

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

DATE: FRIDAY, FEBRUARY 27, 2009  
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 9:04 a.m. The following were in attendance:

MEMBERS

Laura Thielen  
Jerry Edlao  
Ron Agor

Timothy Johns  
Samuel Gon III  
Taryn Schuman

STAFF

Morris Atta, LD  
Dale Bonard, NARS  
Sam Lemmo, OCCL  
Ed Underwood, DOBOR

Bob Moore, NARS  
Paul Conry, DOFAW  
Alton Miyasaka, DAR  
Bill Andrews, DOBOR

OTHERS

Randy Ishikawa, Deputy Attorney General  
Len Mikkelson, Item K-1  
Jennifer Kahn, Item D-4  
Gayleen Nakazuka/DOE, Item D-9  
Robert Klein, Item D-7  
Richard Mirikitani/City & County of HNL, Item J-1

Clark Hashimoto, Item D-10  
Don Bryan, Item D-3  
Eric Leong/DOT, Item M-1  
Gary Woo/DOH, Item D-11  
David Frankel, Item D-7

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

**Item A-1      February 12, 2009 Briefing.**

Member Gon, Schuman and Johns recused themselves. Not enough for quorum.

**Deferred (Johns, Agor)**

**Item A-2 February 13, 2009 Minutes.**

Member Gon and Member Schuman recused themselves.

**Approved as submitted (Johns, Agor)**

**Item D-10 Consent to Lease Lands Under Governor's Executive Order No. 4018 to Maui County Farm Bureau, Inc., Kula, Makawao, Maui, TMK: (2) 2-3-003:023.**

Morris Atta, Administrator for Land Division, reported on background asking to amend the recommendation to include that the consent be subject to Section 171-11 per the Attorney General's Office. Section 171-11 authorizes the set-asides and there was a question whether the lease rents would be subject to the ceded lands 20% distribution issue. The Attorney General's Office believes the inclusion of a reference to HRS Section 171-11 in the recommendation would provide greater clarity to address that concern. Add a 3<sup>rd</sup> recommendation stating subject to HRS 171-11.

Clark Hashimoto of County of Maui said he was here to answer questions and was ok with the recommendations.

**The Board:**

**Approved staff's recommendation by adding a third recommendation to say "Subject to HRS 171-11."**

**Unanimously approved as amended (Edlao, Johns)**

**Item C-1 Acceptance and Approval of a Strategic Plan for Hawaii's Natural Area Reserves System.**

Bob Moore representing the Natural Area Reserve System (NARS) apologized that his technical person is sick and couldn't present their powerpoint presentation and proceeded with giving background on the NARS Strategic Plan – Vision Statement, Mission Statement, page 13 - objectives, page 18, #5 – cultural objectives, and bills to transfer lands to OHA. Not in the plan are the yearly operational plans based on the goals - Hawaii Island is finished, Kauai and Oahu are almost finished and Maui is still working on theirs. A handout of the "Program Performance Results for Measures of Effectiveness" was distributed based on the budget. Mr. Moore acknowledged staff members who worked on this plan.

Dale Bonard, Chairperson of the Natural Area Reserve System Commission, said that the commission supports this plan explaining issues like resource restrictions and protecting

each ecosystem. Cultural is not mentioned in the protection of NARS and there is no cultural commissioner assigned within the statute which it should because every piece of land holds cultural resources. Goal #5 was entered to address this suggesting changing the statute to reflect the cultural.

Member Johns asked about funding to implement the plan. Mr. Moore said until the recession everything looked good, but everything relies on the conveyance tax which has decreased 50% over the past two years and he hoped to get some funding from the stimulus package. Mr. Bonard reported at the bottom of page 16, 3.6 – staff is working with the Department, the legislature, and environmental community to garner support for funding for conservation lands like House Bill 1741.

Member Johns asked about the two actions of the recommendation to “Accept” and then “Approve.” Randy Ishikawa, Deputy Attorney General, said that in discussions with Christian Mitchell and Linda Chow that is the best wording.

Member Gon noted that it is interesting over the years to watch the evolution of Natural Area Reserves System and was pleased by the mission statement.

