

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

DATE: FRIDAY, MAY 11, 2007
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson Allan Smith called the meeting of the Board of Land and Natural Resources to order at 9:09 a.m. The following were in attendance:

MEMBERS

Mr. Allan Smith	Mr. Rob Pacheco
Mr. Tim Johns	Mr. Jerry Edlao
Mr. Ron Agor	Ms. Taryn Schuman
Mr. Samuel Gon III	

STAFF

Mr. Sam Lemmo, OCCL	Mr. Paul Conry, DOFAW
Mr. Russell Tsuji, LD	Mr. Dan Quinn, SP
Mr. Daniel Ornellas, LD	Ms. Sasha Smith, DOFAW
Mr. Randy Awo, DOCARE	Mr. Clarence Yamamoto, DOCARE
Mr. Gary Moniz, DOCARE	Mr. Randy DeCambra, DOCARE
Mr. John Yamamoto, DOCARE	

OTHERS

Ms. Linda Chow, AG	Mr. Glenn Abe, DOT Harbors
Ms. Antoinette Marie Davis, D-12	Mr. Richard Halfhill, D-11
Mr. Ernest Kalei Smith, D-13	Mr. Randy Waldrop, D-14
Mr. Archie Kalepa, D-15	

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

Item A-1 Minutes of April 27, 2007

Member Pacheco recused himself.

Unanimously approved as amended (Edlao, Gon)

Item M-1 Issuance of Direct Lease and Right-of Entry to Ameron International Corporation, DBA Ameron Hawaii Adjacent to and in Vicinity of Pier 60 and Keehi Lagoon Tax Map Key: 1st Division, 1-2-23: Portions of 33 Honolulu Harbor, Kapalama and Iwilei, Honolulu, Oahu

Mr. Glenn Abe of Department of Transportation (DOT), Harbors Division.

Unanimously approved as submitted (Johns, Agor)

Item M-2 Issuance of an Inconsistent Use Revocable Permit to Alexander & Baldwin, Inc., Kahului Airport

Unanimously approved as submitted (Schuman, Johns)

Item M-3 Issuance of a Replacement Lease U.S. Federal Aviation Administration, Lihue Airport

Unanimously approved as submitted (Gon, Johns)

Item M-4 Issuance of a Direct Lease to Castle & Cooke Homes Hawaii, Inc., Honolulu International Airport

Mr. Ross Smith, Property Management & Land Acquisition Supervisor for DOT, Airport Division reported an amendment to submittal. 1. Deletion of requirement upon rent re-opener. It requires the appraised amount be the rent. Deleted floor of 112% of previous rental and going with the appraisal. 2. Rent Credit – Rent will begin 366 days from abatement of lease.

Unanimously approved as amended (Johns, Schuman)

Item K-2 5th Request for 15-Day Time Extension to the 180-day Processing Period for Conservation District Use Application (CDUA) OA-3266 to process Haseko request to utilize State-owned land for proposed drainage system improvements by Sandra Wilhide/Yvonne Izu, Ishikawa Morihara Lau & Fong LLP, 400 Davis Pacific Center, 841 Bishop Street, Honolulu, Hawaii 96813, 808-528-4200, subject parcel TMK: (1) 9-1-11:002 and 003, Ewa District, Island of Oahu

Mr. Sam Lemmo representing Office of Conservation and Coastal Lands reported is a time extension request to extend the 180-day processing period on a CDUP for Haseko for the Papipi Road drainage improvements. Currently in contested case mode at this time and the Board is deliberating on this matter. They need extra time to come up with the order. Haseko is asking for a 15 day extension of the processing period until June 7, 2007.

Unanimously approved as submitted (Schuman, Gon)

Item K-1 Conservation District Use Application (CDUA) HA-3396 to make Improvements to Isaac Hale Beach Park, Puna District, Island of Hawaii, TMK's: (3) 1-3-008:014 and 021, and (3) 1-4-002:008 by Ron Terry, Geometrician Associates, P.O. Box 396, Hilo, Hawaii, 96721 for the County of Hawaii, Department of Parks and Recreation, 101 Pauahi Street, Suite 6, Hilo, Hawaii, 96720

Mr. Lemmo reported the land is controlled by the County of Hawaii through an executive order. The area is Puna, Ho'oiki District. This is the only boat ramp in the area and one of two parks in Puna. The County is proposing to make some improvements to the makai area of the road. They filed a CDUP for these improvements and filed an EA for the project and completed in May 1998 which had some conceptual elements. They have now fine tuned the park plans which took them through the CDUA process on the specific park improvements and received various comments. Through staff analysis subject to 14 conditions and seeking your approval.

