

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

DATE: FRIDAY, JULY 26, 2013
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Dr. Sam Gon
Reed Kishinami

Rob Pacheco
David Goode
Shawn Smith

STAFF

Dan Quinn/PARKS
Maria Carnevale/NWHI
Larry Pacheco/LAND
Roger Imoto/DOFAW

Steve Soares/PARKS
Russell Tsuji/LAND
Sam Lemmo/OCCL
Carty Chang/ENG

OTHERS

Julie China/Deputy Attorney General
Boogie Kahilihiwa: E-1
DeGray Vanderbilt: E-1
Esther Kia'aina: E-1
Roger Imoto: E-1
Lesley Kulop: E-1
Don Reeser: E-1
Pauline Puahala Hess: E-1
Melva Aila: E-1
Sharmine Windward: E-1
Dan Cordoso: D-7

Sidney Hayakawa/DOT: M1 – M5
Valerie Monson: E-1
Ed Correa: E-1
Jerome Yasuhara: E-1
Glenn Hirata: E-1
Ms. Piono: E-1
Gloria Marks: E-1
Ms. Rita: E-1
Shawna Spooner: E-1
Aulani Paaha: E-1
Robin Lee: K-1

- Item M-1** Issuance of a Direct Cargo Facility Lease Able Freight Services, Inc. Kona International Airport at Keahole Tax Map Key: (3) 7-3-43: Portion of 003.
- Item M-2** Issuance of a Right-of-Entry Agreement to Group 70 International, Inc., 3129 Ualena Street Honolulu International Airport, Tax Map Key: (1) 1-1-14-103 (portion):113:114.
- Item M-3** Issuance of a Right-of-Entry Agreement to So Ono Good Products, LLC, 3129 Ualena Street Tax Map Key: (1) 1-1-14-103 (portion):113:114.
- Item M-4** Issuance of a Heliport Lease to Helicopter Consultants of Maui, Inc., DBA Blue Hawaiian Helicopters, Lihue Airport Tax Map Key: (4) 3-5-01: portion of 8.
- Item M-5** Amendment to Prior Board Action of February 8, 2013, Item M-3, Issuance of a Direct Lease to K.W. Auto Body, LLC, to Delete the Specific Termination Date and to Revise the Property Description TMK: (1) 1-1-04:06.

Sidney Hayakawa, representing the Department of Transportation (DOT), Airports Division, said that Ann Shigi was available to report on the items.

Unanimously approved as submitted (Pacheco, Gon)

- Item E-1** Issuance of Direct Lease to Ka ‘Ohana O Kalaupapa and Authorization to Construct a Memorial to Honor and Perpetuate the Memory of Those Individuals Who Were Forcibly Relocated to Kalaupapa Peninsula from 1866 to 1969, Kalaupapa National Historic Park, Kalawao, Moloka‘i, Tax Map Key: (2) 6-1-001: 002 (por.).

Written testimonies from Alan M. Arakawa, Pauline Ahulau Chow, Anwei Skinsnes Law, Henry G. Law, Carleen Ornellas, John D. Waihee, Carol Lee Kamekona, Charles M. Heaukulani, Charles Buck, Clarence “Boogie” Kahilihiawa, Chris Mahelona, Daniel N. Wenk, Mazie Hirono, Colin K. Brede, Danielle Kaleinani Bunnell, DeGray Vanderbilt, Donald W. Reeser, Erika Stein Espaniola, Gloria L. Marks, Grace Ishii, Pi’olani Motta, Janet M. Nabb, Jerome Yasuhara, Richard Pezzulo, Kalapana Kollars, Lee Henry-Chang, Lei Kihoi, Maika’i Kapahe’e Kaufman, Manu Josiah, Marci Weight Lyons, Edward Weight, Patrick J. Boland, Pauline Ka’iulani Puahala Hess, Rev. Dr. Lon A. Rycraft, Ellen Storm Rycraft, Sol P. Kaho’ohalahala, Thelma Dickerson, Velda Napua Akamu, William F. Petrie, Marla Momi Musick, Kamana’opono M. Crabbe, Ph.D., Monica K. Bacon, Valerie Monson, and Lieutenant Governor Shan Tsutsui were distributed to the Board members on item E-2.

Dan Quinn, representing the Division of State Parks (SP), conveyed some background on item E-1. SP staff recommended a 20-year term lease.

Member Sam Gon asked if the lease can be negotiated after the 20-year term has ended.

Mr. Quinn said that the Ka 'Ohana O Kalaupapa (Ohana) may be able to move to a longer lease.

