

AMENDED

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

DATE: THURSDAY, DECEMBER 9, 2010
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

MEMBERS

William Aila
Jerry Edlao
Rob Pacheco

Ron Agor
John Morgan
David Goode

STAFF

Randy Kennedy/DOFAW
Russell Tsuji/LAND
Edwin Matsuda/ENG

Dan Quinn/PARKS
Carty Chang/ENG

OTHERS

Colin Lau, Deputy Attorney General
Scott Fisher, C-3
Dave Cooper, D-6

Helen Nelson, C-3
Ronnie Grover, E-3
Bruce Lenkeit, D-6

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

A number of written testimonies was received and distributed.

Item C-3 Request to Amend a Fiscal Year 2008 Grant from the Legacy Land Conservation Program to Maui Coastal Land Trust by Reducing the Acreage of the Approved Project

Randy Kennedy representing Division of Forestry and Wildlife (DOFAW) noted that as you look through the application the acreage amount was the same and the applicant was hoping to add another parcel to it. In that sense there is no change. The president of the Maui Coastal Land Trust is here in support of this change and Speaker Say supports it in his written testimony.

Member Edlao asked for the funding what percentage is the State's. Mr. Kennedy said that most of the funding for this parcel is from Federal grants. The total cost of the parcel is \$4 million dollars and of that \$2.78 million from Fish and Wildlife Service and \$994,000 from the State and there are private donations. There is a challenge grant for \$110,000 so the State is paying 25% of the cost.

President Helen Nielsen representing Maui Coastal Land Trust testified that she spoke with Chancellor Tsutsui who is in agreement with this amendment and all the Federal funds have been approved with the amendment hoping to close by the end of the year.

Member Goode asked for clarification that the reduction in acreage is not a reduction in price going from 120 acres to 80 acres. Ms. Nielsen acknowledged that was correct. The original 82 acres was 78 at one point. There has been 2-1/2 years worth of restoration work done to the property.

Scott Fisher, project manager with the Maui Coastal Land Trust testified describing the project area replacing an ungulate proof fence and the return of native species of plants and migratory birds. They are controlling predators, invasive plant species and identifying the extent and locations of archaeological sites many never documented as well as monitoring.

Member Morgan asked that this submittal says you want to get the balance of the remaining acreage. Mr. Fisher said they would like to see it protected which is between the Maui Coastal Land Trust and Ulupalakua Ranch to determine whether it will be an easement or ownership.

Member Morgan asked whether everything complies with 343 and Ms. Nielsen confirmed that.

Unanimously approved as submitted (Edlao, Goode)

Item E-3 Request Approval to Renew and Issue New Revocable Permits for Use of State Parks Lands on the Islands of Kaua'i, O'ahu, Maui and Hawai'i

Dan Quinn representing Division of State Parks noted that the agenda numbers and submittals were switched and requested leaving the agenda numbers intact, but switch submittals numbered item E-2 and E-3. Attorney General Colin Lau confirmed that was okay. Mr. Quinn conveyed that several of the revocable permits (RP) came before the Board during the course of the calendar year to request your approval. It has been staff's

intent to have all of these renewed at the beginning of each year so we don't have these come up on us at multiple renewal times. All RPs are listed on the back where he briefly described a few. The non-profit camps at Koke'e were approved by the Board for several organizations and staff has not yet issued the long term leases approved by the Board which he listed. The RPs for Kealakekua Bay for boating has not yet been executed and are not on this list. Exhibit B shows more detail. Staff requested the Board authorize the issuance of revocable permits as listed on Exhibits A and B and delegate to the Chair approvals of any other terms and conditions to serve the best interest of the State.

Ronnie Grover representing Na Pali Sea Tours testified that they have an RP for beach landing at the Na Pali Coast and would like to continue operations there.

Member Morgan asked how the \$5 or 5% per person is derived from and how do you determine market. Mr. Quinn explained originally an appraisal was done when the Board first approved these and that was a result of that. When the Division is able to hire a property manager staff will re-examine that, but staff doesn't propose changing it this time around and to leave it as is which may change in the future. Member Pacheco said that the Na Ala Hele system uses these figures. Mr. Quinn noted based on recent rule changes staff has the ability to move those type of operations to an administrative level permit which staff has already done with some operations in the Wailua River which makes it a more simplified process to renew. It might be possible staff will do that with the boating operation permits which would come before the Board.

