

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

DATE: FRIDAY, JUNE 8, 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 9:00a.m. The following were in attendance:

MEMBERS

Ron Agor
Jerry Edlao
Dr. Sam Gon

David Goode
Rob Pacheco
John Morgan

STAFF

Russell Tsuji/LAND
Michelle Phillips/DAR
Paul Conry/DOFAW
Dickie Lee/ENG

Dr. Bob Nishimoto/DAR
Randy Awo/DOCARE
Kevin Yim/DOBOR

OTHER

Cindy Young, Deputy Attorney General
Linda Chow, Deputy Attorney General
Dr. Steve Karl, F-4
Dr. Greta Aeby, F-7
Daniel Amato, F-1

Ross Smith: M-1, M-2, M-3, M-4
Polyann Fisher-Pool, F-3
Ellen Husain, F-6
Dr. Chris Winn, F-8

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

Item A-1 May 11, 2011 Minutes

Board member Morgan recused from this item.

Approved as submitted (Pacheco, Edlao)

Item A-2 May 25, 2012 Minutes

Item A-2 was not ready.

Item M-1 Request to Amend Prior Land Board Action under Item M-2, May 11, 2012, Restaurant and Lounge Concession Agreement No. DOT-A-11-0006, Host International, Inc., Lihue Airport, Tax Map Key: (4) 3-5-01: Portion of 8

Item M-2 Request to Rescind Prior Land Board Action under Item M-1, April 27, 2012, and Request for Approval to Issue a New Revocable Permit to E Noa Corporation, Honolulu International Airport, Tax Map Key: 1-1-14:15 (portion)

Ross Smith, Property Management/Land Acquisition Supervisor for the Department of Transportation (DOT) – Airports Division said there were no changes. For item M-1, it was assumed that the concessionaire made the request, but the administration made the request and they are making the change. In item M-2, there was some confusion about the usable area where a ditch was misidentified.

Member Morgan disclosed that he has a working relationship with E Noa Corporation, but he has nothing to do with airport transfers.

Item M-3 Issuance of a Right-of-Entry to the Kohala Community Action Groups for Research Work at Upolu Airport, Tax Map Key: 3rd Division, 5-5-06: 7 &12

Mr. Smith related problems with motor cross activities eroding the area and sought a right-of-entry agreement with the National Park Service and community groups in Kohala who will maintain the trail.

Member Pacheco asked whether there was a list of community groups and Mr. Smith gave him the right-of-entry. Member Gon asked if he could read it and Member Pacheco did.

Item M-4 Amendment 18 to Concession Agreement No. DOT-A-92-18, Host International, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-03: portion of 1

Mr. Smith said item M-4 is seeking to increase food and beverage in the pre-security area.

Member Gon made a motion to approve items M-1, M-2, M-3 and M-4. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Morgan)

Item D-6 Consent to Assignment of Sublease K-8 of General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, High Health Aquaculture, Inc., Sublessee/Assignor, to Shrimp Improvement Systems

**Hawaii LLC, Assignee, Kalaoa 1st-4th, North Kona, Hawaii, Tax Map Key:
(3) 7-3-043:068, 069 & 070 (formerly 7-3-043: portion of 041 & 042).**

Russell Tsuji representing Land Division talked about item D-6 and that NELHA and the new tenant representatives were here.

Board member Agor asked whether the applicant agreed with staff's recommendation and Joe Tabrah (Shrimp Improvement Systems) acknowledged that.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Marc Lammers, Assistant Researcher, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Deploy Hydrophone Arrays and Ecological Acoustic Recorders (EARs)

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) introduced Michele Philips from DAR staff. Dr. Nishimoto presented background on item F-3 noting that the Native Hawaiian community supports this and staff recommends approval.

Member Gon asked whether or not the acoustic survey is partly to identify a need of yet unidentified biological noises out there. Polyanna Fisher-Pool testified that she is from RCUH working for JIMAR and said there are a lot of sounds they record, but they don't know who they belong to. Depending on the frequency they might know what fish or dolphin it might be. Member Gon said he finds this fascinating and likes the proposal.

A query was made by Member Edlao on whether they were emitting sounds and Ms. Fisher-Pool confirmed they are not that they are only recording.

Member Morgan asked about vessel sounds. Ms. Fisher-Pool said it depends if they are revving the engine or on idle which could be from a few meters to half a mile.

Member Gon asked whether it could record artificial sounds and Ms. Fisher-Pool confirmed that.

Unanimously approved as submitted (Gon, Morgan)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Stephen Karl, Associate Researcher, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Disease Research Activities and Fish Connectivity Studies

Dr. Nishimoto conveyed some background on item F-4 referring to appendix 1 on page 13 for a list of the species. The applicant plans to compare healthy and diseased individuals to determine if there was a genetic disposition to develop growth anomalies in the species. There will be a

total of 250 samples collected and to find differences between shallow and deeper ecosystems. The applicant will use nets, pole spears and sample 8 targeted species of near shore reef fishes. DAR staff agreed to allow this activity and the Monument Management Board (MMB) agreed to staff's recommendation.