Member Gon and Mr. Quinn discussed changing the lease from 20-year to a 65-year term lease.

Steve Soares, representing SP, spoke about the location of the DLNR land and the cooperative agreement between the Department and the National Park Service (NPS).

Boogie Kahilihiwa, President of Ohana for 10 years, testified on item E-1. He shared the experience and history of the patients at Kalaupapa and supports amending the lease from a 20-year lease to a 65-year lease.

Valerie Monson, a coordinator of Ohana, testified on item E-1. She is very passionate about Kalaupapa and shared the amount of work needed for the Memorial; as a result, she is in favor of the staff recommendation but wants to amend the length of time.

Member Rob Pacheco asked how much the monument will cost. Ms. Monson estimated between \$5-8 million.

Member David Goode and Ms. Monson discussed the Memorial management and construction agreement.

Member Pacheco said that the Memorial is authorized by Statute (Public Law 111-11, March 30, 2009), commonly referred to as the Kalaupapa Memorial Act, which is incorporated into the National Parks legislation.

DeGray Vanderbilt stated the 'Ohana has been pushing for a cooperative agreement with NPS and recommended that the cooperative agreement allow for the co-management of the Memorial with NPS. The Ohana intends to operate with a task agreement for construction of the Memorial and seeks a similar arrangement with NPS like those with the Catholic Dioceses and the United Church of Christ as partners.

Ed Correa testified on behalf of the Native Hawaiian Role Commission supporting the Memorial.

Esther Kia'aina, a resident of Nanakuli, testified in her personal capacity, about her ancestors who lived in Kalaupapa. She supports the current proposal but not the 65-year long term lease. She spoke about the legislation for the Memorial by Congress. She believes the Memorial should be managed by the NPS because they should bear the management cost.

Member Pacheco commented that this issue deals with the land piecemeal, and it would make more sense to have a long-term lease.

Member Pacheco asked if Ms. Kia'aina was in favor of the 65-year lease and Ms. Kia'aina was concerned about the Ohana managing the Memorial for the long-term due to possible financial hardships within 20 years. Ms. Kia'aina recommended that the NPS should be responsible for the maintenance of the Memorial so that it is properly managed and the people are honored in perpetuity.

Jerome Yasuhara, on behalf of the Office of Hawaiian Affairs (OHA), testified in support of the staff recommendation but suggested that the lease term be amended. He believes that 20 years is insufficient due to the requirement that the Ohana execute fundraising for the Memorial.

Roger Imoto testified as an individual for a 65-year lease.

Glenn Hirata testified on item E-1 and asked to read Mayor Arakawa's written testimony requesting to amend from a 20-year to a 65-year lease. Mr. Hirata is aware of the fundraising requirement and is also in favor of the 65-year lease.

Lesley Kulop, Maui resident, testified on item E-1 and is in favor of a 65-year lease. Ms. Kulop said Kalaupapa is a special place. She does not want Kalaupapa to be a National Airport strip because there is an important responsibility to protect the Ohana and Kupuna of Kalaupapa.

Ms. Piono, an 84-year old woman, testified on item E-1. She shared her family history having leprosy, and her grandparents gravestones are nowhere to be found. Ms. Piono is in favor of the Memorial.

Don Reeser, Makawao resident and Ohana Board Committee member, supports the Ohana's request of a 65-year lease.

Member Gon asked if the Board is able to modify from a 20-year lease to a 65-year lease and Mr. Reese said yes.

David Goode asked if NPS is interested in taking over the maintenance service facility, and Mr. Reese said that was an option but that in the past, NPS was not supportive.

Gloria Marks, resident of Kalaupapa, testified in support of the 65-year lease.

Pauline Puahala Hess testified in favor of a 65-year lease. Ms. Puahala's parents who had leprosy were separated as children from their families and sent to Kalaupapa. They met in Kalaupapa and she was born there. Because of the history of pain, family illness and feelings of abandonment, Ms. Puahala is in favor of the Memorial to heal the pain of the people who were sent to Kalaupapa, for their families and future generations. She believes the Memorial will encourage everyone to be stronger as a unit.

Ms. Rita testified in favor of the 65-year lease.

Melva Aila supports the amendment from 20-year to a 65-year term lease. Her experience with Kalaupapa has been a spiritual experience and she supports the Memorial to honor the ancestors.

Shawna Spooner testified on item E-1 and is in favor of the 65-year lease term. She pointed out that the vision will take time and will take a lot of fundraising.

Sharmine Windward, the youngest Board member of the Ohana Kalaupapa committee, testified in favor of the 65-year lease for the benefit of her son so the legacy can be shared with future generations.

Aulani Paaha testified on item E-1 and is in favor of a 65-year lease for fundraising purposes. Ms. Paaha understands that it takes time to do fundraising.

DeGray Vanderbilt discussed the history of NPS which did not support the Memorial before the act was passed, and it was the Ohana and others who worked on congressional action for approval of the Memorial. He did not understand why NPS staff were not there to support. He made a point that the churches own and manage their own Memorials through a cooperative agreement with DLNR.

Member Pacheco asked if the submittal included maintenance of the Memorial.

Mr. Vanderbilt's statement is that when you establish something, you stay there with it so it should include the maintenance.

Chairperson William Aila made it clear that there is no conspiracy between National Parks and DLNR. Also, he inquired whether there is an opportunity to honor the Hawaiians who were living there and took the patients in?

Mr. Vanderbilt agreed that this is a very good point, and national parks should take that into consideration.

There was a discussion about fundraising for long-term maintenance and ownership of the Memorial by Member Goode and Ms. Kia'aina. Ms. Kia'aina discussed issues with the relationship between the 'Ohana and DLNR and NPS staff and cost estimates and the endowment.

Member Gon read a letter from Erika Stein, Kalaupapa Park superintendent in support of the Memorial.

Member Gon expressed importance of the area from a global perspective and he and Member Goode encouraged NPS and Ohana to work together.

Member Gon expressed concern that DLNR remain the landowner and that they would be responsible if the Ohana is not be able to comply with the lease. Member Pacheco stated there

should be a mechanism in the lease that specifies responsibility for the Memorial if the 'Ohana cannot comply with the terms or maintain the Memorial.

Mr. Quinn discussed the 'Ohana's proposed changes to the recommendations and stated he would not change the staff recommendations.

Mr. Goode stated he thought it would be best for the long term that the 'Ohana not manage the Memorial due to the uncertainty of a funding source.

Mr. Soares said that as submitted, if we moved forward with the plan, the lease would require the Ohana to manage and maintain the property and it would be necessary to negotiate changes with the DLNR/NPS cooperative agreement.

11:36 AM EXECUTIVE SESSION

12:14 PM RECONVENE

Member Goode made a motion to accept staff recommendations with an amendment to item 4(a) regarding the lease term:

“That the lease shall be for a period of 65 years with the condition that if the Memorial is not fully constructed by within the first 10 years of the lease, the Board reserves the right to amend or revoke the lease and that by year 20, the lessee will provide for the Board's review and approval, a management plan to address the long term management and maintenance of the Memorial. If the lessee fails to do so, the Board reserves the right to amend or revoke the lease.”

Member Pacheco seconded that.

Member Pacheco stated there will be two benchmarks: (1) 10 years - Memorial will be constructed; (2) 20 years – A management plan with a recognized funding stream will be presented. Otherwise, the Department reserves the right to amend or revoke the lease.

Member Gon has full confidence in the 'Ohana effort and the support of prominent individuals. This is something we will support. Member Goode seconded that.

Unanimously approved as amended (Pacheco, Gon)

Item F-1 Request for Authorization and Approval to Issue an Amendment to Papahānaumokuākea Marine National Monument Research Permit, PMNM-2012-049, issued to Dr. Robert Toonen, University of Hawaii, Hawaii Institute of Marine Biology, and Dr. Christopher Bird, Texas A&M

University - Corpus Christi, for Access to State Waters to Conduct Intertidal Biodiversity Survey Activities.

Item F-2 Request for Authorization and Approval to Issue an Amendment to Papahānaumokuākea Marine National Monument Research Permit, PMNM-2012-52, issued to Ms. Shauna Kēhaunani Springer, Nā Maka o Papahānaumokuākea, for Access to State Waters to Use Traditional Ecological Knowledge to Examine Intertidal Ecosystems.

Maria Carnevale, representing the Division of Aquatic Resources (DAR), conveyed some background on item F-1 to permit amendments to Kehaunani Springer's trip to the Northwest Hawaiian Islands.

Julie China, Deputy Attorney General (AG) said that Member Gon did not have to recuse himself from agenda items F-1 and F-2.

Items F-1 and F-2 were unanimously approved as submitted (Gon, Goode)

Item D-6 Assessment of \$500 Fine Against Applicants for Seawall Encroachment; Grant of Term, Non-Exclusive Easement to CH2, Stephen T. L. Hurwitz, and Robert P. Chancer, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

Russell Tsuji, representing Land Division, conveyed some background on item D-6, regarding land and shoreline encroachment.

Unanimously approved as submitted (Pacheco, Kishinami)

Item D-7 Impose a \$1,000.00 Fine and \$420.00 in Administrative Cost against MAUIOCEANACTIVITIES.COM LLC, also known as MAUI OCEAN ACTIVIES.COM LLC, for Unauthorized Commercial Activities Conducted on State Unencumbered Lands at Wailea Beach, Wailea, Honuaula, Maui, at TMK: (2) 2-1-008: Seaward of Parcel 109.

Larry Pacheco, Land Division staff agent, conveyed some background on item D-7 enforcement action due to commercial activity on Maui, Wailea beach. Mr. Pacheco took photos and documented commercial activity at the site. Everything will be removed if the vendor agrees.

Dan Cardoso from Maui Ocean Activities testified on item D-7 and said that he is 100% in compliance and is okay with the administrative cost.

Mr. Tsuji said there were Environmental Assessment (EA) issues.

Member Pacheco asked if the Board approved with no fine, but suggested a higher fine if the vendor came back with a second offense.

In terms of the law, Mr. Cardoso asked for clarification on what constituted a violation. Specifically, is it a violation to traverse the beach carrying commercial items to be taken into the water? Would this type of activity constitute a second offense?

Member Goode recommended staff to waive the \$1,000 fine.

The Board found a violation but amended the staff recommendation no. 1 by waiving the fine of \$1,000 on the condition that the operator (Maui Oceans Activities) agrees to immediately cease commercial activities within the shoreline (seaward of the naupaka at Wailea Beach), and with the understanding that if the operator commits a violation in the future, such violation would be considered a second violation warranting a higher fine under HRS 171-6(15).

The Board retained recommendation no. 2 warranting a fine of \$1000 per day for future violations.

Unanimously approved as amended (Goode, Pacheco)

Item D-2 Forfeiture of General Lease No. S-3977, P.I.K.A. INC. Lessee, Hanapepe, Waimea, Kauai, TMK (4) 1-9-005:007.

Witten testimony from Leonard Bagano was distributed to the Board members on item D-2.

Mr. Tsuji conveyed some background on item D-2 which has had a series of default issues dating to 2009.

Member Reed Kishinami asked if there were any conditions to the permits.

Mr. Tsuji responded that they inspect the site every one or two years. They are unable to inspect more often because of staffing issues.

Member Kishinami asked if there is any evidence of contamination based on the last assessment.

Mr. Tsuji noted that the road is paved, but the key issue is the ability of the tenant to get a performance bond.

The Board and Mr. Tsuji discussed the performance bond.

The Board amended the Recommendation Section by adding a heading, and conditions; the amended Recommendation Section amended to read as follows:

A. Special Installment Agreement and Posting of Required Performance Bond:

- 1. The Board approved the alternative presented in the staff submittal by approving the issuance of a Special Installment Agreement (SIA) under the terms and conditions noted in submittal (term of 24 months at 7%**

interest, etc), on the specific condition that prior to execution of the SIA the Lessee must post the performance bond that is required under the lease, and if the lessee fails to execute the SIA or post the required performance bond within twenty (20) calendar days after being notified by the Kauai District Land Office, then the lease shall automatically be terminated without further Board action and in accordance with the Board's termination provisions in the paragraph B. below.

2. If the lessee misses an installment payment under the SIA and fails to cure the payment default within the time prescribed in the SIA, then the lease shall automatically be terminated without further Board action and in accordance with the Board's termination provisions in paragraph B. below.
3. If the lessee defaults under the terms of the lease and fails to cure the default within the cure period provided for in the lease and in the notice of default, then the lease shall automatically be terminated without further Board action and in accordance with the Board's termination provisions in paragraph B. below.

B. Termination of Lease Provisions.

1. Authorize the cancellation of General Lease No. S-3977 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3977 to be applied to any past due amounts;
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of August 2, 2013, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-3977 and to pursue all other rights and remedies as appropriate.

Unanimously approved as amended (Smith, Kishinami)

Item K-1 Conservation District Use Application (CDUA) OA-3666 for Deviation of the Minimum Setback in Regards to a Proposed Garage and Accessory

**Structures at an Existing Residence Located at Honolulu, Island of Oahu,
Tax Map Key: (1) 3-3-029:036.**

Sam Lemmo, representing the Division of Conservation and Coastal Lands (OCCL), conveyed some background on item K-1 and mentioned that the applicant is requesting the approval for a garage on the property.

Robin Lee, an architect who plans to work on the project, testified on item K-1, that he wants an Environmental Assessment (EA) due to the neighborhood disruption. Mr. Lee is fine with the recommendation.

