

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

DATE: FRIDAY, APRIL 8, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Jerry Edlao
Rob Pacheco

Ron Agor
John Morgan
Dr. Sam Gon

STAFF

Sam Lemmo/OCCL
Laura Stevens/ADMINISTRATION

Russell Tsuji/LAND

OTHERS

Pam Matsukawa, Deputy Attorney General
Terry Tusher, K-3

Ron Terry, K-1
Gary Nelson, D-6

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

Item A-1 February 25, 2011 Minutes

Item A-2 March 10, 2011 Minutes

Item A-3 March 24, 2011 Minutes

Minutes were not ready for this Board meeting.

Item K-1 Conservation District Use Application (CDUA) HA-3546 for Saddle Road (State Highway 200) Improvements and Subdivision of Land by the Federal Highways Administration Located at Mile Post (MP) 7.85-11, South Hilo, Hawaii, TMKs: (3) 2-5-001:002, 003, 004, 006, 007, 008, 011, 012, and 013; 2-6-018:004 and 010

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reported that this is the fifth CDUP processed for the Saddle Road improvements. All mitigation measures identified in the Federal impact statement and record of decision by the Federal Government are incorporated as conditions of this action. An MOA has been executed with Historic Preservation Division (SHPD), OHA, Federal Highways and DOT regarding archaeology and cultural sites. Staff recommends the Board approve the CDUA.

Ron Terry representing the Federal Highways Administration and the author of this CDUA testified that this is the last CDUA for Saddle Road as long as they get their Federal funding they should be able to complete the improvements in the conservation district area. They are still working on CDUA #3 from the 11 to 19 mile marker which will be done by September 2011. CDUA #4 was granted last year and that area hasn't started construction. They may have to be back here depending on the funding situation and noted there are several statements in the CDUA that was given in May 2011 that are no longer true. A CDUA was filed and approved for the west side. No waters of U.S. were present after consultation with the Army Corp of Engineers.

Member Gon asked whether he reviewed all conditions and agreed to them. Mr. Terry acknowledged that.

Board member Edlao asked whether it was night or day work. Mr. Terry replied all day time.

Member Goode asked whether he thinks two years is adequate given the funding uncertainties and whether to bump it up another year or delegate to the Chair to have an additional year without coming to the Board. Mr. Terry said the Federal Highway Administration would appreciate that. They have made most deadlines, but have had to come in for a couple extensions based on construction difficulties. Adding a year to the start date and finish date would prevent them from coming back if that should occur. Member Goode said condition #5 says to start within two years and complete within five or if they did three and six years. Mr. Lemmo said that was fine with him.

Member Pacheco asked whether the funding was earmarked. Mr. Terry acknowledged that saying some depended on how you define it. They identified that portion of the project that can take the money right away. They have a right-of-way to acquire on this particular portion of the project and will apply that money to the west side.

Member Edlao asked about public testimonies. Mr. Lemmo said he ran the public hearing in Hilo. Mr. Terry said most were part of the Saddle Road Task Force appointed by Senator Inouye.

Member Pacheco commented on how well the project flows with minimal delays. Mr. Terry said they had a number of compliments on the construction.

Member Pacheco amended staff's recommendation #5 from two and five years to three and six years. Member Gon seconded it. All voted in favor.

The Board:

Amended staff's recommendation #5 initiation date of two years to three years and completed within six (6) years instead of five (5) years.

Unanimously approved as amended (Pacheco, Gon)

Item K-2 Conservation District Use Application (CDUA) OA-3574 for a State Civil Defense Disaster Warning System by the Department of Accounting and General Services (DAGS), Located at Kea'au Beach Park, Waianae, Oahu, TMK (1) 8-3-001:001

Mr. Lemmo said he stands on staff's submittal. Sirens are site approved and should be expedited referring to the recent tsunami.

Unanimously approved as submitted (Morgan, Gon)

Item K-4 2nd Annual Status Update on Management Actions Identified in the Mauna Kea Comprehensive Management Plan, and Sub Plans, Mauna Kea, Hamakua District, Island of Hawaii, TMKs: (3) 4-4-015:009&012

Chair Aila said that this item is to be withdrawn.