Member Agor asked whether the plan had been distributed to the mayors which they have not per Mr. Moore.

Chair Thielen asked whether Division of Aquatic Resources included the plan mentioning Ahihi Kinau. Mr. Moore said staff is working with Dan Polhemus and DAR on Goal #8 to come up with a designation.

Chair Thielen pointed out Goal #2 – Integration with other DLNR programs giving Kealakekua Bay as an example - what is the rule? which depends on where you're standing because there are various rules with each division making it confusing and suggested having “place based rules” across divisions and departments to make it clearer. What are the rules and management strategies for that area making it an integrated management area which would be worthwhile to clear up any confusion? Mr. Bonard said that the reason Aquatic wasn't mentioned was because it is one of the environmental resources. Board members suggested inventory of lands and waters.

Chair Thielen suggested revising Goal #9 title to “Enforcement and Compliance” because that is important when looking at measure of effectiveness. It's a matter of changing behavior or not. Mr. Bonard agreed that is the challenge whether they are getting to the public.

Chair Thielen agreed that the program performance results should be revisited and to assure funding depends on how well the plan is articulated because this fund has gone to other programs.

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

**Item K-1 Conservation District Use Application (CDUA) HA-3484 for the Proposed Joseph Single Family Residence at Laupahoehoe, North Hilo, Island of Hawaii, TMK: (3) 3-6-02:39**

Sam Lemmo, Administrator for Office of Conservation and Coastal Lands, informed the Board that there was a typographical error. The parcel size says 14,156 square feet and .3 acres which should be 3.149 square feet for area of parcel. Mr. Lemmo asked for approval.

Lori Mikkelson is a friend assisting the applicant who asked to approve and accepts the conditions.

**Unanimously approved as amended (Agor, Johns)**

**Item D-3 Grant of Term, Non-Exclusive Easement to Tradewinds Forest Products, for Access Purposes, O'okala, North Hilo, Hawaii, TMK: (3) 3-9-01:06.**

Member Johns recused himself.

Mr. Atta for Land Division reported on background and Tradewinds requested use of the area which staff had no objections.

Don Bryan representing Tradewinds Forest Products described that the area was used by the sugar plantation to lay sugar and his company will use it the same way with timber. There will be heavy truck traffic, there is debris from the sugar plantation that needs to be cleared and the address on the form is old and should be changed to their O'okala address.

Member Gon asked whether O'okala School is still active and whether the proposed use would create safety concerns. Mr. Bryan replied that the school has been closed for some time.

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

**Item D-4 Issuance of Right-of-Entry Permit to the University of California-Berkeley onto State Lands at Makeanehu, Kaihooa-Pahinahina, North Kohala, Hawaii, TMK: (3) 5-8-01: 6 & 12; 5-9-03: 1 & 4; and 5-9-04: 8.**

Member Johns recused himself.

Morris Atta representing Land Division described the background where staff recommended granting an extension.

Member Gon disclosed that he had worked with the doctors listed previously and that he would not get any benefits from this particular action.

Jennifer Kahn from University of California – Berkeley was present to answer questions.

Chair Thielen asked whether the Board could add a requirement for the University of California - Berkeley to share their inventory results and subsequent reports with the State Historic Preservation Division and Ms. Kahn replied that it would not be a problem.

**The Board:**

**Approved staff's recommendation with the amendment to #2 by adding and share their inventory results and subsequent reports with the State Historic Preservation Division.**

**Unanimously approved as amended (Gon, Edlao)**

**Item M-1 Cancellation of Amendment to Harbor Lease No. H-87-30 Lessee: Hawaii Maritime Center, Fast and Submerged Land at, in Vicinity of or Adjacent to Pier 7, Waikahalulu, Honolulu Harbor, Honolulu, Island of Oahu, Tax Map Key: 1st Div., 2-1-01:58**

Member Johns recused himself.

Eric Leong, Property Manager for Department of Transportation (DOT)/Harbors Division, gave background.

**Unanimously approved as submitted (Schuman, Edlao)**

**Item D-9 Approval in Principle of the Acquisition of Private Lands for a New Kihei High School Campus, Portion of Kula, Makawao, Maui, TMK: (2) 2-2-02:15 por. & 54 por.**

Written testimony/documents were distributed.

Mr. Atta described background and the needs of the area. Referring to the documents distributed questioning the ownership of the parcels, Mr. Atta reported that Land Division did not have anything to verify or collaborate any of the information and couldn't comment on Mr. Liu's concerns.

Gayleen Nakazuka representing Department of Education (DOE) Planning Section said that they are working with the consultant to get the documentation on clear title which should occur in a couple weeks.

Member Edlao described a letter that provided documentation allegedly verifying the adverse claims to the property that never got a response from DOE. Ms. Nakazuka said that the superintendent of the area did receive the report.

Member Edlao asked whether the Board can proceed with this because of the pending civil action. Deputy Attorney General, Randy Ishikawa said he believes the pending action will appear in the title report.

Chair Thielen noted that what is before the Board is an agreement in principle which is not a lease. It's approving the negotiations, but the pre-conditions have to be met before the party can come back to the Board to ask for final approval of the lease including a clear title report. She reiterated that this action was only an approval in principle for the land acquisition.

Member Johns referred to recommendation item 1.C. and requested the addition of "any resolution of any title issues." There appears to be a claim of sovereign issues that may not subject to state law. The State has the ability to condemn whoever owns this parcel. It's a question who gets the proceeds. Chair Thielen said that it's not condemnation, but whether there are any title issues because we received letters notifying the Board of claims. The title search will resolve any title issue.

Member Edlao asked how far back should or will the search go when going through a title search. Ms. Nakazuka says that the title companies go back as far as possible and DOE is hiring a title insurance company to do it.

Chair Thielen summarized what is being recommended to the Board is to approve in principle the land acquisition subject to the following conditions and what Member Johns proposed is amending condition C to say "Review and approval by the Department of Attorney General including resolution of any title issues." The DOE would hire a title company to do a title search for DOE and we are on notice on particular claims of title that title search needs to cover those particular claims as well as everything else in the record and the title company would come back with a report either validating issues for title and those that need to be resolved or saying there are no issues with title. Only then would the deputy attorney general sign off on the acquisition documents.

Member Edlao asked regardless of the pending civil case ...he is comfortable with it.

Member Johns noted in the written documents that the title search shows broken title.

Ms. Nakazuka said that the property owner had looked into it too and she believes the owner and Mr. Liu are trying to resolve it. DOE is looking at the larger part of the parcel and was not sure of what the claim was.

Member Edlao said that Mr. Liu felt overlooked by DOE.

Chair Thielen said to add the condition to follow-up with Mr. Liu.

**The Board:**

**Approved staff's recommendation with an amendment to condition number 1.C. Review and approval by the Department of Attorney General including**

**resolution of any title issues. and to add a condition 1.E. For staff to follow-up with Mr. Liu.**

**Unanimously approved as amended (Edlao, Johns)**

**Item D-11 Approval of Lease of Private Property with County of Maui on Behalf of the State Department of Health to Enter into a License Agreement with the County of Maui for an Air Monitoring Station, Hale Piilani Park, Waiakoa, Wailuku, Maui, TMK: (2) 3-8-004: 031 por.**

Mr. Atta reported on background.

Gary Woo with Department of Health - Clean Air Branch, was asked by Member Edlao whether the grant money had been secured which it has.

**Unanimously approved as submitted (Edlao, Gon)**

**Item D-7 Report to the Board on Jacoby Development, Inc.'s Termination of the Kona Kai Ola Development Agreement for public lands at Kealakehe, North Kona, Island of Hawaii, Hawaii. TMK: (3) 7-4-08: 71, 999, and portion of 3.**

Written testimony was distributed.

Mr. Atta explained that this is a non-action item, follow-up report that the Board requested last September where Jacoby Development, Inc. (JDI) requested termination of their Kona Kai Ola project. Due to JDI's attorney's representation that they were willing to work with staff to come up with mutually agreeable terms, the Board had suspended implementation of the termination on the condition that JDI develop such terms with staff. JDI subsequently responded with initial terms that were unacceptable to staff, who then requested that JDI come back with revised terms by December 31, 2008. To date JDI provided no follow up response. Consequently, staff brought this issue back to the Board to report the inability to agree on terms and to confirm termination of the contract.

Robert Klein representing JDI said that Mr. Atta summarized it properly and that due to the complete rejection of JDI's initial proposals, they believed it was futile to present any further terms to the Department.

David Frankel from Native Hawaiian Legal Corporation representing Kaliko Chun and Dicky Nelson, said when this Board made a decision several years ago to go forward with this process in Kona, the Board received testimony advising the need to complete the 343 before decision making which didn't happen. Instead, the Board authorized an agreement which allowed everything to move forward contingent upon completion of the EIS rather than getting all the information first. This project would have had serious adverse affects on public trust resources and traditional and customary practices in the area and it is

incumbent upon the Board to investigate those impacts prior to any decision making which should have occurred. But, they are happy with the outcome.

**Item C-2 Issuance of Special Use Permit No. FW-2009-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:007 and (3)-7-4-001: por. 003**

Written testimony from Palani Ranch Company, Inc. was distributed.

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW), reported on the background that the purpose is to phase out ranching by removing cattle and for re-forestation to come in. Mr. Conry explained the rules for all areas on the Big Island provide for a safety zone of 50 yards from roads or buildings, and aerial shooting policy is to back off 1,000 yards from anyone detected within the shooting area.

There was some discussion about retrieval of carcasses which is difficult due to lack of public access and the ranch not willing to allow it.

Member Gon asked what is the timeframe to phase out ranching to forest. Mr. Conry referred to page 2 of the permit that staff is at the 2.a. phase implementing with public notices and described each sequence. The ranch has been moving the cattle out, but it's difficult. There is a U.S. Forest grant to start the koa re-forestation which includes fencing to keep cattle out.

Chair Thielen asked because of contact from concerned people is Mr. Conry alright with adding to the recommendation for DOFAW to coordinate with neighbors on the shoot days, times and locations and to use safety measures including the one he mentioned earlier where Mr. Conry agreed.

**The Board:**

**Moved to accept staff's recommendation with the additional provision 1.c. to coordinate with neighbors on shoot days, times, and locations, and for aerial shooting to back off 1,000 yards if people are detected in the area and implement other safety protocols as established by DLNR DOFAW.**

**Unanimously approved as amended (Gon, Edlao)**

**Item D-1 Amend Prior Board Action of December 9, 2005 (D-2) Set Aside to Agribusiness Development Corporation for Irrigation System and Waimea (Mauka) Hydro-Electric Power Generation Plant Purposes, Kekaha and Waimea Valley including Hawaiian Home Lands, Kauai, TMK's: (4) 1-2-1:various; 1-2-2;various; 1-4-1:various; and 1-5-1:various.**

Mr. Atta said this item is fine as is.



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

**Item D-2 Consent to Assign Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28180, Wailua Associates, Assignor, to Coco Palms Ventures LLC, Assignee, and Consent to Mortgage, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-03:11**

The Board asked what happens if Coco Palms defaults on the mortgage where Mr. Atta replied nothing happens to the Department.

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

**Item D-5 Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Kamuela Baseyard and Nursery at South Kohala, Hawaii, TMK: (3) 6-6-5:1.**

There were no changes per Mr. Atta.

**Unanimously approved as submitted (Gon, Edlao)**

**Item D-6 Rescind Prior Board Action of October 24, 2008 (D-7), Issuance of Revocable Permit to Mahalo Broadcasting, LLC, Permittee; Forfeiture of Revocable Permit No. S-7425 to Skynet Hawaii LLC, Kalaoa, North Kona, Hawaii, TMK: (3) 7-3-49: 38.**

Mr. Atta reported on background.

**Unanimously approved as submitted (Schuman, Edlao)**

**Item D-8 Request for Approval of Special Installment Agreement for Payment of Retroactive Rent under General Lease No. S-5700 to George Y. Tamashiro and Suzuko Tamashiro, Kealakehe, South Kona, Hawaii, TMK: (3) 7-4-20:18 & 20.**

Mr. Atta amended the recommendation under the 2<sup>nd</sup> line to delete the phrase “in which the Lessee prevailed after filing its motion”. Mr. Atta clarified that the release of a copy of the appraisal was due to voluntary release of the document by the Department and not the Lessee prevailing on its motion.

