

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

DATE: FRIDAY, AUGUST 8, 2008
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 9:05 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Robert Pacheco
Samuel Gon III

Timothy Johns
Jerry Edlao

STAFF

Sam Lemmo, OCCL
Ed Underwood, DOBOR
Dan Quinn, SP
Dawn Hegger, OCCL
Barry Chung, LD

Morris Atta, LD
Paul Conry, DOFAW
Dan Polhemus, DAR
Kimberly Mills, OCCL

OTHERS

Pam Matsukawa, Deputy Attorney General
Randy Vitousek, Item K-2
Keith Avery, Item D-10
Merlin Keaulana-Dyball, Item D-3
Burt Lau, Item D-9
Miwa Tamanaha, Item F-1 to F-3

Ben Welborn, Item K-2
Michael Munekiyo, Item K-1
Gary Gaspar, Item D-6
Moana Keaulana-Dyball, Item D-3
Stephen Kozlowski, Item D-9

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

Item A-1 July 25, 2008 Minutes.

Deferred. (Johns, Gon) The Chair had made amendments.

Item K-2 Conservation District Use Application KA-3460 regarding a Single Family Residence at Haena, Kauai, in the Limited Subzone, Catherine Moragne Bartmess and Russ Bartmess, TMK (4) 5-9-005:027

Written testimony was distributed.

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), distributed testimony from the County of Kauai Planning Department. He described background and mentioned that there is a sandbag revetment that anchors the property. In the 1990s the County issued an emergency SMA permit for the sandbag revetment and a right-of-entry was issued by the Kauai District land agent. Staff asked the county whether the structure was legal and the county said that as long as the owners follow through with the conditions. Staff met with the owners because staff didn't know where the shoreline is because of the sandbag revetment. The owners agreed to place the structure as far in as possible, an 80 foot set back. He noted that Kauai County has a variable set back system. Mr. Lemmo described the side yard set back variance and notification of neighbors on this. The written testimony asks to defer on this, but staff recommends approval subject to the 80 foot and variance to side yard set backs. He proposed should the Board approve this CDUP would be subject to a 29 day waiting period should there be a challenge to the FONSI. There was discussion regarding the FONSI date. The owners asked to do a conceptual for the 80 foot then come back with the final construction plan because they don't know if they'll get the variance. Staff wants the ability to say something about the sand bag revetment referring to condition 15. He wants to add the artificial lighting condition from Item K-1, condition 19. More discussion regarding whether or not there is a challenge on the FONSI. If a FONSI is overturned then the owners do an EIS. The timing gets complicated.

There was discussion to add conditions from Item K-1, #15 and #17 regarding commercial activity and seabird protection protocol.

Ben Welborn representing Russ and Catherine Moragne Bartmess and their attorney, Randy Vitousek are here. He reiterated Mr. Lemmo's report regarding the set backs and to treat this as a single family residence and not a shoreline revetment. He asked about the additional new conditions.

Chair Thielen explained that the additional conditions are standard conditions that are part of the conservation district use permits. She described the seabird protection protocol, artificial lighting condition, and the commercial activity restriction.

Mr. Welborn reported that the owners addressed the seabird concern and discussed it with OHA. He is familiar with the conditions.

There was discussion whether the set back should be in compliance with the Kauai County ordinance, but it doesn't have to per Mr. Lemmo. Mr. Welborn read the Kauai County ordinance "For lots with a an average depth of 160 feet or less the shoreline set back shall be established based upon the average depth of the lot as provided in table 1 or

at the option of the applicant upon a coastal erosion study as provided in table 2. For lots more than 160 feet the shoreline set back shall be established based on a coastal erosion study as provided in table 2 and shall be no less than the set back distances set forth in table 1 as applicable.” His clients did a coastal erosion study and their set back is less than the table. Mr. Lemmo confirmed this.

Mr. Welborn asked for a change of 1 year to 18 months to commence with construction due to the redesign of the residence.

