

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

DATE: FRIDAY, APRIL 13, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Board member Ron Agor called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

MEMBERS

Ron Agor
David Goode
Jerry Edlao

John Morgan
Dr. Sam Gon
Rob Pacheco

STAFF

Sam Lemmo/OCCL
Ed Underwood/DOBOR
Alyson Yim/ENG

Russell Tsuji/LAND
Paul Conry/DOFAW

OTHER

Julie China, Deputy Attorney General
Ross Smith, M-1
Phil Hauret, D-8

Francis Ouye, K-1
Leilani Pulmano, D-3
Jody Hart, K-2

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 March 9, 2012 Minutes

Approved as submitted (Gon, Edlao)

Item A-2 March 23, 2012 Minutes

Member Pacheco recused from item A-2.

Approved as submitted (Morgan, Gon)

Item K-1 Conservation District Enforcement File HA 12-21 Regarding Unauthorized Land Clearing, Grading and Grubbing by Francis D. Ouye Located at Ke'ei, South Kona, Island of Hawaii, TMK: (3) 8-3-006:004

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background regarding item K-1. December 2011, DOCARE (Division of Conservation and Resource Enforcement) did the site inspection and were unclear what plants or trees were removed. This is conservation land and staff looks at this as a violation of conservation district rules where they can levy a maximum fine of up to \$15,000 per violation reminding the Board that staff last year put together some penalty guidelines which staff uses now. The penalty schedule is based on what type of permit that would've been required if they had gone through the permit process. This rises to a board permit because it's landscaping involving grading and grubbing. The landowner did not realize they needed a permit to do the clearing, an inadvertent type of situation. Work was stopped and the landowner was noticed. There is no other resource damage other than the clearing itself. Mr. Ouye has been working with staff to rectify the situation. There were some mitigating circumstances where staff lowered the fine from \$15,000 to \$10,000 which is the low range for this category of penalty. Staff recommends a \$10,000 fine and \$500 administrative costs for a total of \$10,500.

Member Morgan asked what the cut off is between major and moderate. Mr. Lemmo said moderate is between 2,000 to 10,000 (square feet).

A query was made by Member Edlao on what kind of mitigation was done. Mr. Lemmo said he didn't say mitigation, but the landowner is cooperating acknowledging that there was clearing done and staff hasn't ordered any remedial actions yet for that area.

Member Edlao inquired if they do fine him what happens to the land – leave as is or require replanting. Mr. Lemmo acknowledged that saying yes probably. Member Edlao asked whether this is conservation (land), but Mr. Ouye is the owner and Mr. Lemmo said he believed so.

Member Pacheco asked if the landowner came in for a permit what would staff require. Mr. Lemmo explained a conservation district use application (CDUA) via a Land Board approval. Staff may or may not have him submit an environmental assessment (EA) which depends on the situation. When a CDUA is submitted it would go through staff including State Historic Preservation Division (SHPD) for input and the County Planning Department and other affected agencies. Comments would be compiled and staff would recommend a course of action where the Land Board would either approve or deny or modify it.

Member Pacheco asked as for remediation, since it is cleared would you allow the owner to keep the vegetation down. Mr. Lemmo noted that the issue is not the clearing, but the grubbing and grading and removing stumps that you need a permit if you take it to that extent. Yes, cut the grass, but going back in to grub and grade again would be another violation. The damage is done

and he wouldn't know what you would restore if you were to and if it would be a benefit to anybody.

Member Edlao asked if the owner wants to continue keeping the grass down he would have to come back for the permit to do that. Mr. Lemmo said unless there is heavy equipment. A weed wacker and a chain saw would be fine.

Member Pacheco said under the new conservation law you can remove certain invasive species and Mr. Lemmo confirmed that. You can remove a non-native tree but you have to replace it.

Member Edlao asked what happens if he wants to plant a tree here. Mr. Lemmo said he would have to look at the situation. At this point it doesn't seem like a problem, but he would have to check on the tree whether it's regulated or not. Member Edlao asked so he may need a permit where Mr. Lemmo said if he plans to do some landscaping he will need some kind of authorization. Member Edlao said he wanted to make it clear to Mr. Ouye and Mr. Lemmo said what is contemplated here that in the future he would be motivated to consult with us.

A query was made by Member Goode on whether staff ran this by SHPD (State Historic Preservation Division) on the archaeological. Mr. Lemmo said no, they didn't noting that there is a rock wall formation on the property and SHPD has been notified of that. There is a green waste pile remaining on the property where the County is concerned about the potential for combustion and recommends the green waste be spread out. No one has indicated any damage to the rock wall. There was a reference made to the photos in the submittal.