Withdrawn

Item K-3 Conservation District Use Application (CDUA) OA-3572 for a Single Family Residence and Setback Variance by the Liljestrand Trust, Located at Tantalus, Honolulu, Oahu, TMK (1) 2-5-017:006 (residence) and 2-5-017:018 (associated grading)

Mr. Lemmo conveyed that there are some design changes from the previous approval and those changes are in a positive direction. Staff is coming back to the Board to reaffirm the request to build a house on the site with standard conditions. The site is challenging being on a little bit of a hill, but Tantalus is a residential area. Staff has recommended approval of the permit for a house on this site. He'll stand on the conditions and the consultant is also here.

Board member Morgan asked about recommendation #4 whether that means if you go to Connecticut for a year you can rent it to someone else during that year. He understands the short term rental, but does that mean long term rental as well? Mr. Lemmo said if you wanted to rent whether for short or long term you would have to have Board approval. These approvals don't typically provide for a rental and it's for the entity building the structure. If they want to do a long term rental they would have to come to the Board to seek approval. The new rules are trying to incorporate some language to address this issue, at least with respect to short term rentals. Member Morgan asked whether this is standard to anyone living on Tantalus. Mr. Lemmo confirmed that. Member Morgan said he is glad the new rules will address that. Mr. Lemmo said it will address the short term rental. Member Edlao said he had a concern with that condition as well because of contested case hearings and suggested language "unless approved by the Board" for that whole area. Mr. Lemmo said maybe in the future. Member Edlao said that people in the past never come to the Board and instead went ahead and did it causing problems. Mr. Lemmo said that the Board will see those rules for final approval.

Terry Tusher testified that he is the architect and representative of the owner. He had some questions and some maybe staff questions rather than Board questions. On page 9, item 8, he asked whether they needed the approved plans prior to doing that kind of work. Mr. Lemmo said they are able to do what they are allowed to do without the benefit of having a permit which is pruning, weeding type of things, but he is hesitant to say go ahead and remove trees or do anything to the site until we have plans in place that have erosion control, a grading plan because he is concerned about making sure before they do any type of work on the site that they have a plan in place to control construction impacts. They have bmps in place to control sedimentation, erosion and it would be unusual for us to say go ahead, go into the site and start doing the substantial work without having approved the plans. Mr. Tusher agreed.

Member Edlao related previous situations where the client went ahead without approval. Mr. Tusher said he understands reiterating what Mr. Lemmo said is allowed.

Mr. Tusher asked for clarification on item #10 whether those mature trees will be identified on the construction plans when they are submitted. On item #7, does the clock on the one year begin at the approval of the CDUP or with the approval by the director of the final construction plans? He was concerned with one year because of all the permits they have to approve. Mr. Lemmo said the clock starts from today and should you not be able to get your plans in order you can request an extension for two years which could be approved by the Chairperson, administratively. Any work to be done to the land, that's an interpretation, sometimes you got to do soil borings or work that you maybe able to do as a precedent to construction plan approvals because you need to get design information and data to prepare your plans that can constitute initiation of work. If you need more time you can always ask for an extension.

Member Pacheco asked under the rules you're allowed to remove six trees. Mr. Lemmo said under the current rules you can remove up to five mature trees with the Departmental

permit. Four to five trees with a Board permit. You can remove dead or diseased trees without a permit, but all that is being modified in the new rules.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-1 After-the-Fact Issuance of Direct Lease to Honpa Hongwanji Mission of Hawaii for Church Parking and Allied Purposes; Issuance of a Management Right-of-Entry, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-06: 08.

Russell Tsuji representing Land Division said there is a long history and a representative is here. Nothing else to add and noted that the Mission has a non-profit status which is nominal rent and may have been an issue in the past.

Unanimously approved as submitted (Agor, Morgan)

Item D-4 Issuance of Revocable Permit to Hilton Hawaiian Village LLC for Purposes of Beach Activities to be held from April 30, 2011 through May 4, 2011 at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.

Mr. Tsuji said this item is separate and distinct from the concession agreement on the beach side which is currently before the court. The representative from Hilton is here. It is for team building corporate clients.

Unanimously approved as submitted (Morgan, Gon)

Item D-6 Grant of Perpetual, Non-Exclusive Easement to City and County of Honolulu for Sewer Line Purposes; Issuance of Construction and Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:006 and seaward, (1) 2-1-015:009 portions.

Mr. Tsuji said he had no changes. Written testimony was distributed from a Gary Nelson.

Gary Nelson testified that he is a law student and wasn't objecting that he had some questions. He did review the submittal.

Member Morgan asked whether he was here when the Board discussed the Saddle Road project. Mr. Nelson said he came later. Member Morgan said because his comments were regarding the length of the project which they just went through with another agenda item regarding extensions. He asked isn't this an abundance of caution kind of thing? Mr. Tsuji confirmed that saying so they don't have to come back to the Board or modify or amend a legal document. Mr. Nelson asked won't it take as long as it's been ascertained. Member Gon acknowledged that it avoids any administrative delays or additional bureaucracy within the context of this project. Otherwise, they would have to

come back numerous times for extensions, but given a window things will move within that time frame. Member Morgan said he would hate a relatively simple construction project last for years and years and that is not the intent of this submittal. This submittal is to allow not coming back if there are unknown delays.

Mr. Nelson agreed and asked if there were any estimates of how long it would take construction for the lands zoned recreation. Mr. Tsuji said he doesn't have any since the County would be doing this. Member Pacheco said they plan to not finish until 2014 and start construction in January 2012 and looking at a maximum of two years for the whole project.

Mr. Tsuji related that the sewer system at Sand Island has been an issue for a long time and that this project might be connected to the Federal mandate to upgrade the infrastructure. Mr. Nelson wondered whether there was a choice for the Board.

Wynn Miyamoto representing Fukunaga and Associates testified saying there is a Federal mandate to be completed by 2014 and that there is a two year window. As to when the contractor starts on the park side it's really up to him to what would work best. Mr. Nelson asked whether it was two years or three years because it said to the end of 2014. Mr. Miyamoto said that is a projected construction schedule for the entire project because they will be doing work on the other side of the harbor at Pier 1, too. The total projected schedule is about three years which includes time for the contractor to order materials and set-up the staging area. Mr. Tsuji asked whether this was either in the conservation district or the SMA area and if they have all permits. Mr. Miyamoto acknowledged they had a hearing and was approved for the CDUA for the harbor crossing. We received both city and state SMA approvals.

Mr. Nelson asked how this would change the landscape. Mr. Miyamoto said it is not expected to at all because they are micro-tunneling. They are digging shafts which would go from one shaft to the other and they will try to avoid any surface disturbance as much as possible. Only the shaft site and connection points would be disturbed, but they will restore it back to existing conditions. Mr. Tsuji said to check because there maybe a lot of easements. Mr. Miyamoto said for the harbor crossing they will be drilling about 100 foot shafts to go under the harbor and the alignment in the park is about 30 feet deep. They are aware that the treatment plant has some large outfalls and they will make sure to go under them. There is a lot of trenchless technology and the EA has more information about it. Member Goode said that OAQC has it on-line.

Member Gon asked whether any aspects of this project will come before the Board. Mr. Tsuji said there maybe. As he recalled where the sewer treatment plant is DLNR had to transfer some of their land out there to DOT, but they are aware that they may have to carve out additional acreage for the sewage treatment plant. There have been prior Board submittals on that with the reservation when the County was ready to proceed with the Federal mandate and they haven't come to us yet. But, I expect them to. Mr. Miyamoto said that is going to be a separate project, but might be part of the Federal mandate. Chair Aila said within 10 years they have to build some other facilities, but the question

is to build it not far from the existing facility. Mr. Tsuji said we were reserving some extra land in the future in case they needed to expand.

Unanimously approved as submitted (Morgan, Gon)

Item D-7 Rescind Prior Board Action dated December 11, 2009, Item D-14, Sale of Remnant to Guillermo Geldermann; Kaaawa, Koolauloa, Oahu; Tax Map Key: (1) 5-1-011:055 portion.

Member Morgan asked whether staff is rescinding everything and Mr. Geldermann will not purchase it. Will he come back? Mr. Tsuji said as far as he knows, no. In the end staff will hold the remnant. There are actually two remnants. At the end this person decided not to purchase it.

Member Morgan disclosed that he is a Board member of the Kaaawa Beach Owners Association, but he is not a party to this item.