Member Edlao said that this has been going on and on either that you guys are not getting it or this is different each time they come before us. He asked how long will this go on and whether it is a forever type thing? Dr. Steve Karl from HIMB said no, it is not forever that he is right. It has been going on and referred to the permit starting out with 30 individual species. After the first year it was 27 where many species were not that easy to collect and it took some time to get to 30 which is what they need for statistical support. They anticipate this year or next to be down to the last few species. Most species have been written up and these are the last ones.

It was asked by Member Gon for those species with adequate samples what is the conclusion of the analysis to date. Dr. Karl said normally they look at species by species, but came up with a lot of different answers. There is a break south of French Frigate Shoals where this species aren't mixed or in-between or it's the Main versus the North where they are not mixed or in-between depending upon what species. Dr. Karl described Dr. Toonen's meta-analysis of 30 species. It turned out to be a hodge podge of trends. Member Gon said certain trends with certain exceptions and Dr. Karl agreed.

Member Pacheco asked to explain the relationship between the 3 labs at HIMB that is doing this kind of work and how their work compliments each other. Dr. Karl explained when he came to HIMB he was most attracted to the level of collaboration and described working closely together with other scientists in writing grants and papers. They and their students look at the same processes in how they use genetics to understand ecological processes that are difficult or impossible to understand in traditional ways (watching or tagging fish).

Member Pacheco inquired about Dr. Greta Aeby's lab. Dr. Karl said his training is in evolutionary biology and is not species specific where his students worked on fish, birds, snakes, turtles, etc. He and Dr. Aeby discussed about taking his genetic understanding to bear on the disease issue and they started a collaboration to begin taking her work and looking from her lens and transmission to the level of is there a causative agent or is there a genetic pre-disposition. It is a relatively new collaboration.

Unanimously approved as submitted (Pacheco, Gon)

Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Florence Thomas, Associate Researcher, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Reef Environmental Assessment and Monitoring Research Activities

Some background on item F-5 was conveyed by Dr. Nishimoto where the applicant proposes deploying an array of in situ environmental sensors to measure habitat variability at ecological-relevant temporal and spatial scales. This is to understand how the coral reefs in the NWHI will

experience changes in the physical changes caused by global climate change. Scuba will be used where Dr. Nishimoto described the deployment and that it will not be in or on live coral. The scientific and Native Hawaiian community accepts this. DAR recommends allowing it and read the 3 recommendations.

Unanimously approved as submitted (Morgan, Gon)

Item F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Ellen Husain, Director, British Broadcasting Corporation, for Access to State Waters to Conduct Documentary Filming Activities in the Monument

Dr. Nishimoto briefed the Board on item F-6 where a crew of six will film an upcoming wildlife documentary called "Survival" and he related the goals and objectives from the submittal. The applicant proposes to construct a temporary platform on sandy substrate in shallow water near East Island to film interactions between albatross and sharks. They intend to not leave the platform up for more than 30 days and will be removed by the end of this project. The film crew will not target or pursue protected species (monk seals) and will be under direct supervision of Monument staff. DAR recommends approval.

Board member Agor asked whether the applicant agrees with the recommendations. Ellen Husain, director of "Survival" for the British Broadcasting Corporation (BBC) agreed to the recommendations.

Member Edlao asked about the picture and when will this be broadcast. Ms. Husain said it's in the permit and will be transmitted in fall of 2014 in the U.K. (United Kingdom) and later in the U.S.

Member Gon made a query on whether this was a focus on the NWHI or a theme of challenges. Ms. Husain said this is one of a theme of challenges in a particular life phase of an animal and there will be 6 phases.

Member Morgan asked whether she expects a lot of predation of albatross by sharks. Ms. Husain acknowledged that describing a 2007 shoot there of something similar with about 5 incidents every morning.

Member Edlao asked about their funding. Ms. Husain explained that all the BBC natural history programs are partly funded by the U.K. like PBS in the U.S. and they get co-production money from Discovery.

Unanimously approved as submitted (Pacheco, Gon)

Item F-7 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Greta Aeby, Assistant Researcher, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Disease Research Activities

Dr. Nishimoto related some background information on item F-7 noting that this is work previously permitted in the Monument to examine coral disease occurring there and he goes on to list the objectives on page 2. He noted that Dr. Aeby will not be on the cruise and her field principle investigator (PI) would do the work. On page 3 there is a typo under Montipora and to change 5 to 10 which changes the Grand total from 780 to 830. The last 4 species will be collected only if disease is detected. This is a collaboration between the 3 researchers so there is no duplication in collecting. DAR and the cultural supports approval and the recommendations were read.