Randy Vitousek, attorney for the clients, explained that the FONSI has been approved and published. It can be challenged if a law suit was filed under HRS 343-5. There is no requirement of a final approval. It’s subject to 30 days for someone to file a lawsuit to challenge it. If it is filed and the FONSI is found invalid then the permit is invalid because it wasn’t in compliance with HRS 343. Board Member Johns suggested changing condition 18 language to say “The approval of the CDUA is subject to full compliance to Chapter 343, HRS.” Mr. Vitousek agreed.

Member Johns moved to approve staff’s recommendation with the following revisions that condition 18 be changed to read that the CDUA is subject to full compliance with HRS Chapter 343 with the addition of the provisions for no commercial activity, sea bird protection provisions, and artificial light which are conditions 15, 17 and 19 respectively in Item K-1.

Member Edlao seconded.

The Board:

Approved staff’s recommendation with the following amendments:

- 1. Change condition 18 language to say “That the approval of CDUA KA-3460 is subject to full compliance with HRS Chapter 343.”**
- 2. Add the following conditions from Item K-1 condition 15, 17 and 19 regarding commercial activity, seabird protection protocol, and artificial lighting.**

Unanimously approved as amended (Johns, Edlao)

Item K-1 Conservation District Use Application MA-3458 regarding a Single Family Residence at Olowalu, Maui, in the Limited Subzone, Peter and Deborah Martin, TMK (2) 4-8-003:046

Sam Lemmo of OCCL reported on background.

Member Johns asked whether there were any problems with enforcement of conditions. Mr. Lemmo replied that it is the Department’s responsibility to ensure compliance by having DOCARE monitor the protocols.

Representing Peter and Deborah Martin was Michael Munekiyo who referred the Board to page 11 and distributed an illustration with the changes. He understood the plan is subject to approval by staff and the Board.

Unanimously approved as submitted (Edlao, Johns)

Item D-10 Withdrawal from Governor's Executive Order No. 3867 to the Department of Agriculture for the Kahuku Agricultural Park, Approval in Principle of the Issuance of a Direct Lease to West Wind Works, LLC, for a Commercial Renewable Wind Energy Generation Facility and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1) 5-6-08:6

Member Johns recused himself.

Morris Atta, Land Division Administrator, gave background about the project and Department of Agriculture approved.

Keith Avery, President of West Wind Works reported who they are and what projects they've done. He distributed a couple photos and gave more details about this project. He described the process and has met with all the interested community groups.

Unanimously approved as submitted (Pacheco, Gon)

Item D-1 Withdrawal from Governor's Executive Order No. 2313, Set Aside to Department of Transportation, Highway Division; and Issuance of Construction and Management Right-of-Entry, Lihue Kauai, TMK: (4) 3-4-7:4 and 3-8-5: portion of 13.

Morris Atta of Land Division informed the Board on the background.

Member Gon asked whether the DOT representatives were cognizant of all the recommendations. They were and they approved.

Unanimously approved as submitted (Johns, Gon)

Item D-6 Issuance of Right-of Entry Permit to Department of Transportation, Highways Division on Lands Encumbered by General Lease No. S-5488, New Town & Country Stables Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-008:059 (Portion)

Morris Atta representing Land Division described project.

Gary Gaspar representing DOT explained the improvements are for safety and to meet the American Disabilities guidelines.

Unanimously approved as submitted (Johns, Gon)

Item D-3 Re-Submittal, Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:25.

Morris Atta of Land Division reminded the Board that this matter was brought before them last month but was deferred because the Lessees were on the mainland and had asked to defer. The tenants are delinquent on the lease rent and have not supplied the necessary bond amount that's required under the lease. Despite the delay it has not been cured and based on that staff requests forfeiture of the lease.

Merlin and Moana Keaulana-Dyball appreciated the deferral and distributed documents to the Board. He said that he and his wife wants to keep the property, he described the area and their history on the property as subsistence farmers. He noted on his documents that they are current on property taxes, current on insurance, and that there is a conservation plan, but there is a problem with an ex-spouse.