Francis Ouye introduced himself and that Christine Sum is co-owner. Mr. Ouye testified that he was surprised with this not knowing what he can or cannot do and will meet with staff afterwards to learn more about this and what is recommended. He explained he was being a responsible neighbor by taking care of the overgrown cactus and trees. He has no plans to do anything to the property at this time, but to maintain it. Mr. Ouye met with the Planning office (County) because of concern with runoff to the ocean and some rocks were knocked down from the rock wall over time. He was cited by the County.

There were some discussions between Member Pacheco and Mr. Ouye on the location, houses in the vicinity and that cactus was growing on the wall.

Member Edlao asked that he tried to clear the area before, but was unsuccessful, why. Mr. Ouye said it was so overwhelming because the cactus is so thick and keeps coming back. Member Edlao asked whether he had visions of doing something out there and Mr. Ouye said no, maybe for camping but that is about it. He just wanted to clear his property. Member Pacheco explained how dense the haole koa can get and once it's clear you have it under control it is a more useful property which he doesn't see any harm other than you going through the process for permits.

Member Edlao said that in the future if he should want to plant anything or grub or grade you need to come back to the Department. Mr. Ouye said that is why he is meeting with staff after to

find out if he can plant coconut trees or something native. Member Edlao said staff will clarify that.

Member Pacheco made a motion to approve staff's recommendation. Member Edlao seconded it. All voted in favor.

Member Agor mentioned that if Mr. Ouye wants to file a contested case hearing he must say so during the meeting today and file it within 10 days. The Board members explained what it entails.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-1 Resubmittal of Item M-1 of March 23, 2012 Land Board Agenda, Issuance of a Fixed Base Facility Lease and Addendum Universal Enterprises, Inc., Lihue Airport, TMK: (4) 3-5-01: Portion of 8

Ross Smith, Department of Transportation (DOT) – Airports Division, Property Management Supervisor indicated that item M-1 is a resubmission apologizing that they failed to include an environmental assessment (EA) that had been done for the general aviation sub-division and the realignment of Ahukini Road that an aeronautical user is coming in to develop a fixed base operation.

Unanimously approved as submitted (Edlao, Gon)

Item D-3 Grant of Term, Non-Exclusive Easement and Immediate Right-of Entry, to Auwahi Wind Energy, LLC for Access Purposes; Mooiki, Mooloa, Moomuku, Onau, Kanahena Kualapa, Kalihi; Honuaula; Maui; Tax Map Key: (2) 2-1-004: 049 and (2) 2-1-005: 055 & 077.

Russell Tsuji representing Land presented some background information on item D-3 pointing out the number of conditions in the recommendation and that the applicant's representative was here. He had nothing to add.

Leilani Pulmano, representing Auwahi Wind Energy, LLC testified that they have been working with staff and agreed to all the conditions.

Board member Goode asked about condition #4 with a 50 foot right-a-way and the roadway is less than that. Not knowing the condition of the road there might be some grading needed to bring in this equipment and that you may have to go outside 50 feet. Do you think you'll go outside 50 feet to make up? Ms. Pulmano said the engineering plans show that they can fit within this 50 feet right-a-way. If they have to go out the 50 feet they will be coming back to staff to talk about that.

Member Goode asked whether these archaeological sites have been identified and if they are near the road. Ms. Pulmano acknowledged they have and are adjacent to the road. Member Gon

said the road easement itself doesn't seem to affect any known archaeological site which Ms. Pulmano said that's correct.

Member Goode asked about condition #13 that it's confusing because if you are not disturbing the site there is nothing to restore. Ms. Pulmano said that the intent was they remove all of the markers that they put out for all the existing archaeological sites in the trees and groves. Member Gon said it's the removal of markers and fencing to bring it to pre-existing conditions.

Member Gon asked to clarify on #7 regarding old growth trees and what the definition of large concentrations are that you are allowed to remove in terms of – 3, 5, or 50 trees. Ms. Pulmano said that they spoke to staff and most are large groves of wiliwili trees and their intent is to avoid all of those. Member Goode asked whether the alignment of the construction plan avoids all of those groves and Ms. Pulmano acknowledged that.

Member Edlao said he was working with staff on the concerns and any time they go out the 50 feet they will have to come back to the Board. It would behoove them not to since this has been going on for a long time working very closely with staff where he moved to approve as submitted. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Edlao, Morgan)

Item D-8 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Electrical Transmission Lines Purposes; Issuance of Construction and Management Right-of-Entry; Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064:025 portion.