Member Morgan was curious whether the company pays the 5% or \$5.00? Mr. Quinn said it depends on the season.

Member Edlao asked whether the Board will see this again in a year and whether it will change during the year. Mr. Quinn confirmed it will be back in a year and would have to come before the Board for any changes.

Member Agor made a motion to approve as submitted. Member Morgan seconded it. All approved.

Unanimously approved as submitted (Agor, Morgan)

Item D-7 Delegation of Authority to the Chairperson of the Department of Land and Natural Resources to Issue Right-of-Entry Permits to the United States of America to Conduct Environmental Investigations, Remediation, and Response Activities Pertaining to Unexploded Ordnance, Discarded Military Munitions, and Munitions Constituents Occurring on Unencumbered and Encumbered Public Lands in the State of Hawaii in Relation to the Defense Environmental Restoration Program/Formerly Used Defense Sites and Military Munitions Response Program and Other Similar Programs.

Chairperson Aila noted that this item would need to be deferred to the next Land Board meeting because of questions regarding Chapter 343 that needs to be answered first.

This item was deferred by Member Morgan and seconded by Member Agor.

Deferred (Morgan, Agor)

Item D-6 Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various.

Russell Tsuji representing Land Division explained that this item is a housekeeping measure that Land Division is assisting Division of Boating (DOBOR) and related that historically DOBOR was under DLNR as one agency under DOT where it split off many administrations ago and this is the final clean-up withdrawal from Division of Transportation (DOT) and set aside to DLNR's DOBOR. There are a lot that are EOd to DOT. DLNR has been managing the area as its own, but the formal paperwork didn't go through. It's still State property.

Dave Cooper testified that his issue with this item was trying to understand it and suggested a layman's executive summary by the people making these presentations. What are in these large documents that may or may not affect people citing the example of the Hilton land reverting to something else and he had no idea what that means. Member Pacheco asked whether he read page 3 and 4 of the submittal and Mr. Cooper acknowledged he read the whole thing, but when you go back into the details they don't support that executive summary in those areas. It would be easier for everyone to clarify. Member Goode said this came up at the last Board meeting that the summary was too vague or mysterious maybe. Mr. Cooper said the executive summary didn't contain what was in the body of the document which is the issue. In the corporate world this wouldn't happen that the Board doesn't get to see the details of the submittals until the meeting. Member Agor explained that is why we have this process to welcome the public to come and ask the questions. Mr. Cooper agreed, but when he had done it in the past no one answers it. Member Pacheco asked whether Mr. Tsuji's explanation help clarify what this is about. Mr. Cooper said he felt a little better, but it would be better to understand what he is reading so he would know what to ask.

Bruce Lenkeit a resident of the Ala Wai boat harbor testified reiterating Mr. Cooper's testimony that what is in the summary is not necessarily in the rest of the document and things were passed by this Board in this manner. He suggested clarifying things in the future.

It was asked by Member Edlao when the submittal is posted whether people can call staff for clarification and whether they had any calls. Mr. Tsuji confirmed that, but no one called on this item. Staff does get calls from Board members, legislators and the public sometimes if it's a Land Division item. If it's a Boating submittal DOBOR handles it.

Member Pacheco said there is huge amount of pages Mr. Cooper referenced because we don't have something like that in our submittal and asked would that be the legal mechanism doing the land transfers. Mr. Tsuji explained the point of this submittal is to take it out from DOT Harbors and give it to DOBOR since they are managing the area and that's it. There are a lot of issues when dealing with Waikiki Beach...Member Pacheco asked about the huge document Mr. Cooper is referring to. Mr. Tsuji asked what document is he referring to. If it's Waikiki Beach there are various agreements and legal documents related to Waikiki Beach because it was a project between public and private where it was previously a swamp. All this submittal is doing is cleaning up some of DOBOR's stuff so they can get the formal EO to issue these long term leases because if they want to generate revenue the land that is giving over to DOBOR is so they can issue a lease and to get the AGs to sign off it would be difficult for them to sign off if they don't have the formal Governor's EO which is like a deed. This is to get the transfer done so DOBOR can proceed.