Chair Thielen asked Mr. Keaulana-Dyball whether they understood the high rent was part of the lease when they took on the property. Mr. Keaulana-Dyball disagreed and explained they brought the property in 1997 from First Hawaiian Bank and he noted the original 55 year lease as page 4 of the documents. It shows a rate of \$552 per year which is the base rent and is what Department of Agriculture charges to subsistence family farmers. He compared it to the appraised annual rent of \$10,000 in 1998, but staff has it at \$4500 per year which he disapproved of. First Hawaiian Bank's lawyers spoke to DLNR to bring its price down. These lawyers contacted the legislature and said the lawyers were right and in 2003 Mr. Keaulana-Dyball's property was given to Department of Agriculture (DOA). DLNR has been delaying the transfer of his property to DOA which was supposed happen in 1 year.

Mr. Atta reported that the intention is to transfer this property to DOA, but there were delays from DLNR and DOA. He needs time to find the facts on this.

Chair Thielen suggested deferring for 2 weeks to give staff time to research.

Deferred (Pacheco, Johns)

Deferred for two weeks to provide Land Division the opportunity to review and research the explanation for the delay in transferring General Lease No. S-4138 to the Department of Agriculture.

Item D-9 Request for Grant of Two Term, Non-Exclusive Easement To Minatoya Real Estate LLC for Seawall and Landscaping Purposes, Kualoa, Koolaupoko, Oahu, TMK: (1) 4-9-009:004 & 005 seaward.

Mr. Atta reported background. Issues were raised on the removal of the wall with a possible destabilization of the adjoining property owner's wall and land. OCCL felt the wall was not appropriate.

Barry Cheung of Land Division distributed copies of a draft request.

Burt Lau represented the owner and noted that the owner and neighbor were present. Mr. Lau reiterated the situation and gave history. He cited OCCL's comments on the draft. He discussed public access, studies in the area, and the adverse impacts to the neighbor. Mr. Lau read the Board policy from 1999 with regard to unauthorized structure enforcement. All factors apply here which the Chair says is not an issue.

Unanimously approved as submitted (Johns, Edlao)

Item J-1 Issuance of a Revocable Permit to Diamond Parking, LLC, for Management of a Parking Concession Located at the Ala Wai Small Boat Harbor, Honolulu, Oahu

Written testimony from the Surfrider Foundation and Noa Napoleon was distributed.

Ed Underwood, Division of Boating & Ocean Recreation (DOBOR) Administrator, reminded the Board that on May 23, 2008 staff asked to enter into a parking plan with amendments and to implement. Staff will maintain the 300 parking stalls at a minimum of 300. The permit parking would remain and the agreed paid parking area. It includes a performa based on an 80 percent occupancy and he noted breakdown. Staff established an ad hoc committee as requested by the Board. The ad hoc committee's first meeting is August 20th to provide input on the parking plan. Staff asked the Board to enter into this agreement with Diamond Parking.

Stephen Kozlowski, Vice-President of Diamond Parking Company, replied to Member Gon's question that he had seen the recommendations and he agreed.

The Land Board asked Deputy Attorney General Pamela Matsukawa as to whether there is legal authority for the Board to approve the Boating Division's request in light of the written testimony of Surfrider Foundation. Ms. Matsukawa advised the Board that the Board did have authority under (HRS) chapter 102 to issue a revocable permit for no longer than one year.

Unanimously approved as submitted (Johns, Gon)

Item J-2 Amendment of Prior Approval for Award of Contract - IFB No. 08-001-H, Guard Services for Parking Control and Security for Kailua-Kona Pier

Mr. Underwood for DOBOR reported background that Freeman Guards had issues getting the required performance bond and staff recommended Wackenhut who is next on the list. They are used for cruise ship security, night security and it's a year round contract.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-1 Request for Approval to Enter into an Agreement to Sub-grant between the Kauai Public Land Trust and the Department of Land and Natural Resources for the Purchase of Unit E of the Kilauea Coastal Preserve, Kilauea, Kauai, TMK 4-5-1-5-16.