A query was made by Member Edlao that Dr. Aeby is the applicant and will not be on the cruise then who is doing the collecting. Dr. Greta Aeby, HIMB explained that they have an on-going disease problem up there since they went up last year and described the areas with disease. There was 60% acropora cover in 2006 and now only 30% left. This year they would like to look at the recovery of that reef that has died under these pristine conditions and hooking up with other scientists to explain this high incidence. In other parts of the Pacific there was prevalence of growth anomalies of less than 1% and this is not a disease they are concerned about except at this site. She is working with Dr. Karl where the prevalence is 40%. To understand diseases it's a process of elimination where they run a number of tests. If you have a high prevalence or an outbreak of a disease it could be the underlying genetics or some other environmental contaminant we are not aware of. This is step 1 of figuring that out. She is not able to go up this year, but she is training Dr. Karl's students at HIMB where Kaneohe has a high level of disease and makes it easy for her to train. Growth anomalies are pretty easy for her to train to identify.

Member Agor said that KAHEA submitted documents in opposition of this matter.

The Board:

Amended staff's submittal page 3 under Coral species Montipora sp. island # should be (up to 10) and not [5] which amends the total # to 200 instead of [150] and the Grand total is 830 from [780].

Unanimously approved as amended (Pacheco, Edlao)

Item F-8 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Christopher Winn and Dr. Samuel Kahng, Assistant Professors, Hawaii Pacific University, Oceanic Institute, for Access to State Waters to Conduct Ocean Carbon Research Activities

Dr. Nishimoto reported on item F-8 reminding the Board that this was work previously permitted in the Monument. The new activity is collecting water samples off small boats and from the NOAA ship Hi'ialakai's flow through system. The applicant plans to collect ocean water at various depths noting that the sea floor will not be disturbed and they will collect no more than 800 samples (53 gallons). The cultural review, the scientific community and DAR staff accepts allowing this activity. He read staff's recommendations.

Member Gon made a query to the applicants that if they accept staff's recommendation how many years will this project take. Dr. Chris Winn said this is their 4th year of a project that will last beyond his lifetime and won't be doing it forever where remote systems are being developed. He mentioned the reason they went up there was to look for the alkalinity solution halo that surrounds the Hawaiian Islands a region where soluble carbonates were to come off of the islands and dissolve in the open ocean which would stimulate the flux of carbon dioxide from the atmosphere into the sea. The growth of coral does the opposite enhancing the carbon dioxide and is all related to climate change, impacts on ocean chemistry and atmosphere which is a great topic for their graduate students. They looked for the halo and didn't find it, but it doesn't mean it doesn't exist and in the past these measurements were not easy to make due to inaccuracies and they are making sure it does exist. They are concentrating on a chemical method to measure and also the impacts of an island on the ocean. The ultimate goal is to provide enough information of what is happening in the ocean right now that those changes might impact the environment.

Member Gon said that 4 years is barely enough time to provide a basis to measure and asked if there were any trends. Mr. Winn acknowledged that is a small (period) and there were no trends yet. He described doing open ocean testing every 5 to 7 years which has more consistent results and the students will go on the cruise to run the program.

Unanimously approved as submitted (Gon, Morgan)

Item D-11 Approval of Land Exchange and Sale of Property Pursuant to the Stipulated Judgment on Partition in Napoleon, et al., v. State of Hawaii, et al., Civ. No. 92-0786 for Land Located at Ualapue - Kapualei, Kahananui, Molokai, Tax Map Keys: (2)5-6-006:014; (2)5-6-006:015; (2)5-6-003:012; (2)5-6-003:008; and (2)5-6-003:010.

Mr. Tsuji said item D-11 is a proposal to the Board to consider approving a land exchange that came about as the result of a lawsuit. The State had half interest in various lots and that Deputy Attorney General Linda Chow was here. He is assuming these lands are not landlocked and are very small.

Ms. Chow said that the one coming to Land Division is land locked, but was under an RP (revocable permit) under Land Division for many years now. In the course of going through this they are seeking to get access to that lot. She doesn't remember interests of the State because this was before she came to the AG's (Attorney General's) office. The stipulated judgment entered in 1970. This case has been around for a long time. When the property was initially awarded out the State reserved back a half interest and was never extinguished along the way. A quiet title action was brought and an agreement was made between all of the parties for partition of the...as to title because clearly the State had a half interest in all the parcels and as to partition which the State would get 2 parcels. The other parties will partition 1 large parcel between them and 2 of the smaller parcels are to be sold and the proceeds split proportionately amongst the parties including the State's. One of the parcels will go to Land Division because currently we have it under RP and one parcel will go to DOFAW (Division of Forestry and Wildlife) for inclusion in a forest reserve.

Member Goode referred to the letters from the parties' attorneys all saying to go. Ms. Chow confirmed that because they have been waiting a long time for this.

Member Morgan asked whether all 3 parcels were land locked. Ms. Chow said one might be and confirmed that 2 are ocean front which are proposed to be sold.

Unanimously approved as submitted (Morgan, Goode)

Item D-3 Amend General Lease No. S-5523, Volcano Art Center, Lessee, Olaa, Puna, Hawaii, Tax Map Key: (3) 1-9-005:009. Purpose of the Amendment is to Modify the Character of Use Provision to Include Community Related Purposes, and to Authorize Subletting Portions of the Premises.