Unanimously approved as submitted (Kishinami, Gon)

Item D-10 Discussion on the Status of Chapter 11 Bankruptcy Case No. 12-02279, Hawaii Outdoor Tours, Inc., Debtor, Filed in the United States Bankruptcy Court, District of Hawaii, General Lease Nos. S-5844 and S-5372.

The Board may hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. NO STAFF SUBMITTAL

Mr. Tsuji conveyed some background on item D-10.

Nonaction item.

Member Pacheco made a motion to The Board to hold a discussion in Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded that.

12:54 PM EXECUTIVE SESSION

1:30 PM RECONVENED

Item D-5 Consent to Assign General Lease No. S-5330, Masatsu Kawamoto, Eunice M. Kawamoto, and Maverick Masatsu Kawamoto, Assignor, to Jeremy S. Lewis, Assignee, Kahei and Hualua, North Kohala, Hawaii, Tax Map Key: (3) 5-5-003: 013 & 019.

Member Kishinami is recused from Item D-5.

The Board amended the total area noted on page of the submittal to read 157.315, more or less.

Unanimously approved as amended (Pacheco, Gon)

Item C-1 Request to Designate the Kahakapao Recreational Area as a Na Ala Hele Feature Within the Maui Na Ala Hele Trail and Access Program Inventory.

Item C-2 Request for Authorization to Award, Execute, Amend, and Extend contract(s) to Install Ungulate-Proof Fencing Within in the Puu Waawaa Forest Reserve, TMKs (3) 7-1-01:06 por, (3) 7-1-01:07, por, North Kona, Hawaii And

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

Item C-3 Request Approval of a Forest Stewardship Agreement with Anne Brooke to Participate in the State Forest Stewardship Program, TMK (3) 2-6-010:129, South Hilo District, Island of Hawaii.

Item C-4 Request Approval to Negotiate and Sign a Contract(s) for the Management of the Department of Land and Natural Resources Youth Conservation Corps Program And

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for This Procurement.

Item C-5 Request for Delegation of Authority to the Chairperson to Negotiate, Approve, Execute, Amend, and Extend Right-Of-Entry and Release of Liability Agreement(s) for the Division of Forestry and Wildlife to Conduct Conservation Management Including Invasive Species and Fire Control, Restoration of Native Species, and Monitoring at Ulupalakua Ranch at Auwahi, Maui, Tax Map Key: TMK 1-9:001:006, Por.

Roger Imoto, representing the Division of Forestry and Wildlife (DOFAW), said there were no changes on items C-1, C-2, C-3, C-4 and C-5.

Member Gon said that he finds interest in the Forestry items, such as fencing and new conservation items.

Unanimously approved as submitted (Gon, Pacheco)

Item L-1 Appointment of Jeff Knowles as Kona Soil and Water Conservation District Director.

Carty Chang, representing Engineering Division, said that there were no changes on item L-1.

Unanimously approved as submitted (Pacheco, Goode)

- Item D-1** Request for Issuance of Revocable Permit to Keith Silva for Pasture Purposes, Por. Of Ili of Kikiaola, Waimea, Kauai, Tax Map Key:(4) 1-2-006:018.
- Item D-3** Cancellation of Governor's Executive Order No. 820 as Amended by Governor's Executive Order No. 2321 and Reset Aside to Department of Accounting and General Services for Government Office Purposes, por. of Lihue Town, Lihue, Kauai; Tax Map Key: (4) 3-6-005:001.
- Item D-4** Consent to Sublease General Lease No. S-5996, First United Protestant Church of Hilo, Lessee, to the Trustees of the Estate of Bernice Pauahi Bishop, Sublessee, Piihonua, South Hilo, Hawaii; Tax Map Key: (3) 2-3-027:016.
- Item D-8** Issuance of Right-of-Entry Permit to Hilton Hawaiian Village, LLC for Open Air Movie Showing Purposes to be held on Wednesday and Saturday in August 2013 at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portion of 021.

Witten testimonies from Jeff Merz and Caroline Hayashi was distributed to the Board members on item D-8.

- Item D-9** Issuance of a Right-of-Entry Permit to Waikiki Roughwater Swim Committee, Inc. for a Swim Race Event to be held on September 2, 2013, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:por. 21.

Mr. Tsuji said there were no changes on items D-1, D-3, D-4, D-8 and D-9.

Unanimously approved as submitted (Pacheco, Gon)

Adjourned


There being no further business, Chairperson William Aila adjourned the meeting at 2:04 p.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,



Marlou Lamblack
Land Board Secretary

Approved for submittal:



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