Paul Conry, Administrator for Division of Forestry and Wildlife, informed the Board on the background. There is a stipulation to find another land trust or nonprofit if Kauai Public Land Trust were to go under. If not it would go to DLNR. Staff recommends approval.

Unanimously approved as amended (Gon, Pacheco)

Item D-8 Forfeiture of General Lease No. S-4007, God's Love Mission, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-027:23 and 24

Morris Atta for Land Division asked to withdraw.

Withdrawn (Johns, Edlao)

Item D-11 Authorization to Enter into Agreement with James Campbell Company LLC Regarding Water Allocation and Easements for State Lands; Amend Prior Action of December 14, 2007, Item D-26; Kunia, Ewa, Oahu, TMK: (1) 9-4-012:001, 002 & 003.

Mr. Atta gave background. Staff noted that the Office of the Attorney General (AG) pointed out that the declaration regarding water use agreement contains an indemnification which the State can't agree to.

Chair Thielen said that the recommendation is to negotiate and execute the agreement subject to the review and approval of the AG's Office. Ms. Matsukawa agreed.

Mr. Atta reported on the 2nd part of the request where staff wanted to add "subject to the correction and covenant referred to on the first request." And "the Army Corp requested for non-exclusive easement to access utility purposes." Also under recommendation B, it should be 1 & 2 not d & e.

Unanimously approved as submitted (Gon, Johns)

Staff was informed by the Attorney General's office that the State could not indemnify private parties as provided in the Declaration of Covenants

Regarding Water Allocation and Easements, however, it could execute an agreement that refers to the Declaration without binding itself to the indemnification requirement. Tenants of the State on lands affected by the Declaration could be bound by its terms. Otherwise, the Land Board approved staff's recommendations as submitted.

- Item D-2** **Consent to Assign Grant of Non-Exclusive Easement S-5719, William A. Lydgate, Assignor, to The Association of Apartment Owners of Dry Gulch Flats, Assignee and Amend Grant of Non-Exclusive Easement S-5719, Kapaa and Waipouli, Kauai, TMK: (4) 4-4-4: Portion 28.**
- Item D-4** **Rescind Prior Board Action of August 12, 1992, Under Agenda Item F-6, and Approval of License Agreement Between Castle and Cooke, Inc., as the Licensor, and the State of Hawaii, By its Board of Land and Natural Resources, on Behalf of the Department of Accounting and General Services, as the licensee, for Radio Station Purposes, Puu Kilea, Lanai, TMK: (2) 4-9-02: Portion of 1.**
- Item D-5** **Issuance of Right-of-Entry Permit to U.S. Army of Corps of Engineers on State Unencumbered and Encumbered Lands, Island of Oahu; TMK: (1) 2-9-055:001; (1) 4-1-008:013; (1) 4-2-005:001; (1) 4-2-006:002; (1) 4-2-010:001 & 004; (1) 4-5-033:002; (1) 4-8-007:002; (1) 4-8-013:001; (1) 9-7-026:001 & 002.**

Mr. Atta had no changes. No public present.

Unanimously approved as submitted (Pacheco, Edlao)

- Item D-7** **Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-026:18**

Mr. Atta said that the Chair brought to his attention whether or not Department of Agriculture (DOA) had been consulted. Staff has been in constant discussion with DOA.

Barry Chueng confirmed that.

Unanimously approved as submitted (Johns, Edlao)

- Item E-1** **Approval for Award of Maintenance and Repair Services For Pump Systems Contract - IFB No. 08-0010-DSP at Various State Parks on Oahu**

Dan Quinn, Administrator for State Parks, staff needs to hire an engineering firm outside of the department and asked the Board's approval to lock in for future years because it

would be economical. Without it their systems would fail and staff recommended approval subject to funding and the AG's review.