Mr. Tsuji related some background on item D-3 to allow the Lessee to generate some form of revenue and the school acquired this lease pursuant to 43.1-171 which requires a 501c3 status and wants to retain that status when they generate revenue.

Member Gon asked the representative if they agreed with staff's recommendations and the representative acknowledged that.

Unanimously approved as submitted (Pacheco, Gon)

Item F-1 Request for Approval of Special Activity Permit 2012-62 for Mr. Daniel Amato of the University of Hawaii at Manoa, Botany Department and Designated Assistants to Take Three Species of Common Marine Algae from Within the Ewa Limu Management Area, Pokai Bay, Pupukea Marine Life Conservation District, and Haleiwa Harbor, Oahu for a Stable Isotope Analysis to Identify Potential Sewage Pollution

The Board was briefed on item F-1 by Dr. Nishimoto. These are protected areas and 2 of the species are alien species and the third is a weedy native species, Alva, indicative of highly nutrient waters. Three samples from each site will be collected and these sites were selected due to high risk of sewage pollution. DAR staff recommends approval.

Member Edlao asked whether the applicant will share this information with the Department. Daniel Amato representing University of Hawaii (UH) – Botany Department said yes, to gain an understanding of how the systems are operating to better conserve these areas.

Member Gon asked what the Hawaiian name for Alva was and Mr. Amato said palahala.

Unanimously approved as submitted (Pacheco, Morgan)

Item F-2 Request for Approval to Authorize the Department of Land and Natural Resources (DLNR) Chairperson to Enter into a Contract Between DLNR and Windward Boats, Inc. for the Purchase of a Research Vessel

**(\$132,308.85) in FY12 General Funds) for the Division of Aquatic Resources
West Hawaii Coral Reef Management/Monitoring Program**

Dr. Nishimoto conveyed that item F-2 is a purchase to replace an aging and problematic DAR vessel which covers all of West Hawaii. These funds are available and approved and asked for the Board's approval.

There were some discussions of a photo of the new vessel and wanting to see it.

Member Morgan inquired what they will do with the old vessel and Dr. Nishimoto said they will have the Monument people throw in some funds and use it because the Department doesn't have the funds to repair it and the NOAA folks are willing to.

Unanimously approved as submitted (Pacheco, Gon)

Item B-1 Request for Authorization to Enter into a Grant Agreement with the Harold K.L. Castle Foundation for Partial Support for the Establishment of a Fisheries Enforcement Unit Initiative in the Main Hawaiian Island to Improve the Health of Nearshore Ecosystems

Randy Awo representing Division of Conservation Resources Enforcement (DOCARE) talked about item B-1 relating some background from staff's submittal and he recommended approval.

The Board expressed their approval.

Unanimously approved as submitted (Edlao, Gon)

Item C-1 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contracts for the Implementation of Watershed Partnership Management Plans Statewide for FY 2013

Paul Conry representing Division of Forestry and Wildlife (DOFAW) conveyed some background on item C-1 that staff was successful at the Legislature in receiving funding - \$2.5 million in CIP funds plus \$2.5 million in special funds for the initiative and putting the special funds in to this competitive process for selecting watershed projects across the State. He described the process.

Member Gon disclosed that The Nature Conservancy of Hawaii (who he is employed with) is a member of these partnerships and this agenda item doesn't appear to be in conflict for him and his participation in this.

Member Morgan made a similar disclosure since his company, Kualoa Ranch, has some property in the Ko'olau Mountains Watershed Partnership, but there doesn't appear to be a problem here.

Mr. Conry said staff wants to implement the waterfall and rain forest initiative and be able to go back to the Legislature to say their investment on this initiative has been initiated and to ask to be fully funded for next year.

Member Gon said that is great jump off point to move those monies quickly and hoped to get some exciting large scale protection efforts underway.

Unanimously approved as submitted (Gon, Morgan)

Item J-1 Request Acceptance of the Final Environmental Assessment and Approval for the Issuance of A Finding of No Significant Impact (FONSI) for a Proposed Boat Park Expansion at Honokohau Small Boat Harbor, North Kona, Hawaii

Kevin Yim, staff officer for Division of Boating and Ocean Recreation (DOBOR) briefed the Board on item J-1. He read staff's recommendations asking for approval.

Unanimously approved as submitted (Pacheco, Morgan)

Item L-1 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for: Job No. F23C617A, Puu O Mahuka Heiau State Historic Site, Entry Road Improvements, Pupukea, Oahu, Hawaii and Pu'u Ualaka'a State Wayside Road and Parking Improvements, Honolulu, Oahu, Hawaii'i

Item L-2 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for: Job No. F78CK46C, Polihale State Park Water System Improvements, Waimea, Kauai, Hawaii'i

Dickie Lee representing Engineering Division said staff recommends approval of items L-1 and L-2.

Unanimously approved as submitted (Gon, Goode)

Item D-4 Consent to Sublease General Lease No. S-3624, 69 Railroad, LLC, Lessee, to Hui Malama Ola Na Oiwi, Kirby Kuoha, Sub-lessees, Subject to State's Participation in Sublease Rent Profits, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-1-12:26.