Member Johns asked the boundary of the park is triangular shape? Does it extend over inside of the bay? Mr. Lemmo showed on the map. Member Johns inquired will the freshwater pond be affected by the construction? Mr. Lemmo replied no the sidewalks are not near the area. The purpose of the project is to remove the shoreline impacts so traffic will be restricted from the area.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-8 Cancellation of Revocable Permit No. S-7271 and Issuance of Month-to-month Revocable Permit for Pasture Purposes to Kapapala Ranch, Kapapala, Ka'u, Hawaii, TMK: (3) 9-8-01:03, 06 & 13.

Mr. Tsuji of Land Division reported he had no changes.

Member Gon commented he noticed the location is right next to the Ka'u Forest Reserve he was wondering if among the reasons for the revocable permit is to explore agricultural uses, but also koa reforestation.

Approved as Amended. Page 3 of the Submittal indicates that staff will study a possible longer-term disposition of the lands for intensive agricultural and pasture purposes. The Board amended the Submittal by asking Staff to also study the possibility and feasibility of adding Koa reforestation as a purpose.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-6 Issuance of Right-of-Entry Permit to Department of Hawaiian Home Lands, onto Encumbered State Lands at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-6-01:11

Mr. Tsuji reported he had no changes.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-11 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Operation of Motor Vehicle by Richard Halfhill, MA-07-846, Hanaula, Wailuku, Maui, Tax Map Key (2)3-6-001:014.

Item D-12 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Operation of Motor Vehicle by Antoinette Davis, MA-07-846, Hanaula, Wailuku, Maui, Tax Map Key (2)3-6-001:014.

Item D-13 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Operation of Motor Vehicle by Ernest Kalei Smith, MA-07-846, Hanaula, Wailuku, Maui, Tax Map Key (2)3-6-001:014.

Item D-14 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Operation of Motor Vehicle by Randy Waldrop, MA-07-846, Hanaula, Wailuku, Maui, Tax Map Key (2)3-6-001:014.

Item D-15 Enforcement of Violation on Unencumbered Public Lands, Unauthorized Operation of Motor Vehicle by Archie Kalepa, MA-07-846, Hanaula, Wailuku, Maui, Tax Map Key (2)3-6-001:014.

Mr. Tsuji, Administrator for Land Division, reported D-11 to D-15 is a Maui Enforcement Action where motorcycles damaged State encumbered lands and Division of Conservation & Enforcement (DOCARE) officers were involved, issued citations and seized the vehicles. Staff is bringing to the Board and asking an administrative fine be assessed at \$500.00 plus the administrative costs. Staff will need to identify the travel costs and costs from DOCARE.

Chairperson Smith asked how many traveled here? Mr. Tsuji replied DOCARE brought 4 officers plus the Maui District Land Agent total of 5. Mr. Awo added also one Forestry Technician for a total of 6.

Member Gon stated on the direction of the State to return the said vehicles after satisfying the State's requirements and conclusion of this matter. Member Johns asked why would we return them at all? Is it based on legal advice from the Attorney General's (AG) office? Mr. Tsuji responded yes.

Mr. Johns moved to go into Executive Session to meet with our attorney to address our rights, privileges and immunities with regard to the application and HRS Sanctions to deal with this item. (Johns, Agor)

9:30am – Adjourned for Executive Session.

9:42am – Back in Session.

Ms. Antoinette Marie Davis passed out handouts. She explained where they (she & Richard Halfhill) entered there were no signs. There was a welcoming sign that said “trail” and there were roadways. Where they parked the truck to the left of a sign they shouldn’t have parked it. It’s the first time they have been there. The report stated they were fleeing, but that is not true because it’s contradictive. At the bottom of the report it’s stated they complied and came. Mr. Richard Halfhill reported there were signs stating where the trailhead is. They had called and were told there was a parking lot back there. A truck with bikes in the back came down from where the sign is and they thought that is where the trail is. But that road goes up the mountain. He parked off the road so the truck wouldn’t block it. They rode their bikes down to Ma’alaea and that’s when they saw the officers and spoke with them. On the way they saw the parking lot, but decided to leave the truck where he parked it to prevent vandalism. They did not know they were doing anything wrong. He apologized for parking his truck where he did.