The Board members asked Mr. Cooper what document he was referring to because the submittal is only 10 pages. Mr. Cooper said it has a lot of TMKs in it and what is happening with the lands. He appreciated staff's work in cleaning stuff up. When you get to the bare bones of a document you have to go and get additional documents which is referenced in the submittal. Member Pacheco explained if the Board had every single reference they would have a high stack of papers. The Board relies on staff and the Deputy Attorney Generals to review these things to make sure all the legal is proper. If the public does see discrepancies and comes forward with specific information it would be helpful. To Member Pacheco this particular submittal is straightforward. Now he understands the legal documents Mr. Cooper presented is not part of the submittal. Mr. Cooper acknowledged that is correct reiterating a better job at explaining things.

Member Goode moved to approve as submitted and Member Morgan seconded it.

Unanimously approved as submitted (Goode, Morgan)

Item C-1 Request Approval for Selection of Competitive Sealed Proposal Process and Authorize the Chairperson to Award and Execute a Contract for Completing Environmental and Cultural Compliance for the Kau Conservation Project

Item C-2 Request for Authorization to Execute and Sign a Contract for Helicopter Transportation Services for the Division of Forestry and Wildlife, Hawaii Branch

Randy Kennedy, Acting Administrator for DOFAW communicated that both items C-1 and C-2 are straightforward and require Board approval. There are no changes. Item C-2 is important to get a helicopter contract on the Big Island.

The Board commented on Judge King's support of the palila.

Member Morgan made a motion to approve as submitted. Member Pacheco seconded it.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-1 Consent to Assign General Lease No. S-5583, William J. Sanchez and Alison Sanchez, Assignor, to William J. Sanchez, Assignee, Kapaa Agricultural Lot, Lot 1, Kapaa, Kawaihau (Puna), Kauai, Hawaii, Tax Map Key: (4) 4-3-4:1, 14, and 17.

Item D-2 Approve the Withdrawal of Approximately 2,226.683 Acres from General Lease No. S-4478, Boteilho Hawaii Enterprises, Inc., Lessee, Parcel 3, Government Lands of Kaohe 2nd, Hamakua, Hawaii, Tax Map Key: 3rd/4-3-10: portion of 2.

Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Consisting of 2,226.683 Acres for Addition to the Mauna Kea Forest Reserve; Issuance of Immediate Management Right-of-Entry, Parcel 3, Government Land of Kaohe 2nd, Hamakua, Hawaii, Tax Map Key: 3rd/4-3-10:02 portion of 2.

Member Morgan asked whether SC Ranch and Boteilho are okay with it. Mr. Tsuji confirmed that. He wasn't sure whether Member Morgan was here when the Board did Jason Moniz which is similar to that and Parker Ranch is coming up. Jason Moniz didn't take advantage of the extension, but the other two did and are at their maximum term so this is to clean-up to formally withdraw it from the lease and set aside. And, the Board should have received written testimony from DOFAW in support.

Item D-3 Approve the Withdrawal of Approximately 737.754 Acres from General Lease No. S-4477, SC Ranch Co., Inc., Lessee, Government Lands of Kaohe II, Hamakua, Hawaii, Tax Map Key: 3rd/4-3-10:08 (por.); and

Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 737.754 Acres for Addition to the Mauna Kea Forest Reserve, and Issuance of Immediate Management Right-of-Entry, Government Lands of Kaohe II, Hamakua, Hawaii, Tax Map Key: 3rd/4-3-10:08 (por.).

- Item D-4** **Consent to Mortgage with Estoppel Certificate, Lease of Non-Exclusive Easement S-5252 (pending), Meri-Jo Abrams Manuel, as Successor Trustee of the Lakala Trust, Lessee, Lahaina, Maui, Tax Map Key: (2) 4-5-1:seaward of 55.**

- Item D-5** **Amend Prior Board Action of October 24, 2008, Item D-9; Approval in Principle of Direct Lease to Pacific Gateway Center for Multi-Purpose Keehi Community Resource Center and Related Programs Purposes, Honolulu, Oahu, TMK: (1) 1-1-3:3, 204, 205, 206, 207, 211, 212, 138.**

- Item D-8** **Extension of Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes at Laupahoehoe, Hawaii, Tax Map Key: (3) 3-6-6:portion of 46. (HDLO) Charlene**

- Item D-9** **Termination of Revocable Permit No. S-7464 to Community Development Institute-Head Start (CDI HS); Issuance of Revocable Permit to Parents and Children Together (PACT), for Day Care Purposes, Keauhou 1st, North Kona, Hawaii, Tax Map Key: 3rd/ 7-8-007: portion of 028.**