Mr. Tsuji indicated that there was a letter from the Lessee asking the Board to defer item D-4 because he wants to meet with his lawyer. Mr. McCully holds this lease and another lease with the State of Hawaii and he is not the original bidder, but acquired these leases through a private acquisition. None of those leases is he operating a business other than a middle man landowner who collects rent. In these consents to sublease, staff reviews these following Boards's policy from years ago without thoroughly reading it and it doesn't fit the consent. As compared to stepping back as the Board had recommended the staff do and evaluate each transaction

independently to make sure each makes sense and if we are not going to participate in the sublease rent. Mr. Tsuji related Mr. McCully's other lease and he tried to arbitrate the lease rent evaluation of \$80,000 a year that he was suppose to pay to the State of Hawaii, however, he was turning around and subleasing to various entities and making about half a million on that property. He has 2 properties with the State of Hawaii. Mr. McCully is not please with staff's recommendation to participate in a consent and has asked for a deferral that he doesn't know whether this Board wants to defer to the next meeting or until he is ready. Member Pacheco confirmed that Mr. McCully asked to defer to July 13th. After talking to Mr. McCully, he has 11 subleases on this property and the reason why we're doing these 2 is because they've come through for approval. We should defer.

Member Pacheco made a motion to defer to July 13th BLNR meeting. Member Edlao seconded it. All voted in favor.

Deferred to July 13th BLNR meeting. (Pacheco, Edlao)

Item D-8 Forfeiture of Grant of Easement Bearing Land Office Deed No. S-28685, Randall S.Sohler, Grantee, Kanaio, Makawao, Maui, Tax Map Key:(2) 2-1-003:Portion of 050.

Some background information was conveyed by Mr. Tsuji that the easement is to run with the land and since then the insurance lapsed. Staff sent the Grantee a letter and there was no response to the notice of default. Since then, subsequent to the granting of the easement, apparently a lot of transfers were made and probably lease sales or either gave interest in the land. He asked to defer since the new owners are entitled to adequate notice and may want to cure it. If the Grantee or HPR subdivided the lot and when the easement was granted staff probably thought it was for a single family 50 acre lot and all of a sudden it maybe a brand new development. Could put 8 homes on 1 acre when subdivided and he asked for a deferral. Staff will properly notify the other owners and hopefully they can cure the insurance requirement.

Member Goode made a motion to defer up to ninety (90) days to allow to cure. Member Edlao seconded it. All voted in favor.

Deferred up to 90 days. (Goode, Edlao)

Item D-13 Consent to Assign Grant of Non-Exclusive Easement No. S-5341 from Linda Renaud, Assignor, to Pipeline Shores, LLC, Assignee; Amend the Easement Condition by Allowing the Easement to Run With the Abutting Property; Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-020:048 seaward.

Mr. Tsuji indicated that item D-13 is a smaller lot and he wasn't sure if they can add it in here that he did say easement and thought in abundance of caution whether here or from now on we add a standard provision in our easement documents. Previously, the easement document requires Board consent for any transfer and it became too burdensome and they had a provision at the AGs to run with the land so you won't have to come back to the Board. Looking at item D-8 people can convey their interest and not...what the paragraph says is the easement holder

shall notify the new owner if there is an easement, etc. and that's it, but it doesn't require either of them to specifically notify the Land Division office. Like in D-8, staff thought they were the original holder and to find out he may not be alive any more or have an interest in the lands. We could add it in the consent because they are consenting to the assignment and the assignment is between the current holder and the property owner. The new person buying the property will take on the easement. Mr. Tsuji wanted to add a provision that both the transfer and transferee notify the Division of the changes. Deputy Attorney General Cindy Young suggested that the Board take that question into Executive Session.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded it. All voted in favor.

10:17 AM EXECUTIVE SESSION

10:24 AM RECONVENED

Member Gon made a motion to accept staff's recommendations with amendments to #3 "....State, such as notification of the Department of any or all transfers of easements then to further recommend to staff to amend the consent to assignment form to include the notification of the Department of any transfers." Member Pacheco added by both buyer and seller. Member Gon said he would accept that. Member Morgan seconded that motion. All voted in favor.

The Board:

Approved as amended. The Board amended Recommendation no. 3 to read:

3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State, including but not limited to adding a provision in the Consent to the Assignment document that clearly requires the easement holder and any subsequent transferee or assignee (i.e., seller and buyer of the easement and benefitting parcel to both provide notice to DLNR of the sale/transfer) to both provide notice to the Department of the change in ownership and other information required by the Department.