Mr. Tsuji conveyed item D-8 and said that the applicant was here.

Phil Hauret representing Hawaiian Electric Company (HECO) testified that he was here for any questions.

Unanimously approved as submitted (Morgan, Gon)

Item J-1 Request Approval to Initiate Chapter 91, HRS, Rule-making Proceedings to Amend Title 13, Chapter 256, "Ocean Recreation Management Rules and Areas," Subchapter 5, "Windward Oahu Ocean Recreation Management Area," by Adopting a New Section 13-256-73.13, "Ahu o Laka Safety Zone" to restrict the following while in the safety zone: 1) possession or use of alcohol, 2) entrance while under the influence of alcohol or drugs, and 3) disorderly behavior.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reminded the Board that they came before to implement the emergency rule for Ahu o Laka or the Kaneohe Sandbar. Subsequent to that staff went to the Attorney General's office for their review and they had some concerns with the way the emergency rule had been drafted where they re-drafted the rule which resulted in substantial changes and is why they are back before you. It is still going to

be no alcohol permitted in the area during 3-day holidays and defined what this sort of conduct is. A definition of what noise is was put in. Other than that the guts of the rule is the same. They are requesting to go to public hearing with the rule as written out.

Member Pacheco pointed out written testimony that a reference be made to the Kaneohe Sandbar like "Ahu o Laka aka Kaneohe Sandbar" which he thinks is a good idea for the public because most people recognize it as that name. Mr. Underwood agreed and that isn't a substantive change, but a clarification.

It was asked by Member Edlao whether he could go out there on a 2-day weekend and have a beer. Mr. Underwood said no that it's defined and the Board members pointed out Exhibit B. Member Edlao inquired why not ban it totally. Mr. Underwood said that will most likely come before this Board in the near future because people are setting up flotillas with inner tubes and coolers. There was one that Enforcement broke up one year that could have had upwards to 500 people which was in Magic Island. Now the question is what do we do about drinking alcohol in the water because if you're on the beach there are rules, but in the water there isn't and it's ok. You just can't operate a vessel under the influence. Member Edlao pointed out that when this initially started in this area his comment was they will just move to another area, but here we're dealing with Ahu o Laka and he would rather ban it totally. Mr. Underwood said staff got a lot of push back from the boating community on that. One of the things staff is working with the County on is that on the mainland states they have BUI enforcement on the water which is like going through a check point. They pull you over, run you through a battery of tests and that may be very effective if people know now that you could lose your driver's license or your vehicle if you're caught driving a vessel under the influence. But, right now the County prosecutors are reluctant to take those to trial. They want to make sure the first case that goes in is going to win.

Member Edlao asked when losing your vehicle do you mean the car you're hauling your boat on or the boat you're driving on. Mr. Underwood said no, your actual driver's license. It's tied in. The way the Statute reads it's all together vehicle and boating in one. If you BUI in a boat you may lose your driver's license as well. There is a big stick there if they can bring some of these to court.

Member Morgan commented that he thinks doing that would be an over reach, personally because all the problems occur on the 3-day weekends and there weren't any other problems. That is the tendency of Government to say we have a problem here and make a huge solution here. There are a lot of good people out there and we'll get a ton of testimonies if we ever tried to go the whole way and ban everything. Mr. Underwood said like what some people have said they like to go out on their boats and watch the sunset with some wine and you couldn't do that if you banned alcohol entirely. Member Morgan agreed with only 2 people there and so. Mr. Underwood said this has worked well and curtailed the activity out there. The hard part in other places is they are in deep water without a sandbar to sit on. Maunalua Bay got popular all of a sudden.

Member Goode said this past year we had some perpetrators that were caught and came here and they had to be like District Court and he personally found it not fun. He asked with these rules will we be doing that again. Mr. Underwood said unfortunately yes.

Member Pacheco asked whether we can get the Civil Administrative process that hasn't come to fruition instead of coming for Board action to define violations that DOCARE can issue citations. Mr. Underwood said that ultimately that is where they would like to get to. Yes and setting up that process. We did leave in the Statutes to where it gives the enforcement officer to either bring it before the Board or write it and take it to a County Court. But, staff found that the majority of the things before a County Court get thrown out. The Judge just doesn't want to deal with it. Another example is Waikiki Beach where there were numerous complaints of pre-setting beach chairs taking up the entire beach. Staff went down there confirmed it, they warned and cited all the way down the beach and every one of those were thrown out of court. It gets discouraging for the enforcement officer. It would be better to come before the Land Board because you understand the issues much better and staff can present their evidence to you and do it through this process.