**The Board:**

**Approved staff’s recommendation after deleting the phrase [in which the Lessee prevailed after filing its motion].**

**Unanimously approved as amended (Edlao, Agor)**

**Item D-12 Consent to Lease of Lands under Governor's Executive Order No. 4033 to County of Maui, Honokowai, Lahaina, Maui, TMK: (2) 4-4-001:106.**

Mr. Atta had no changes.

Member Edlao asked about the ceded lands in exhibit B where Mr. Ishikawa noted HRS 171-11. Mr. Atta said it wouldn't hurt to include it.

**The Board:**

**Approved staff's recommendation by adding "subject to HRS 171-11."**

**Unanimously approved as amended (Edlao, Agor)**

**Item F-1 Approval of Selected Hearing Officer to Conduct the Contested Case of Makena Boat Partners.**

Alton Miyasaka representing Division of Aquatic Resources asked the Board's approval.

**Unanimously approved as submitted (Edlao, Gon)**

**Item J-1 Extension of Cure Period in Notice of Default, Authorize and Allow for Amendment of General Lease No. B-00-1, and After-the-Fact Approval of Assignment of Lease by Lanai Company, Inc. to Castle & Cooke Resorts, LLC, Manele Small Boat Harbor, Manele, County of Maui, Island of Lanai, Tax Map Key: (2) 4-9-17:02**

Ed Underwood, Division of Boating and Ocean Recreation Administrator, summarized background asking for an extension and for the Board to approve the recommendations.

Richard Mirikitani representing Castle & Cooke (C&C) came up to answer questions.

Member Gon asked Mr. Mirikitani to characterize the lease requirements because the history of the lease requirements was such that Castle & Cooke didn't meet those requirements and now there is an agreement that they would take on additional responsibilities which Mr. Mirikitani acknowledged. Member Gon was unclear with what kind of assurances are in place that these additional responsibilities would occur given the fact that the items that were previously imposed didn't occur and asked Mr. Mirikitani to give the history and explanation of that. Mr. Mirikitani said with respect to the additional obligations it was his understanding that they were immediate performance obligations and it would be apparent if Castle & Cooke wasn't performing it. They probably are doing the maintenance where Mr. Underwood said not yet. The maintenance would begin once this is approved and noted that Castle & Cooke will provide annual regular updates to the Chairperson on December 31<sup>st</sup> of each year. Staff is monitoring the progress. Member Gon said he was concerned with the monitoring.

Chair Thielen said under the agreement in Table II about the responsibilities asked whether a default on these responsibilities would be considered a default on the lease agreement. Mr. Mirikitani said it was his understanding that with this lease approval C&C would proceed with an actual lease amendment and he assumed it would specify the conditions. That failure to perform material obligation is a default under the agreement. Chair Thielen said that there are provisions in that lease agreement which would provide the penalties of those consequences. Member Edlao asked whether the Board will see those lease agreements or is the Chair doing that. Chair Thielen said it would amend the lease consistent with these terms which is coming before the Board to approve these new terms and then do a new lease agreement where failure to abide by those terms would be subject to the consequences in that lease agreement. Mr. Underwood said it doesn't take C&C out of default it extends the cure period. Member Gon said the only item left will be improvements to the rock line which Chair Thielen noted under the original default. Failure to comply with new terms and conditions would be the current lease agreement. There would still be an ability to enforce those conditions. Mr. Underwood said staff will work with C&C.

Mr. Mirikitani acknowledged the concerns noting that in good faith C&C previously donated two acres of related lands to the State and is happy to be working with the State.

**Unanimously approved as submitted (Edlao, Gon)**

**Adjourned. (Edlao, Gon)**

There being no further business, Chairperson Thielen adjourned the meeting at 10:30 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:



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Laura H. Thielen  
Chairperson  
Department of Land and Natural Resources