Unanimously approved as amended (Morgan, Edlao)

Item D-2 Resubmittal: Amend Prior Board Action of July 22, 2011, Agenda Item D-1, Set Aside to Department of Agriculture for Agricultural Purposes, Puna, South Hilo, North Hilo, Hamakua, North Kohala, South Kohala and Kau, Hawaii, Tax Map Keys: (3) 1-2-6:5 and 77; 1-4-34:27; 1-8-6:103; 1-9-1:18; 2-4-49:29; 3-1-4:1 and 2; 3-9-1:1 and 2; 3-9-2:7 and 8; 4-1-1:6; 4-1-5:1; 4-4-11:33; 4-6-4:1, 2, 3, 5 and 6; 4-9-11:2; 5-5-3:12, 18, 4, 5 and 6; 5-5-4:51 and 52; 5-5-6:2, 3, 4 and 15; 5-5-7:11; 8-8-4:10; 9-5-15:3; 9-6-2:55; 5-5-5:1. The

purpose of this item is to include Tax Map Key No. (3) 5-5-4:52 in the set aside.

Mr. Tsuji pointed out that the lands listed on item D-2 is to go to DOA (Department of Agriculture), but wanted to make a correction to the title and the text of the submittal and is looking for a motion to amend the title and to delete a particular TMK. He referred to the submittal title, second TMK 1-4-34:27 that in the submittal there was various prior Board actions and attached to the second to the last page is what happened in a Board meeting which had previously approved a prior submittal, but didn't make an amendment in the decision to delete that particular TMK. When staff brought it back to the Board it was overlooked by staff and they put it back in and to be consistent they want to delete this particular TMK. Mr. Tsuji spoke to DOFAW's administrator that it is in the Forest Reserve right now and they will have to go through the process to get it out of the Forest Reserve and DOFAW has no objection of turning back land to DOA.

Board member Pacheco queried whether this was in Puna. Mr. Conry said this has an orchid farm on it and they want it turned over to DOA, but is currently in the Forest Reserve.

Mr. Tsuji reiterated it will be an amendment to strike that second TMK from the title and from page 1 of the submittal.

Member Pacheco asked whether he saw the written testimony from the North Kohala Community Access Group and Mr. Tsuji said no. Member Pacheco related DOFAW requested provisions to be inserted on several parcels covered by this action, but they missed 2 parcels that required access and they are looking for access preservation. These leases are going to DOA with the same terms, but DOFAW has in their leases for public access. He knows the place well confirming what the Group is saying about TMK 5-5-06:15 that both are around Upolu Airport. There are roads that run above the airport and access along the shoreline both ways that are wide open roads that have been used for a long time. There is no public access easement prescribed for those and they are asking for that to happen. Mr. Tsuji said they are just transferring a lease and he wasn't familiar with DOA. Member Pacheco said that is the concern that he doesn't know what DOA's requirements are for public access and what the community doesn't want to happen is once the property goes to DOA those leaseholders can stop public access. Mr. Tsuji said he doesn't know what DOA will do and if they give it to ADC they have more special powers. The push from the tenant to go to DOA is because DLNR is too restrictive because they can only get a lease through the auction process and apparently under DOA you can get extensions upon extensions. Member Pacheco said that is the same concerns that the community has with these lands going to DOA and now this access that the public has had forever up there is suddenly closed off. Is there anything the Department could do to preserve that access?

Member Agor suggested perhaps on those TMKs they could put a condition on those transfers. Member Pacheco said he wasn't sure if they could do that. Member Goode suggested working it out with DOA. Mr. Tsuji said maybe they could put a condition in the EO (Executive Order). Member Pacheco asked to preserve all public access. Mr. Tsuji said what they are doing is setting aside to DOA and right now these are under DLNR. What staff has been doing when transferring these Ag leases they document it as an EO to DOA and they give them the lease

because it is encumbered with the lease and perhaps in the EO document have a provision about access which is basically between Governor, Department, Chair, DOA that we are giving this to you subject to the lease and subject to preserving access which they have done before.

Member Pacheco pointed out that Deborah Chang gives some language in her written testimony that standard condition should be included in the set aside and defines DOA to similar requirements that exist for DLNR, HRS 171-26. He didn't know if they could do that. Her thing is prior to disposition of any public lands the DOA shall determine whether public rights of way to the mountains or to the sea exist on the subject lands and ensure protection of those accesses. Mr. Tsuji said he does know in the past that they have added conditions to a set aside.

Member Goode asked in all of them. Mr. Tsuji said there is only one EO for all of these parcels.

Member Morgan asked this is to determine whether rights of way to the mountain or sea exist, how do you make that determination. One person could say they've been doing it for years and no one knows about it. How does that impact the whole thing? Mr. Tsuji reminded the Board about a couple months ago regarding Margaret Wille access which was approving a disposition with the rancher. Saying before you do that please determine if there is access to this area and it wasn't shoreline. Member Pacheco said that was mountain and for a renewal. Mr. Tsuji noted that applies to brand new leases that before giving a lease to an individual can you make sure the public has access to the shore.

Member Morgan asked that is his concern what kind of Pandora's Box is that. Mr. Tsuji said it is already in the statute. Member Pacheco noted that the statute only binds DLNR and we don't know what DOA has. Mr. Tsuji confirmed that ADC is not following 171 provision.