Member Gon commented and making sure there are administrative fees where Member Edlao adamantly said you bet that. You can't drink or drive a car any where, any place so what's the difference. Member Morgan said the difference is the car is only so wide and cross the center line you kill somebody and the ocean is a big place. Member Edlao said he understands, but there are recent accidents with boats. He'll go with this, but we will be back.

Member Gon made a motion to approve as submitted. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Morgan)

Item C-3 Progress Briefing for Research Projects, Educational Tours and Administrative Challenges of the Hawaii Experimental Tropical Forest

Paul Conry representing Division of Forestry and Wildlife (DOFAW) asked to pull item C-3 since they want to have the Forest Service folks be able to participate that they didn't get their travel arrangements and will do this at the next meeting.

WITHDRAWN (Morgan, Agor)

Item C-1 Request Approval to Issue an Invitation for Bid and Authorized the Chairperson to Award and Execute a Contract to Furnish and Deliver a Compact Excavator for the Division of Forestry and Wildlife, Kauai Branch and

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the Project

Item C-2 Approval of Land License Agreement Between the Division of Forestry and Wildlife and the City and County of Honolulu Board of Water Supply to Conduct Animal Control Activities on Board of Water Supply Lands in Mākaha, O'ahu, Tax Map Key: (1) 8-4-002:001 and (1) 8-4-002:014 and

Request for Delegation of Authority to the Chairperson to (1) Negotiate, Approve, and Execute Land License Agreements, Right-of-Entry and Release of Liability Agreements, and Memorandums of Understanding for the Division of Forestry and Wildlife to Conduct Animal Control Activities on Lands in the Wai'anae Mountains Watershed Partnership; and (2) Determine and Approve Chapter 343, HRS Environmental Compliance Requirements, Including Approval of Declarations of Exemptions from Environmental Assessment(s) for the Division of Forestry and Wildlife for Agreements with Partners of the Wai'anae Mountains Watershed Partnership Related to Animal Control Activities

Mr. Conry noted that item C-2 is approving an agreement with Board of Water Supply (BOWS) and establishes that the Chairperson can enter into agreements with private landowners to perform ungulate control activities in the future. There were no changes to item C-1 and C-2.

Member Gon commented that he likes the watershed partnership and ungulate control in the Waianae Forest.

Unanimously approved as submitted (Morgan, Gon)

- Item D-1** **Consent to Assign General Lease No. S-4573, Hanapepe Place Associates, Inc., Assignor, to Hanapepe Commercial Properties, LLC, a Hawaii Limited Liability Company, Assignee, por. of Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-008:064.**

- Item D-2** **Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on July 4, 2012, Ouli, South Kohala, Hawaii, Tax Map Key: (3) 6-2-02: seaward of 04.**

- Item D-4** **Issuance of Right-of-Entry Permit to Jeanine Thomason (Event Manager) for The Maui Film Festival at Wailea 2012 Event, at Wailea Beach, Maui, Hawaii: Tax Map Key:(2) 2-1-008: seaward of 109.**

- Item D-5** **Amend Prior Board Action of June 24, 1997, Item D-18, to Authorize the Inclusion of Three (3) Additional Parcels in the Sale of Leases at Public Auction for Pasture Purposes, Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-004: 001, 002, 029, 031, 066, and (2) 2-2-005: 047 & 053.**

- Item D-6** **Set Aside to Department of Land & Natural Resources, Division of Forestry & Wildlife for Employee Housing Purposes, Lanai City, Lanai, Maui, Hawaii, Tax Map Key: (2) 4-9-015:004.**

- Item D-7** **Set Aside to Department of Land & Natural Resources, Division of Conservation & Resources Enforcement for Employee Housing Purposes, Lanai City, Lanai, Hawaii, Tax Map Key: (2) 4-9-015:005.**

- Item D-9** Issuance of Right-of-Entry Permit to Hawaii Explosives and Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on April 28, 2012, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).
- Item D-10** Issuance of Right-of-Entry Permit to Hawaii Explosives and Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on June 22, 2012, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).
- Item D-11** Forfeiture of Grant of Easement bearing Land Office Deed No. S-27020, PSL, Inc., Grantee, Waialeale, Koolauloa, Oahu, Tax Map Key: (1) 5-8-001:015 por.