Member Edlao asked how long have you been riding dirt bikes? Mr. Halfhill replied since he was a little kid. On Maui, these are his first bikes. Member Edlao inquired did you not see the DLNR signs where you parked your truck? Mr. Halfhill answered he did. Member Edlao inquired didn’t that tell you this area is a sensitive area and we shouldn’t be riding in there? Mr. Halfhill replied they did not ride in that area. They only parked the truck there to keep it off the road. Member Edlao asked in the report it stated you were watching the whales at the water tank? Mr. Halfhill answered yes, at Ma’alaea it’s a paved road. Member Edlao stated because with Mr. Halfhill’s experience as a dirt biker wouldn’t it occur to you to think whether this is a sensitive area and you shouldn’t be there. Maui has a need for an area for dirt bikes and Member Edlao wants the Department to look for land for such activity. Seeing other bikers there doesn’t mean it makes it right to go there. Ms. Davis replied do you understand that they parked at that sign and rode their bikes to another area where there are no signs. Member Edlao answered even if it was the maintenance road for the water tank you shouldn’t be there. Ms. Davis asked is it not legal to ride motor vehicles on unencumbered land? Member Edlao replied no, he is not saying that. If you’re familiar with Maui and the area, in fact, if you live in Hawaii you should be sensitive to the lands here and should respect that. When in doubt you should not be there. It’s best to check first before going into an area. Mr. Halfhill replied there was a sign at where they entered that said to stay on the road and that is what they did. Ms. Davis stated she is aware of the administrative rules and was looking for signs. The report stated they didn’t look at the sign, but they did see what it said. Member Pacheco inquired of the signage on the pictures and map. Mr. Daniel Ornellas, Maui District Land Agent, reported Exhibit A is a TMK map.

Mr. Tsuji explained DLNR has no area with the exception of Sand Island that would allow anyone to ride any motor bikes on State or County Land. It is private property or government property and it is not for people to go trespass and bust up the ground. Common sense tells you “no.” You shouldn’t have to see a sign to tell you “don’t ride on it” whether it is private or public property.

Mr. Ornellas presented a map and explained where everything is. There is an old cattle fence that clearly distinguishes between mauka lands from makai lands. If you are on the old plantation dirt road you are clearly on private property makai of State lands.

Anywhere mauka near the truck you are on State government lands. The report they received from the officers stated all bikes emanated from Government Lands. Mr. Halfhill agreed with everything except for the end part. He explained on the map.

Mr. Archie Kalepa, a respondent, explained he has been riding dirt bikes for over 30 years. As well as Randy Waldrop who is a professional racer from the mainland and Ernest Kalei Smith who grew up riding. They were on encumbered lands and they can't argue with that. He did not see the signs because he was going too fast. On the way down they came across other riders that said DLNR was at the bottom of the hill and they asked him what he was going to do? He said he was going to the bottom of the hill. When they got to the bottom everybody sped by the officer, but Mr. Kalepa stopped along with Mr. Waldrop and Mr. Smith. Officer Yamamoto said "you guys aren't supposed to be up here." Mr. Kalepa replied they weren't aware of that and they apologized. They weren't there to break any laws. The officer gave them a warning and took down their information. They heard people were coming up there and they went straight up and came back down. They never saw anything in regards to the fence and pipe cutting. Mr. Waldrop stated he and the rest of the guys have never been there. They always respect the land and this time they blew it and they know it. Mr. Kalepa wants to work with the DLNR officers to be the solution and not the problem. He wants (dirt bikers) to be stewards of the aina, but they need a place to ride. They want to educate riders and they accept the fact what they did was wrong. They are making payments on dirt bikes they don't have. They accept the punishment and want their bikes back.

Member Edlao suggested after all this is done these men should work with Daniel Ornellas to find a place for dirt bikers.

Mr. Kalepa explained the motor cross track exists, but you can only jump triples for so long and then it gets dangerous. He has raced on the mainland and on the Big Island which is the kind of riding the older riders enjoy. It is a family event and more extreme. People want to do more.

Member Johns clarified and asked with these 3 gentlemen if there was a cap on the administrative costs with the recommendations staff defined with returning of the motor vehicles, are you comfortable? Mr. Kalepa answered yes.

Member Pacheco asked where else do you ride? Mr. Kalepa replied there is a perimeter trail at Puunene and a trail in Lahaina. They are talking with Na Ala Hele to maintain and ride trails. When the State put in the fence, riders were cutting the fence. Mr. Kalepa looked for those riders to tell them you don't cut this fence that protects the forest land. We are stewards of the land. He cannot speak for the guys who have been growing pakalolo and going over the fence. Member Pacheco asked where do you park? Mr. Kalepa replied at Waikapu. They told the officer everything.

Ms. Sasha Smith a Forestry & Wildlife Technician for Maui presented a power point program regarding the Nene Program. In the area where this incident occurred is a Nene release site. She made the original complaint of dirt bike activity in the area with the cut fences and pipeline. It has been an ongoing problem over the years. She has posted numerous signs and they get vandalized and tossed away. There are problems with dirt bikes and atvs during the holidays. She presented bike tracks before and later. Member Johns asked because these guys made these tracks and therefore their bikes are off the trail or generally the word got out either through these respondents or through DOCARE's efforts that it's not appropriate to go up there and now the property is recovering? Ms. Smith replied she believes so. That is exactly what she is trying to say. She doesn't know who exactly did it because she didn't catch anyone and it was not these people. Mr. Ornellas pointed out people have been vandalizing the catchment system and some other facilities for the nesting pens. He is not pointing blame, but it is a grievous act that some people are doing up there.

Mr. Clarence Yamamoto, Supervisor of Maui DOCARE and Mr. Randy Awo representing DOCARE Branch Chief for Maui, explained to the Board on what Maui has been experiencing for many years. There has been a proliferation of dirt bikes entering into environmentally sensitive areas. Maui DOCARE has been on the receiving end of increasing complaints and demands from the public to do something about it. It's a challenge for staff with dirt bikes because they are very mobile and can travel at a high rate of speed. When people are geared up staff cannot identify them with the helmets on and can easily run past check points. It's a very labor intensive effort for staff to find entry points, exit points, and try to position their men to detain suspects. In this instance, staff was able to do this with the respondents' cooperation, but in most cases people get away and the damage continues to occur. Staff not only detained suspects for information. They seize motorcycles with the hope and intent it would, while these hearings are completed, at minimum prevent bikes from going back up to these very sensitive areas. He also pointed out this is a big and growing problem and far from over. Even now as he speaks they are getting numerous complaints about an area called Kahikinui which they need to gear up for again. In response to the gentleman's complaint why DOCARE officers were here? They brought Sasha Smith because they felt her presentation was important. They brought the two primary investigators, Mr. John Yamamoto and Mr. Randy DeCambra. Mr. Clarence Yamamoto and Mr. Awo are here because of administrative concerns about how the case was dealt with and was raised as part of this hearing. They wanted to be available to answer any questions.

Member Johns asked he understands Maui DOCARE is under resourced and under manned for the jobs they have to do. In your presentation, Mr. Awo said, that this ability to seize these vehicles is an important tool for your enforcement efforts. Is this still your belief? Mr. Awo replied yes, it's an extremely important tool. It allows staff to take possession of the fruits of the crime. To hold on to it until the investigation or hearing is complete whether civil or criminal. Staff views it as a very important tool especially when dealing with motorcycles because it does send a message and compel defendants to show up at hearings and motivates them to look at this carefully and move to some kind of settlement. But his concern is staff needs to be careful on how to render opinions with

regard to violations occurring on unencumbered lands. When they move on to shoreline, which is the fourth largest coastline in the nation, much of that is unencumbered. If we are no longer able to seize property in that much larger arena as a result of a wide array of violations that occur, particularly since we are an island community, he is very concerned what this would mean for his officers. It is a tool provided to them by the legislature. Member Johns asked is it a larger issue in terms of having that enforcement tool? You didn't seize these (bikes) to punish these particular riders. Especially the 3 gentlemen who cooperated, but you're punishing them because of a larger issue? Mr. Awo replied yes. They absolutely have to have those tools available to DOCARE.

Member Edlao made a motion to fine violators \$500, administrative costs not to exceed \$200 and return of the bikes for each respondent. Agor second.

Member Johns stated he cannot support this. He is ok with the fine and administrative cost, but he is not convinced even after the briefing with the Attorney General that there is clarity as to what seizure rights DOCARE officers have. He doesn't want to vote today to take that tool out of their hands; therefore he is not going to support the motion. He believes it's an important tool for these officers, but the AG needs to give better clarity to what the enforcement officers can or cannot do with regard to seizure. It is important to see pictures and testimony on how important it is, but he doesn't want to punish these people and make them pay a bigger fine. But at the same time he is not willing to take that enforcement tool out of their hands therefore he is not supporting the motion.

Member Gon replied he feels that seizure is important for conservation protection as we expand beyond terrestrial enforcement into marine enforcement and will become even more important. You remove violator's ability to move into areas of contention. He would like to not support based on those grounds. Member Pacheco explained it's the same for him, too. It's a big problem on Hawaii Island and would like the word to get around there are tools out there.

Rule call vote: Pacheco – no, Edlao – yes, Johns – no, Smith, yes, Agor – yes, Schuman – yes, Gon – no. Passed.

Ms. Davis reported they felt violated by the taking of their bikes. She recommended giving a citation instead.