Member Pacheco said and he doesn't know whether they can force the condition on another Department. Mr. Conry said in this particular case he doesn't know if the parcel she is talking about is specifically accesses developed within DOFAW to gain access to landlocked forest reserves or anything like that. Or, if this particular case she is bringing up the issue of making sure that a historic case...Member Pacheco said its lateral access along the shoreline to get to various places along the coastline. Mr. Conry said the question comes up if it is appropriate how broad is that or is she just saying that DOA has to comply with the requirement that if there is a historic trail. Member Pacheco said he thinks what they are saying is that language is already in the TMKs for preserving the public access for the leases and will go over to DOA. In this case these aren't necessarily in...Mr. Tsuji said but, you may want to put it in the EO just to be safe because that lease can terminate and issue a new one in a different form.

Member Pacheco said he agrees that these Ag lands being used should be in DOA and he supports that, but what he doesn't want to see happen is the public losing access rights in this process. Member Morgan said he agreed with that and was concerned that they just create a new process that someone used to get access where they shouldn't get access. Member Agor said that process could be used in their claim against DLNR. Mr. Tsuji said that is what Margret Wille was saying that is in the statutes the Board cannot grant and should do this. Member Pacheco pointed out that was a renewal and not a new disposition and Mr. Tsuji agreed that was why staff went with their way.

Member Pacheco made a motion to approve item D-2 with the amendment to strike TMK 1-4-34:27 any reference in the submittal to that and also include a condition that 1. Prior to disposition of any public lands the BOA shall determine whether public rights of way to the sea or mountain exist on the subject lands and 2. Ensure protection of those accesses. All voted in favor.

The Board:

Amended staff's submittal by striking any reference to TMK number [1-4-34:27] and also included conditions:

- 1. Prior to disposition of any public lands the Board of Agriculture shall determine whether public rights of way to the sea or mountain exist on the subject lands.**
- 2. Ensure protection of those accesses.**

Unanimously approved as amended (Pacheco, Edlao)

Item D-1 Issuance of Right-of-Entry Permit to Hawaii Sand Festival c/o Julian Miller, for a Sand Castle / Sand Art Contest at Hanalei Bay Beach, Hanalei (Makai), Hanalei, Kauai, Tax Map Key: (4) 5-5-001: seaward of 11, 12, & 13.

Item D-5 Amend General Lease No. S-5586, Big Island Dairy, LLC, to Increase Net Acreage From 2,081.084 acres to 2,324.01 acres, more or less, Manowaialee and Ookala, North Hilo and Hamakua, Humuula, Parcel B situate at Humuula, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:01 & 02, 3-9-02:07 & 08, 4-1-01:06 and 4-1-05:01

Item D-7 Issuance of Revocable Permit to Kimo I. Dacalio for pasture purposes at Kanaio, Kau, Hawaii, Tax Map Key: 3rd/ 9-6-012: 004.

Item D-9 Issuance of Right-of-Entry Permit to MC&A Inc. to Conduct a Sandcastle Sculpting, Beach Activity Event for the Lexus Family, at Wailea Beach, Maui, Hawaii: Tax Map Key:(2) 2-1-008: seaward of 109.

Item D-12 Issuance of Right-of-Entry Permit to Hawaii Explosives and Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display on July 11, 2012, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).

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

Unanimously approved as submitted (Edlao, Goode)

Item D-10 Report to the Board of Land and Natural Resources on Land Division's Efforts to have certain Public Lands Included in the Maui Island Plan Urban Growth Boundary, Pu'unene, Maui, Hawaii Tax Map Key: (2) 3-8-008:001 and 038.

Mr. Tsuji (distributed booklet) presented item D-10 naming staff and Member Edlao's involvement in discussing with every councilmember, the mayor and working on this for over a year. Staff found out this area was up for general plan amendment and our lands has roughly 700 acres referring to page 10 map on what staff is hoping to achieve. Page 11 shows the various ownership of lands in the area. Historically, it's called the Pulehunui area, but is actually across the highway from Pu'unene HC&S (Hawaiian Commercial and Sugar Company) sugar cane lands. The various government agencies – DHHL, DLNR and the County has a set aside from this Board in the middle of the lot for recreational purposes with the old airstrip currently used as a drag strip and model airplanes, etc. Also, the armory as indicated as item 8 on page 11.

Mr. Tsuji reported that what has been in the works for years the Department of Accounting and General Services (DAGS) on behalf of the Public Safety Department is looking to build a new jail site because Maui jail is over crowded, old, etc. and DAGS was looking at the cheapest, quickest alternative and targeted parcel 7. That has drawn opposition from the County Planning director because not only is it close to a highway that parcel is 40 feet above grade of the highway and the structure would be another 40 feet high visibility. The County Planning Department asked it be relocated further back, but there has been resistance from DAGS. From DLNR and DHHL's perspective, they are trying to cooperate with the County as best they can and they need to get their support to go to County Council. Staff should have brought this earlier, but they have been meeting every 2 weeks and got hung up the last 3 months arguing amongst ourselves about the jail location. There is no preference for DLNR and DHHL on the location. Currently the parcel is Ag and not in urban growth where there were some hearings that he attended and reported significant problems.