Mr. Tsuji had no changes to the rest of the items.

Member Goode asked about Item D-4 that this seemed awkward to have it to an individual and it should be on behalf of the Film Festival if that person was not around. Member Morgan suggested replacing “for” with “and.” Mr. Tsuji asked if there is an entity. Member Pacheco said it’s under her name for the Maui Film Festival to utilize a portion of the beach. Mr. Tsuji said it maybe because the Maui Film Festival is not a legal entity. It’s just a program and not an entity and that’s probably why.

Unanimously approved as submitted (Morgan, Gon)

- Item L-1** Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. H50B722A, Park Signage Island of Hawaii, Job No. H50B692A, Park Signage Island of Kauai, Job No. H50B718A, Park Signage Island of Maui

Alyson Yim representing Engineering Division said there were no changes to item L-1.

Unanimously approved as submitted (Pacheco, Gon)

- Item K-2** Conservation District Use Application (CDUA) MA-3615 for Public Purpose Subdivision of Land for Road Right- of-Way Dedication by Hana Koali Mesa, LLC. Located at Koali, Hana, Maui, TMK: (2) 1-5-008:006

Mr. Lemmo presented some background on item K-2 that this is private land going to the County for a public purpose use and under the provisions of the rules they can do subdivisions. Looking at the pictures, as long as the work under the newly dedicated right-of-way shoulder is clearing activity and no grading or grubbing, giving them the subdivision is adequate for the purpose of conservation district lands. Staff recommends approval with standard conditions and also that they file the final subdivision map with staff after it’s completed by the County.

Member Gon said he was unclear with what they are allowed to do referring to Exhibit B-4 where there is blue rock cliff along side the road and that it seems impossible to do without cutting into it. He asked whether that is not allowed in this permit. Mr. Lemmo said his sense is

that they are going to clear the grass. The way this was represented they are not going to be doing any construction. The consultant is here and could answer that question. Member Edlao asked if they did they would have to come back. Member Pacheco pointed out they are not widening it. They are just subdividing it. Member Morgan said it's to give the County jurisdiction.

Jody Hart representing Chris Hart Partners testified that the condition of the subdivision is to clear the area of obstructions. The surveyor didn't identify any structures or any obstructions that needed clearing. He added vegetation in case it was requested or to prove there were no obstructions in the way. There are no requirements to do any improvements like carving out the rock face that this is for subdivision action. Member Gon said he was fine with that.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-12 Oral Briefing by the Land Division on the status of the discussions with TLM Partners Ltd. on an encroachment easement on State lands for seawall, lanai and landscaping purposes, situated at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 009.

Mr. Tsuji said he placed this on the agenda as an oral briefing to refresh this Board's recollection that back in January 27, 2012 Board meeting staff brought this item before the Board which he described. The issue is the encroachment of a seawall and filled land on State land. TLM went through the application process, paid the money, document signed by the AGs, sent back to TLM, but they didn't want to sign the document and wanted their money back. On January 27th, the Board ordered that the money be returned unless an easement document was agreed to within 30 days staff would bring back an enforcement action. Immediately after that meeting Mr. Tsuji put in a request through our State system to reimburse TLM - \$108,000 was withdrawn from the Beach Restoration Fund and \$27,000 was withdrawn from the OHA account. TLM picked up the check from our office on March 7th. Between January and today, he has been going back and forth with counsel on the easement and the issues that were significant. There were numerous phone calls, e-mails and exchange of proposed documents where a big issue came up about their initial stance was a difference of interpretation of what exactly the Board had ordered. Their position was that there would be a real estate lien or mortgage lien on the property for the value of the easement, but however...and secondly a subordination to a new first. We raised the issue and spoke to counsel what we had problems with, what was in our view was not exactly ordered by the Board. It was maybe discussed at certain times, but never part of what the formal order was that we believe we needed a definitive deadline because TLM is a legal entity and will survive the passing of the McConnells and could technically end up not selling the property. That would be a freeze on any encroachment on State land. The second part, Mr. Tsuji tried to explain to counsel was the subordination to a new first was troublesome because in their view there was an unlimited amount of first mortgages and basically wipes out all equity. Take that into account with no deadline. Third, they wanted no interest. Fourth, non-recourse debt meaning you don't getting anything out of that property it's all over. It was tough in negotiations and they went back and the latest version was that they made some concessions, but the bottom line is we're still at a stalemate and these are the major significant issues. To this day they are not agreeing to any deadline and insist on it. Mr. Tsuji explained to them we have to have a