- Item D-10** **Amend Grant of Non-Exclusive Easement No. S-5991 for Boat Dock Purposes; HRK Waipahu, LLC, Grantee; Heeia, Koolaupoko, Oahu; TMK (1) 4-6-003:seaward of 077.**

Unanimously approved as submitted (Agor, Morgan)

- Item E-1** **Request Approval to Immediately Issue a Revocable Permit to the Kauai Christian Fellowship, and upon its creation and legal status, Issue a Revocable Permit to the proposed Camp Hale Koa Association for Management of Pu'u Ka Pele Camp Lots (Camp Hale Koa Facilities and Lot) Waimea Canyon State Park, Kaua'i, TMK: (4) 1-4-002:55 (Lots 55-58)**

Mr. Quinn reported that when the Department originally issued leases to the Koke'e lessees approved issuances of five permits directly to non-profit organizations. The Seventh Day Adventist Church was one of them, but during the course of the RP they backed out of their agreement not being able to keep up with it. Staff worked with Koke'e Lodge, but because staff could not issue a long term lease they couldn't make it work for them. Next step was to work with non-profit organizations to issue a permit similar to what the Board had already approved. Mr. Quinn related what buildings are on the grounds and staff had feelers from five different non-profits where in discussion with staff decided to work together as a hui by forming a new non-profit and have it managed in the same fashion as some other organizations are. Kauai Christian Fellowship stepped

forward to be the umbrella organization with the understanding that when a new non-profit is formed then staff will come back to the Board and asked that group then be the future lessee or permittee. Staff recommends to issue to the Kauai Christian Fellowship with the understanding that when a non-profit status is achieved by the Camp Hale Koa Association it would come back to the Board to issue the new RP and delegate to the Chairperson. Staff doesn't want this facility to slip away. It would be at the nominal rent standard.

Member Edlao asked counsel because the recommendation is to approve the RP to Kauai Christian Fellowship and it also says upon creation of the legal non-profit and then issue an RP to Camp Hale Koa would it have to come back to the Board. Mr. Lau said the action is to take care of both. It's up to Board whether to approve both at once and suggested adding another condition subject to review by the Attorney General's office.

Member Pacheco suggested putting a phrase in #1 ...issue upon review by the AG an RP. Mr. Lau said it was the Board's pleasure if they wanted it to come back. Mr. Quinn said all of these documents are always subject to review and approval by the AG. If the AG's office says it needs to go back to the Board they will. Also, if staff receives any substantial change in conditions they will go back to the Board as well.

There were some discussions between Board members and the Deputy AG on the motion.

Member Agor moved to approved staff's submittal as amended. Member Pacheco seconded it. All voted to approve.

The Board:

Amended staff's recommendation #1 by adding ...then issue upon review by the Department of the Attorney General an RP... Otherwise, staff's submittal was approved as submitted.

Unanimously approved as amended (Agor, Pacheco)

Item E-2 Consent to Assign General Lease No. SP-0166, Norman Nitta, Assignor, to Ivan I. Nitta and Val S. Nitta, Assignee

Mr. Quinn noted item E-2 was labeled E-3 on the submittal which is an assignment for the Koke'e Cabins between members of the Nitta family. The Board has a approved a number of these with more coming where there is a nominal \$10.00 fee, but some came in for a consideration for thousands where the State gets part of it, but not for this nominal fee. The recommendation stands and other than changing the item E-2 for E-3 there are no amendments.

Member Agor asked that it's in the rules that the transfer can happen and it's always in the rules even every 20 years when the cabins went out for auction to the public. Mr. Quinn acknowledged that whether it's in the rules or statute. Member Agor said now we are in a situation where the Legislators had asked or made the Land Board lease these