Mr. Kalepa explained when the word gets out that the officers seized their bikes riders will not stop. That is what the officers are trying to avoid. These are young kids and they will take off. Maybe a ticket process and time in court will work. To take away a bike will work against you. He wants to help the officers to get the message out to people. He feels, knowing the dirt bike community, they will not stop. On the mainland, conservation officers will give you a ticket. Member Edlao replied he understands what Mr. Kalepa is saying, but here we are looking at the total bigger picture.

Mr. Tsuji asked Mr. Kalepa since he has ridden on the mainland, with thousands riding all over are they doing it legally or is it allowed on the mainland? Mr. Kalepa explained in Hawaii traditionally we have never established a riding community. We have never

had clubs other than the motocross track. On the mainland, riders join a club and the club pays dues to the government to have a riding area. The club maintains the use of the land. That is what he has been trying to do here.

Mr. Awo explained based on many years of experience versus citations and a civil process. As an example of whether a citation is effective and serves as a deterrent, his answer is no. In Kula Forest Reserve, it is a criminal violation. They have the authority to give citations and have, but it has not stopped the bikes from running past the officers. What has made these riders pause with serious thought to whether or not they stop is if the officers will seize the property that's the reality.

Approved As Amended. The Land Board amended Staff's Submittal by adding a Recommendation No. 3 as follows:

"3. Order Respondent to pay administrative costs not to exceed \$200.00 per Respondent."

Item B-1 Request for Board Approval to Enter Into a Joint Enforcement Agreement between the Department of Land Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement

Item B-2 Request Board Approval to Enter Into a Memorandum of Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the Department of Justice, Drug Enforcement Administration

Unanimously approved as submitted (Johns, Edlao)

Item C-1 Request for Amendment of the Hawaii Invasive Species Contract 54965 with the University of Hawaii so that a Time Extension to 9/30/08 May be Pursued

Item C-2 Request for Amendment of the Hawaii Invasive Species Contract 54842 with USDA – Agriculture Research Center so that a Time Extension to 12/30/11 May be Pursued

Item C-3 Request for Amendment of the Hawaii Invasive Species contract 54535 with USDA – Agricultural Research Center so that a Time Extension to 6/15/10 May be Pursued

Unanimously approved as submitted (Edlao, Gon)

- Item D-1** **Request to Write-Off Uncollectible Accounts on the Islands of Oahu, Maui, Hawaii and Kauai**

- Item D-2** **Grant of Perpetual, Non-Exclusive Easement to Wayne Y. Tokashiki for Access and Utility Purposes, Kapaa Homesteads, 1st Series, Kawaihau, Kauai, TMK: (4) 4-6-33:07.**

- Item D-3** **Sale of Land License at Public Auction for Removal of Rock Aggregate Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-13: Portion of 02.**
- Item D-4** **Amend Prior Board Action of March 23, 2007 (Item D-2), Reconsideration of Rent under General Lease No. S-5513 to Hospice of Hilo, Lessee, for Hospice and Allied Purposes, South Hilo, Hawaii, TMK: (3) 2-3-32:11**

- Item D-5** **Issuance of Right-of-Entry Permit to the University of California-Berkeley, onto State Lands at Makeanehu, Kaihooa-Pahinahina, North Kohala, Hawaii, TMK: (3) 5-8-01:6 and 5-9-03:1**

- Item D-7** **Quitclaim of State's Interests, if Any, in Former Road Right-of-Way to the County of Hawaii, Kailua-Kona, North Kona, Hawaii, TMK: (3) 7-5-22:175**

- Item D-9** **Sale of Reclaimed (Filled) Land to Harry Yamada Trust and Florence Yamada Trust, Kaneohe, Oahu, TMK: (1) 4-6-23:49 seaward.**

- Item D-10** **After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Telecommunication Purposes, Nuuanu, Honolulu, Oahu, TMK: 1-9-07:02**

Unanimously approved as submitted (Johns, Pacheco)

- Item E-1** **Request for Special Use permit to Hold the 2008 International Haari Boat Festival on a Portion of Wailoa River State Recreation Area, Hilo, Hawaii**

- Item E-2** **Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu**

Unanimously approved as submitted (Johns, Edlao)

- Item L-1** **Certification of Election and Appointment of Soil and Water Conservation District Directors**

Unanimously approved as submitted (Johns, Pacheco)

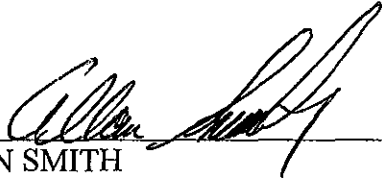
There being no further business, Interim Chairperson Smith adjourned the meeting at 10:25 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



ALLAN SMITH
Interim Chairperson
Department of Land and Natural Resources