deadline especially because they insist on no interest. He proposed initially was 5 years and later proposed 10 years, no interest for 10 years. We normally charge installment agreements on debts owed to the State on rents owed that we come to this Board and we normally charge about 7%. You're talking about \$7,000 per year and multiply by 7 you have \$70,000 free interest already. What is the \$100,000 lien going to be worth in 10 years and worst case when there is no deadline? Also, the State does not warrant title when we issue easements and leases which counsel was insisting to warrant title and he told him we don't do that. Everything is as is where it is and that is standard. It appears in Mr. Tsuji's view unless they come down on the deadline issue which he doesn't believe will happen, we will be coming back to the Board and the plan is April 27th for enforcement action.

Member Pacheco said we told them at that meeting that it was one way or the other and the Board members agreed that they (TLM) were told. Mr. Tsuji said Mr. McConnell and counsel had it in their minds that the Board ordered all of these items – no definitive deadline, subordination to an unlimited first, no interest, non-recourse debt that you don't get anything for the property itself and its all over.

Member Agor asked if there is enforcement action what type of proposals are on the table. Mr. Tsuji said and counsel is totally aware of this. We are giving them the opportunity to legitimize the encroachment, but refusing to sign or pay for the easement leaves us no choice. You got to remove it.

Member Agor asked can they stipulate removal of the wall and return the wall to their property line. Mr. Tsuji said theoretically it's not impossible to take out the encroaching area and continue with the wall within their boundary. Member Pacheco said you would have to get permits to do all that work. Mr. Tsuji agreed. Member Edlao asked should we be discussing what we plan. Mr. Tsuji said this is a no action item that he is just throwing this out. Member Edlao asked there will be action later on that we're getting into an area of what we can propose or may not propose and he questioned that. When the decision comes to us what should we look at? Mr. Tsuji said he wants to make sure Sam (Lemmo) is here as well because this is shoreline area. As you recall the whole area has a wall across the various lots. He is not an engineer, but to continue the wall within your own boundary line. Member Agor said he just wanted to interject whatever you do, to protect that piece of property. Mr. Tsuji said those guys are protected because they have a wall already.

Member Edlao said his understanding was take the easement, pau or take the money and enforcement. They took the money. Mr. Tsuji said they took the money and once they got the money they made it difficult to schedule something and giving all kinds of excuses about the next meeting. He told them you have the money, the wall and the filled land which is more in their interest to not come before the Board, ever. We got to push it.

Member Goode asked whether he reviewed the recording on what it actually says because they made these representations. Mr. Tsuji confirmed that they did review the minutes which is from the recording. The minutes were approved and there was none of that (referring to what TLM's counsel believed was approved). Again, they talked a lot about those ideas and that is what he was trying to explain that a lot came up during discussion, but ultimately what was decided was

return the money and if TLM doesn't agree to the document to come back to the Board with an enforcement action.

Member Gon asked none of the parties are here right? Mr. Tsuji confirmed that since the documents are not ready yet. Member Gon asked and you will send them a preview of the proposed action. Member Edlao commented if you can find them. Mr. Tsuji said counsel is very well aware and he is sure he has explained it to his client from day one on what could happen. So they did make concessions, but still with this thing about no deadline and free interest and it's a legal entity that could go on forever – you may never sell the property. Member Agor said they know what they are doing.

There were some comments about the State lien that Sam Lemmo didn't like that and Member Pacheco said he didn't either. Mr. Tsuji said because we're granting an easement for what they believe to be an encroachment of State lands – a seawall and filled land which would otherwise be a violation to remove it, and they don't want to pay cash. Member Morgan noted they are disputing that and claiming accretion. Mr. Tsuji said they are fine with that if that is the route they want to go.

Member Pacheco said and to rectify the other infringement which was the roof of the lanai. They are going to make the argument. Mr. Tsuji said he consulted with Bill Wynhoff and he is comfortable with that position because ultimately at the end the longer or beyond 10 years or more the value of that lien would be worth almost nothing because they had a free encroachment.

Member Pacheco said if you are going to make us pay for it we disagree that it's accreted, but if you give us a lien on the mortgage...to me they want their cake and eat it too. Mr. Tsuji said staff including Sam Lemmo, the survey folks and their shoreline crew...he had a number here, but it's kind of low. The Board members commented about administrative costs and to tally it up.

Adjourned

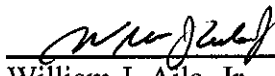
There being no further business, Member Agor adjourned the meeting at 10:05 a.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources