Agriculture – Natural Resources Conservation Service, Kauai Organic Farms, Kilauea Town Market & Deli, Healthy Hut Natural Food Store, Red Hot Mama's Restaurant, Princeville Hotel, Lex Riggle, Ferris Family Farm, David Whatmore, Gordon L. Furze, Daniel E. Saindon, Margaret M. Furze, Namahana Farms, Jeff Larkey, Senator Gary L. Hooser, Christopher Riemer, Steve & Janine Hunt, Kilauea Management Company, Tom Hitch, Ming Fang, Bill & Margo Flaherty, Jack & Bev Harter, and Kauai Office of Economic Development.

Member Schuman recused herself.

Photo testimony from the Commission on Water Resource Management (CWRM) was handed out.

Mr. Russell Tsuji representing Land Division reported on the agreement with Kilauea Irrigation Co. (KIC) and gave submittal background.

Member Johns inquired if KIC is a valid corporation. Mr. Tsuji replied he believes KIC is valid. He noted the problem is staff cannot contact the owner, Mr. Tom Hitch, who has

left the state and Mr. Tsuji does not see him procuring the required liability insurance. After a helicopter assessment of the area the ditch does not appear to be well maintained. It will take 3 to 6 months to obtain permits and it will be a challenge to bring in the labor and materials.

Chairperson Thielen reiterated the lack of insurance and expressed concern over the rainy season approaching because the rain going into the irrigation system is a problem. Staff has spoken to Department of Agriculture (DOA) chairperson, Sandra Kunimoto, to set up a meeting on Kauai with the farmers on whether transferring water diversion rights to the farmers is possible and whether there are alternative water sources available in the region to assist developing or help the farmers' access. Staff wants to see the continued flow of water and they understand the county water rates are too expensive for the farmers to access. Staff will determine what needs to be shut off to begin this process, but at the same time they will work with the farmers, DOA and the property owners to obtain the insurance.

Member Johns asked the coop is insurable. Chairperson Thielen explained there is no cooperative yet. She reported Sandra Kunimoto of DOA spoke to the farmer's agent to start a cooperative.

Mr. David Whatmore, a Kauai farmer and director of Kilauea Agricultural Water Association (KAWA), came forward and testified that the farmers rely on KIC for their water and had no problems with them. Although Mr. Tom Hitch is not here he has two managers handling the business. Mr. Whatmore walked the entire Kaloko ditch which is in good condition. His farmer's association was unable to obtain insurance for their Waiakalua Reservoir. He spoke to a Jerry Ornellas of East Kauai Water Cooperative and learned how long it would take to create a coop. The farmers in his neighborhood are not interested in organizing one. The other alternative is to dig wells. Mr. Whatmore and KAWA respectfully opposed this termination and asked the Board to defer. He requested he be notified of these agenda items in sufficient time. He explained the importance of surface water and described the current situation due to the drought. Mr. Whatmore continued with his written testimony to support his concerns and opposition.

Member Agor asked for clarity of the physical aspects of the situation, the farmers receive their water solely from Kaloko and the only source that goes into Kaloko is through the ditch. Mr. Whatmore affirmed it is currently. KIC is the farmers' advocate for Kaloko and has legal water right agreements with the Lucas Trust and Phlueger.

Member Johns noted Mr. Hitch had submitted a letter claiming the PUC has chosen not to enforce the liability insurance. He asked whether the PUC has taken formal action to waive the insurance requirement and has DLNR waived insurance requirements for other permits in the past. Mr. Tsuji replied he isn't aware of it. In the past, staff has allowed time to procure the insurance. Member Johns inquired does DLNR have an insurance program for revocable permittees or would it be under another department. Mr. Tsuji replied he isn't aware of any agency providing insurance. Mr. Whatmore added he

recently spoke to Nathan Kawakami of PUC where his agency was not aware of today's pending action and he said PUC may want to make a comment.

Member Johns expressed concern over what to do about the insurance issue and what the Board wants to do with someone operating without insurance. Mr. Whatmore asked is the insurance mandated by law. Mr. Tsuji replied there is no statute that requires it, but it is a policy of all leases and permits that require liability insurance for the protection of the State. Discussion over DOA being self insured on own water systems. Member Johns asked the private land owner can say don't put any water in the reservoir and Mr. Tsuji affirmed.

Chairperson Thielen conveyed the stream diversion issue illustrates why the insurance is necessary. She reiterated DOA will get the farmers together, CWRM, Land Division, Jerry Ornellas, and the land owner to meet and find a solution. It will take 3 to 6 months to find a solution that will work for everyone then staff will not terminate the easement.