properties out to the same people who had it 20 years before and therefore the general public did not have an opportunity to have a cabin up there through the bidding process. Is there any possibility in the future of eliminating the transfers if somebody doesn't want it should it go back out for auction to the public rather than to the person the lessee designates it too. Mr. Quinn acknowledged that he shared the same sentiments. A number of these transfer have been within families where the older generation passing to the new generation. Some have been completely outside of the family, to friends who help care for the property. Not having a legal background he could not answer in detail, but staff goes to the Board to approve these whether a Board disapproves the transfer and folks giving up their lease and the property going back on the availability list he couldn't say. It's odd that people fought so hard to get these and then pass it on to other people. They have about 20 who have requested assignment of the agency. Member Pacheco asked whether within the rules there are specific provisions on who it can be transferred to. Mr. Quinn said there doesn't seem to be any limitation at all. Member Pacheco asked whether they as a Board can set policy on. Member Morgan said it's a case by case thing. If it appears to be an unrelated party the Board could say we don't approve it. Mr. Quinn said staff does have to get the Board's approval of the assignment. Member Agor would prefer the Board setting a policy for approval. Member Pacheco agreed because the Board would be in trouble taking these one case at a time. Mr. Quinn noted that the Board has already approved some. Member Pacheco asked whether the Board could ask State Parks to do a historic review of these transfers and suggest a policy to the Board for future transfers. Mr. Quinn said his ability to make such an analysis is limited, but staff could look at it and consult with the AG's office because the leases themselves include a mechanism for assignment. It's possible that if we are going to make restrictions on half the leases would have to be amended. Member Pacheco said he thought it was strange to have leases...Mr. Quinn agreed. Member Goode asked whether there was an expectation on the lessees that they will be automatically transferred especially the inter-family one.

Mr. Tsuji said what he doesn't know is how the Koke'e leases got started and confirmed that by statute it's by auction unless there was a special reason for a direct lease. Normally by end of the term you go back out to auction noting that most of the commercial leases run 55 or 65 years and idea was to open it up to others. Koke'e was special and he thought the Board could issue some parameters how it should be done. There are no special legislation for commercial leases.

Member Pacheco questioned whether these leases have an assignment that is in violation of the law. Mr. Tsuji said he thinks that is the issue. The leases were to expire were granted another lease. Member Pacheco said that was done legislatively.

Mr. Quinn said that the rent was set by appraisal, but there was a negotiation process, but the question is the assignment portion which he believes is in the standard condition of state leases. Mr. Tsuji said that is the issue the Deputy AGs need to deal with and what was actually drafted. He mentioned the law for regular leases. Koke'e was different.

Mr. Quinn said the previous lease period all the lessess except for a couple owned their cabins and it was the sale of the cabin itself where one of the changes was all cabins

became public property. When there is an assignment of that lease and consideration of payment Land Division determines how much that comes to the State. Not the sale of the lease or cabin.

Member Agor moved to approve the submittal as submitted. Mr. Morgan seconded it. All voted in favor.

Unanimously approved as amended (Agor, Morgan)

Amend Agenda Item from Item E-2 to Item E-3. Otherwise, staff's recommendation was approved as submitted.

Item L-1 Request for Authorization for the Chairperson to Contract with Consultants, Enter into Supplemental Contracts, and Negotiate and Execute Joint Agreements with Local and Federal Agencies for the Statewide General Flood Control Plan Update

Carty Chang representing Engineering Division related some background that there is a mandate to do general flood control which hasn't updated since 1983. Staff was able to get a grant from NOAA. In kind services are used to match. This is to move forward with the contracts and enter into an agreement with the County.

Member Goode asked whether the County or NOAA would be in control. Mr. Chang said that Department already works with the County on certain things.

Edwin Matsuda representing Engineering Division related working with the Counties on their storm master plans by looking at flooding history where this General Flood Control Plan will be more a coordinated effort between other State agencies and FEMA.

There were some discussions between the Board and staff regarding the flood insurance maps and when they go into affect.

Member Edlao made a motion to approve as submitted. Member Goode seconded it. All approved.

Unanimously approved as submitted (Edlao, Goode)

Item M-1 Issuance of a Revocable Permit to Clean Islands Council for Inconsistent Use Kalaeloa Airport, Island of Oahu, State of Hawaii

Item M-2 One-Year Extension of Cooperative Agreement No. H-89-8 Issued to the United States Department of the Interior at Kawaihae, Kohala, Hawaii

Item M-3 Issuance of a Hangar Facilities Lease by Public Auction Dillingham Airfield, Waialua, Hawaii

Item M-4 Amendment No. 15 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport

Unanimously approved as submitted (Agor, Pacheco)

Item A-1 November 12, 2010 Minutes

Item A-2 November 22, 2010 Minutes

Item A-3 December 1, 2010 Minutes

Member Agor made a motion to defer the minutes and Member Morgan seconded it. All voted in favor.

Adjourned (Pacheco, Edlao)


There being no further business, Interim Chairperson [~~Thielen~~ Aila] adjourned the meeting at 10:11 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 Thielen~~ William J. Aila, Jr.]
Interim Chairperson
Department of Land and Natural Resources