Unanimously approved as submitted (Johns, Gon)

Item F-4 Request for Amendment to Papahānaumokuākea Marine National Monument Special Ocean Use Permit PMNM-2008-050, Previously Approved for Mr. Brian Armstrong of the National Geographic Society, to Conduct Filming Activities for Wild Spaces National Geographic Series

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR), asked to withdraw.

Withdrawn (Johns, Pacheco)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Russell E. Brainard, NOAA Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct NWHI Reef Assessment and Monitoring Programs

Mr. Polhemus gave background.

Miwa Tamanaha representing KAHEA distributed binders to the Board regarding comments that they've had over the past 2 years on the draft management plan. They are concerned with the lack of a prioritized science plan. Approving science permits without publicly bedded priorities of what kinds of science that should be occurring and how tied to management actions. Budget cuts on direct management actions like trash and debris removal. Where should there be a priority. How should we allocate the limited impacts?

There was discussion that comments were presented through the Board briefings. There will be another briefing.

Chair Thielen reiterated Ms. Tamanaha's concern about lack of funding, but some requests have funding separate from the co-managers. Are there conditions for the types of work KAHEA would like to see researchers do that would benefit the monument managers? Ms. Tamanaha replied that they would like to see things tied to specific management actions. She gave an example of the macro algae sampling could be useful for a number of things – direct restoration, debris removal, etc. Chair Thielen said maybe add a condition to do other activities to help management. Ms. Tamanaha felt that this is an opportunity for everyone to figure out what the prioritized science plan should be. The resource has a carrying capacity, although we might not know what it is, we should honor the precautionary principle in what activities should be allowed. Have a certain number toward monk seal or coral. The RAC did submit separate comments and

KAHEA supports certain positions. The State refuge rules were not included in the appendix and she asked to include it.

Mr. Polhemus noted that there was one public scoping meeting for the science plan and that the management plan had priorities.

Unanimously approved as submitted (Johns, Gon)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Charles Littnan, National Marine Fisheries Service, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Juvenile Hawaiian Monk Seal Survival-Enhancement Activities

Mr. Polhemus reported background and that the applicant was here.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-3 Request for Amendment to Papahānaumokuākea Marine National Monument Research Permit PMNM-2008-018, Previously approved for Dr. Charles Littnan of the NOAA Pacific Island Fisheries Science Center, to Conduct Hawaiian Monk Seal Foraging Research Activities

Mr. Polhemus said that applicant would like access to Nihoa.

Unanimously approved as submitted (Johns, Pacheco)

Item L-1 Approval for Award of Construction Contract-Job No. F98C778A, Natural Hazard Warning Signs Statewide, Hawaii

Item L-2 Appointment of Mauna Kea Soil and Water Conservation District Director

Item L-3 Approval for Award of Construction Contract-Job No. B41CM72C, Kahului Small Boat Harbor Improvements, Phase II, Kahului, Maui, Hawaii

Unanimously approved as submitted (Johns, Pacheco)

Item M-1 Amendment to Prior Board Action of July 25, 2008, Item M-7, Issuance of Non-Exclusive Rent-A-Car Concession at Kahului Airport

**Item M-2 Amendment to Prior Board Action of July 25, 2008, Item M-8,
Issuance of Non-Exclusive Rent-A-Car Concession at Lanai Airport**

**Item M-3 Consent to Sublease Restaurant and Lounge Concession Volume
Services, Inc. dba Centerplate to Shakanet, Inc. and Uncle Miles
Kitchens LLC Hilo International Airport and Kona International
Airport at Keahole**

Item M-4 Issuance of Direct Lease - New Cargo Building Kahului Airport

Unanimously approved as submitted (Gon, Edlao)

Adjourned. (Johns, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 10.52 a.m. Recordings 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:



Laura H. Thielen
Chairperson
Department of Land and Natural Resources