Mr. Tsuji said staff's request was to add the 700 acres into the urban growth which was voted down by less than the full 9 members, but enough for quorum. He gave the speech he gave to this Board before for the need to generate revenue and explained to the County Council especially on Maui that they do not have large tracks of land centrally located that could be commercial industrial. There are small parts here and there, taro RPs, 2 wind farm leases and 2 small hotels in Kihei which generates about \$80,000 per year. The wind farms generate about \$150,000 per year. What they do with the revenues that DLNR generates is fund the Department of Programs and he gave them examples like the threatened endangered species program statewide, invasive species statewide and wild land fire fighting. That week when they spoke there were 4 break outs of forest fires. He learned that the Council turned their request down and they scheduled to go back up the following Monday. Staff heard from their planners who were monitoring the meeting that the big issue for the Council was that the State railroads projects down their throat and they are targeting us because we (DLNR and DHHL) were there. Also, they had a lot of questions about the Public Land Development Corp (PLDC).

Mr. Tsuji said that staff asked Lloyd Haraguchi from PLDC to go up there and alleviate their concerns because they do have special powers and he went up, but Mr. Haraguchi intends to work with the Counties on everything and not run the projects through. He related how PLDC worked with the County of Honolulu and Department of Planning on an expedited review process of their projects. Mr. Haraguchi never got to Maui and he promised them that whatever lands they have (he doesn't even have these lands) he intends to work with the County. It alleviated those council members who had a lot of questions. Mr. Tsuji assured the council

members that any lands going to PLDC would still have to go to public Land Board meetings and that they have 2 Maui Land Board members which he emphasized over and over. Even PLDC meetings are public meetings – Sunshined and agendized. While he stepped out of the meeting, 3 council members took a vote to throw the 700 acres into preservation, but weren't the majority and were voted down. He wanted the Board members know that they are having a difficult time with the Maui County Council. They will re-group and will meet with the Senate President Tsutsui to garner his support from Maui. Later they will meet with all the agencies. The County Council sent a letter to the Chairperson yesterday informing us of their decision and inviting the Department to come back to make a presentation of a master plan of the area end of August and they will discuss with their planners.

Member Morgan asked he has heard that A&B and HC&S were absent during this whole thing. What is their input or impact? Mr. Tsuji said they are a neighbor and referred to the map regarding important Ag lands. There was some discussion regarding those lands. Member Morgan wanted to know what A&B's take on the plan was since they use a big portion of that land and would impact them negatively and should be a factor to think about. Mr. Tsuji said that A&B's representatives were in attendance, but they never raised anything about the urban growth plan because they have other lands. This is a small portion of their lands. Member Edlao said that A&B has other projects in the making and have stayed back on this project.

Mr. Tsuji said he passed out a brochure that they will be distributing giving the history and it hasn't always been in sugar cane. He related information about the set back.

10:04 AM RECESS

10:09 AM RECONVEND

Item D-2 Resubmittal: Amend Prior Board Action of July 22, 2011, Agenda Item D-1, Set Aside to Department of Agriculture for Agricultural Purposes, Puna, South Hilo, North Hilo, Hamakua, North Kohala, South Kohala and Kau, Hawaii, Tax Map Keys: (3) 1-2-6:5 and 77; 1-4-34:27; 1-8-6:103; 1-9-1:18; 2-4-49:29; 3-1-4:1 and 2; 3-9-1:1 and 2; 3-9-2:7 and 8; 4-1-1:6; 4-1-5:1; 4-4-11:33; 4-6-4:1, 2, 3, 5 and 6; 4-9-11:2; 5-5-3:12, 18, 4, 5 and 6; 5-5-4:51 and 52; 5-5-6:2, 3, 4 and 15; 5-5-7:11; 8-8-4:10; 9-5-15:3; 9-6-2:55; 5-5-5:1. The purpose of this item is to include Tax Map Key No. (3) 5-5-4:52 in the set aside.

Member Agor asked for a reconsideration of the motion made to item D-2 that he has been advised that taking out the TMK is improper per Sunshine Law and asked to defer instead which allows staff to work with the AG's office on the language.

Member Pacheco made a motion to withdraw our previous Board action on item D-2. Member Morgan seconded it.

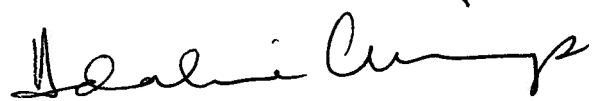
Member Pacheco made a motion to defer Item D-2 which was seconded by Member Gon and all voted in favor.

Deferred (Pacheco, Gon)

Adjourned (Pacheco, Edlao)

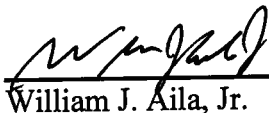
There being no further business, Member Agor adjourned the meeting at 11:00a.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants 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