Board member Goode asked the \$1700, you went out and hired an appraiser or in house appraiser that they paid for. Mr. Tsuji said staff hired an appraiser and apologized that they won't do it this way again. Apparently, when staff took it to the Board they had an estimated square footage of the size of the remnant, did an appraisal and the survey was done later and the square footage increased. Member Morgan said it looks to him that the square footage was accurate the first time, but they included the part that goes across the roadway. It looks like the appraisal was appropriate for the area, but the submittal included the part across the roadway. Looking at Exhibit 2, that is the right area but then ... Member Goode said the way I look at it is the neighbor had the intention of buying the property. It says 20 foot wide old railroad line road remnant and the neighbor along this. My fourth grade daughter can figure out the square footage roughly and know that 3600 is way up, its 140 feet long and 20 feet wide. It's obviously 2800 feet. It's almost like something else is going on, but he paid for the appraisal and wants us to reimburse him for the cost. This doesn't seem right to me. If it was me I would prorate it and say the \$1700 would pay for your 800 square feet that we over estimated, but you pay for the rest of it. Member Morgan agreed and said if his intent is to come back and purchase the right amount, 2692 instead of the 3000 or so including the part that goes across Lihimauna Road because that is where the total amount comes in, but he wants to get his appraisal back and buy the thing, that is manini of him. Buy the whole parcel, 2692 square feet for \$1700 and everybody in the world would want that. Has he come to you and given his intent that he wants to get the money back and re-approach the Board to say I want to buy it now? Member Goode pointed out that the land value wasn't disclosed. Mr. Tsuji says he is cancelling the transaction all the way through. The only reason staff made the recommendation to reimburse is because of this problem that they no longer ordered the appraisal until the survey had been approved. Everyone is aware of the exact square footage and the area. This is something staff should have done and that is the only reason. If he ever wants to come back to purchase it one of the requirements is you have to pay for an appraisal. If his appraisal is still good he won't be able to come back to the Board. Member Goode said you can't change the process now and didn't know whether

to move ahead or not. Mr. Tsuji said he made sure the district manager confirmed that we don't do the appraisal until we have the survey completed. The applicant is obligated to submit the survey, hire the surveyor, submit it to DAG's standards, review it for accuracy, they put their stamp on it and at that point everyone knows including the appraiser. It should be the appraisal first.

Member Pacheco asked how come he wasn't able to get the appraisal. Is it the policy the Department has? He referred to Mr. Geldermann's letter, Exhibit 4. Mr. Tsuji said there is a long history and they are in arbitration on a lot of rent openings. He explained when you purchase and there is a dispute you can arbitrate it. The policy went back to when Mr. Tsuji was there at Land Division because it changed when he was gone which is the public is entitled to at least view it. If there was an issue about copying it, staff provided a copy of it and that this happened before Mr. Tsuji went back to Land Division. It has to do with an open records law. The reason some staff hesitated in the past was when they allowed applicants who had not...and a lot of times it came up in the context of rent re-openings of our industrial and commercial leases. We get an appraisal and they are informed of the value, but they want to see the report and in the past they are given the reported amount. What happened was they would then hire someone not an appraisal, but a rebuttal and they would say I want to arbitrate. It isn't a true appraisal, but a rebuttal and our appraisers that we hired threaten not to do any more work for the State of Hawaii if that is what we start doing because that is not a true arbitration and it is not an appraisal. For whatever reason that administrator and subsequent ones decided rather than push the issue the lessee decided you aren't going to be able to copy it until they arbitrate for the rent issue is it's final meaning where it's agreed upon or gone through the arbitration process and completed then you can make all the copies you want. Unfortunately, when I wasn't the administrator it got to the point where staff didn't even show it to him. I have gone back and we are not only showing it to him. We explained why we don't want...hesitate on offering up a copy of the appraisal they will provide it. We are in a bunch of arbitrations right now which Mr. Tsuji related. It's hard because under the open records law there is a basis, but you are going to have to argue to OIP a justification for not producing the appraisal report at that time because it would frustrate a legitimate government function and there's an argument that it does because it frustrates the arbitration process which is part of the lease and lease terms. But, the ones staff has been handling right now staff has provided the copies.