Mr. Philip Davies a Kilauea organic farmer requested to defer the permit to allow time to come up with the insurance money. He referred to the farmers' written testimony. Mr. Davies clarified the water flowing into the ditch is controlled and always monitored. The farmers are committed to obtaining this insurance. He asked the Board for more time.

Chairperson Thielen reiterated staff has an absentee land owner who is not responding to the request for liability insurance. Staff doesn't have the assurance that a delicate balance (of water) will be maintained regularly during the rainy season. If the Board authorizes the termination of the revocable permit they will authorize staff to determine the effective date of the revocation. It would give staff the ability to work towards a solution.

Member Gon asked are the farmers served by Kaloko water and since the disaster has the farmers been receiving the water. Mr. Davies replied in the affirmative and made it known there was a break in the ditch which was repaired. There were times when no water reached the ditch.

Mr. Earl Yamamoto, a planner from Department of Agriculture (DOA), stated no changes to Board submittal. Member Johns asked how an irrigation district program is set-up. Mr. Yamamoto explained it requires legislation with special funds and cited examples. Chairperson Thielen asked does any of the State Ag. systems feed into reservoirs or traverse privately held lands. Mr. Yamamoto replied yes to reservoirs, but not sure about private lands. He continued his testimony.

Member Johns asked whether Senator Hooser's office has talked to DOA or Land Division regarding what the legislature could do to help the farmers. Mr. Tsuji replied they did not. Member Johns explained the situation that the State must protect its resources. He inquired if the legislature would allow an irrigation district to waive the insurance. Mr. Tsuji added it will require a CDUP to go before the water commission.

Ms. Christina Lucas, a beneficiary of the Lucas Trust, clarified she is here as a beneficiary and not representing the Lucas Trust. She indicated the plantation solution is simple and disclosed the Moloa'a ditch was illegally diverted years ago and suggested it could flow into the Kaloko reservoir.

Member Johns inquired if there are alternatives to controlling the water other than where it physically flows today. If staff doesn't evaluate the impacts of those permits, then the water would no longer flow. Mr. Tsuji stated it would go back to its natural habitat. Member Johns asked when the questions of water sources and management of water will be explored. Chairperson Thielen replied that will be at the meeting with Sandra Kunimoto and the farmers. She suggested staff could add language that the deficiencies of the lease were cured in a 90 day period the Board vote would not go into effect. Mr. Tsuji requested to go into Executive Session.

Mr. Whatmore clarified the safety issue is maintaining the water that is left in the Kaloko reservoir. The current spillway is solid and will not give way. It is carefully monitored. There are more public issues if the water was to be diverted.

**10:59am Adjourned for Executive Session to discuss its legal rights, duties, privileges, and obligations relating to this matter with our deputy attorney. (Johns, Gon)**

**11:14am Reconvened.**

Member Agor communicated feeling comfortable with staffs' recommendation. It protects the State and the people of Hawaii which gives adequate time for the community to get together to come up with a solution. He is from Kauai and believes the Kauai people are resourceful and will come up with a solution.

Chairperson Thielen stated that Sandra Kunimoto of DOA will meet with Ken Kawahara of CWRM, Russell Tsuji of Land Division, KIC, the farmers and the land owner on Kauai to find possible solutions.

**Unanimously approved as submitted. (Agor, Johns)**

**Item D-4 Set Aside to the Department of Agriculture for Waimanalo Reservoir and Issuance of a Right-of-Entry Permit to Department of Agriculture, Waimanalo, Oahu, Tax Map Key: (1) 4-1-10:2 and 92.**

Mr. Russell Tsuji of Land Division reported the Waimanalo Reservoir has been managed and operated by DOA since its inception.

**Unanimously approved as submitted. (Johns, Gon)**

**Item C-4 Request for Approval to Issue a Request for Proposal and Execute a Contract with the Selected Offeror for Coordination of DLNR Youth Conservation Corps/Americorps Program**

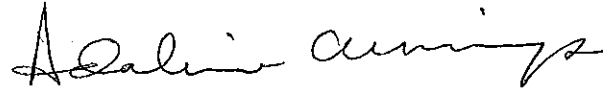


Mr. Curt Cottrell representing DOFAW requested for approval and to execute the contract. Member Johns asked does this need to be RFP every year. Mr. Cottrell replied yes they must go through the process. Chairperson Thielen asked is mentoring involved or is it all physical. Mr. Cottrell explained it is mentoring and the program has expanded. He gave history of current coordinator coming out of YCC. Member Gon added his approval and experience with the people and the program.

**Unanimously approved as submitted. (Johns, Gon)**

There being no further business, Chairperson Laura Thielen adjourned the meeting at 11:20am. 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  
Board of Land & Natural Resources  
Secretary

Approved for submittal:



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LAURA H. THIELEN  
Chairperson  
Department of Land and Natural Resources