Member Pacheco asked he had gone through a couple appraisals on the Big Island and \$1700 seems to be an awful lot. Is that standard Oahu prices? Mr. Tsuji said for several thousand feet. Member Pacheco said with no structure or anything on it. Mr. Tsuji said he isn't an appraiser. Remnants come in at least at \$1,000. He said that there will be other cancellations of proposed transactions coming before the Board which will be significant. Not just remnant situations. There will be previous approvals to legitimize shoreline encroachments via an easement. Filled land and sea wall issues and related that one is going to be litigious that wants to cancel and wants his money back, but staff's perspective is the issue of encroachment and filled land. Deputy Attorney General Pam Matsukawa said that he is going beyond the agenda. Mr. Tsuji said that it's for information. Ms. Matsukawa said even so that he should consider it.

- Item D-2** **Issuance of Revocable Permit to Jeanine Thomason (Event Manager) for The Maui Film Festival at Wailea 2011 Event, at Wailea Beach, Maui, Hawaii: Tax Map Key:(2) 2-1-008: seaward of 109.**

- Item D-3** **Issuance of a Revocable Permit to Pyro Spectaculars, Inc. for Aerial Fireworks Display Purposes, Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of parcels 015 and 016.**

- Item D-5** **Rescind Prior Board Action of May 13, 2010, Item D-17; Sale of Reclaimed Land to Fordyce Smith Marsh, Jr. and Noelani Fowler; Amendment of Grant Non-Exclusive Easement S-5973; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:seaward of 012.**

- Item D-7** **Rescind Prior Board Action dated December 11, 2009, Item D-14, Sale of Remnant to Guillermo Geldermann; Kaaawa, Koolauloa, Oahu; Tax Map Key: (1) 5-1-011:055 portion.**

- Item D-8** **Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate Terms and Conditions and Sign a Memorandum of Understanding between the Department and the Agribusiness Development Corporation, regarding the Puu Lua Reservoir; TMK No. (4) 1-4-001:002 (portion).**

Unanimously approved as submitted (Morgan, Agor)

- Item H-1** **Request Approval for Selection of Competitive Sealed Proposal Process and Authorize the Chairperson to Award and Execute a Contract for Implementation of Selected Elements of the State Historic Preservation Division Corrective Action Plan**

Laura Stevens said that Bill Tam is off island and he asked her to sit in for the Chair's Office. She requested to move forward with this item. Chair Aila said the RFP is to bring some expertise in order to help staff with some compliance issues with the National Park Service review of Historic Preservation in its requirement to comply with national standards which is what the RFP will be used for. Its timely in that we need to have this approved so that there will be a one year time frame and the work can occur in order to make the compliance deadline.

Member Gon said he noticed there are a number of important items with regard to inventory, GIS and the like. Chair Aila explained the reason they are doing this is because we do not have existing staff levels to do this. Member Morgan said we do not have managed expertise and can't find the right people to help us and to get a consultant to help us. Chair Aila said we can't do that and do our regular job at the same time.

Ms. Stevens acknowledged for a completed action plan by June 2012 and as noted in the submittal to bring in additional assistance like recruitment of staff to help with a retention

evaluation program and to help develop a process to clear the backlog of reviewing reports that will be implemented by SHPD staff.

Member Morgan said he could see this being our own headhunting process and maybe the people in the RFP will bring people who we want on the floor and recognize them to bring them into the Department.

Member Goode asked funding wise there are a number of vacancies and the idea that there are existing funds to be utilized, yet. Ms. Stevens acknowledged there is existing funds in the fourth quarter from a lot of vacancies.

A motion to approve as submitted was made by Member Gon and seconded by Member Pacheco. All voted in favor.

Unanimously approved as submitted (Gon, Pacheco)

Item M-1 Amendment No. 16 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International, Inc., Honolulu International Airport

Item M-2 Issuance of Grant of a Non-Exclusive Easement and Bill of Sale for Waterline Purposes to the Water Board of the County of Hawaii, Kona International Airport at Keahole

Unanimously approved as submitted (Morgan, Goode)

Item L-1 Permission to Enter into a Supplemental Agreement to Contract No. 51532, for Job No. B46XM82B, Lahaina Small Boat Harbor Ferry Pier Planning, Maui

Item L-2 Appointment of Windward Oahu Soil and Water Conservation District Directors

The Board had no questions for staff.

Unanimously approved as submitted (Goode, Edlao)

Adjourned (Edlao, Gon)

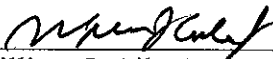
There being no further business, Chairperson Aila adjourned the meeting at 9:58 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



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