

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

DATE: FRIDAY, SEPTEMBER 28, 2007  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

**MEMBERS**

Ms. Laura Thielen  
Mr. Tim Johns  
Dr. Sam Gon

Mr. Ron Agor  
Ms. Taryn Schuman

**STAFF**

Mr. Russell Tsuji, LD  
Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, SP  
Mr. Roger Emoto, DOFAW  
Mr. Curt Cottrell, DOFAW

Ms. Charlene Unoki, LD  
Ms. Tiger Mills, OCCL  
Mr. Michael Constantinides,  
DOFAW  
Mr. Ken Kawahara, CWRM

**OTHERS**

Mr. Ross Smith, DOT  
Mr. Chris Sadayasu, Item D-1  
Mr. Wally Inglis, Item D-2  
Mr. Philip Davies, Item D-5  
Ms. Christina Lucas, Item D-5

Ms. Julie China, AG's Office  
Mr. Mike Donoho, Item C-3  
Mr. David Whatmore, Item D-5  
Mr. Earl Yamamoto, DOA  
Mr. Dennis Ferm, AG's Office

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

**Item A-1 Minutes of September 14, 2007**

**Unanimously approved as submitted. (Agor, Schuman)**

**Item M-1 Amendment No. 1 to State Lease No. DOT-A-95-0012 Additional Space and Extension of Original Lease Term Kamaka Air, Inc., Honolulu International Airport**

Mr. Ross Smith representing Department of Transportation (DOT) conveyed submittal background.

**Unanimously approved as submitted. (Schuman, Agor)**

**Item M-2 Assumption of Sublease by State of Hawaii Department of Transportation, 3239 Ualena Street, Honolulu International Airport**

Mr. Ross Smith of Department of Transportation reported lease background.

**Unanimously approved as submitted. (Johns, Gon)**

**Item K-2 Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case OA 08-04 Regarding Conservation District Use Application (CDUA) OA-3414 for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge Located at Kahuku, Koolauloa, Island of Oahu, TMK: (1) 5-6-001:010**

**Deferred. (Johns, Agor)**

**Item D-1 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Wahiawa, Aiea and Honolulu, Oahu, Tax Map Keys: (1) 7-3-12:15; 7-3-13:9; 9-9-44:20; 9-9-44:24; 1-7-41:2; 2-2-13:4; 2-2-13:14; 2-2-13:96; 2-2-13:101.**

Mr. Russell Tsuji administrator for Land Division reported nothing to add.

Member Johns asked regarding comments that OHA seeks meaningful discussions on appropriate compensation to OHA. Mr. Tsuji replied is the BLNR does not charge other government agencies for set asides by Governor's Executive Order. Mr. Chris Sadayasu of Hawaii Housing Finance and Development Corporation (HHFDC) asked Board's favorable consideration for set aside. He explained HHFDC's Executive Director and branch chief are discussing the ceded land revenue issues with OHA, fully expect to move forward with housing projects on these lands.

**Unanimously approved as submitted. (Schuman, Gon)**

**Item D-3 Approval in Principle of Direct Lease to Honolulu Community Action Program for Preschool and Related Programs Purposes, Kunia, Oahu, Tax Map Key: (1) 9-2-5:12.**

Mr. Russell Tsuji of Land Division reported no changes to submittal.

**Unanimously approved as submitted. (Johns, Schuman)**

**Item K-1 Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case OA 08-03 Regarding Conservation District Use Application (CDUA) OA-3412 for a Portion of the Kaloi Gulch Drainage Improvements Located at Oneula, Ewa, Island of Oahu, Makai of TMKs: (1) 9-1-011:007 & (1)9-1-012:025**

Mr. Sam Lemmo administrator for Office of Conservation and Coastal Lands (OCCL), seeks approval to move forward.

**Unanimously approved as submitted. (Johns, Agor)**

**Item E-1 Request for Approval of Aqua Engineers Inc. as the Selected/Sole Bidder and to Execute a Contract for Services to Operate and Maintain the Water System at Kokee State Park, Water System at Polihale State Park, Wastewater System at Kokee State Park, Sewage Pump Station at Kokee State Park, and Sewage Pump Station at Wailua Marina on Kauai.**

Mr. Dan Quinn, administrator for State Parks, informed the Board this is a maintenance contract for Koke'e water and sewer system. Bid amount is \$146,852, 77 and includes emergency call outs.

**Unanimously approved as recommended by staff. (Agor, Gon)**

**Item C-1 Amend Board Action of April 27, 2007 (item C-1), Addition of approximately 142 acres (TMK (4) 1-2-002: portion 001) to the newly designated Mana Plains Forest Reserve, Waimea District, Kauai.**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) requested to amend.

**Unanimously approved as submitted. (Agor, Gon)**

**Item C-2      Acceptance of Hearing Officer's Report on a Public Hearing for Four Proposed Additions to the Forest Reserve System on Hawai'i Island, and Approval and Recommendation to Governor for the Issuance of Four Executive Orders: Addition of Approximately 1,371 acres (Pending Final Subdivision) to Ka'u Forest Reserve, Ka'u District, Hawai'i; Addition of Approximately 1,500 acres (Pending Final Subdivision to Hilo Forest Reserve, South Hilo District, Hawai'i; Addition of Approximately 37,901 Acres to the Newly Created Pu'u Wa'awa'a Forest Reserve North Kona District, Hawai'i; and Addition of Approximately 25, 856 Acres to the Newly Created Wao Kele O Puna Forest Reserve, Puna District Hawai'i.**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) summarized each of the four proposed additions and public hearing responses. There was concern with semantics or wording used in documentation. Staff's principle action is to add the lands to the Forest Reserve and the details on how to manage them would come later. There was a concern of degradation of resources. Staff felt this will protect these resources. The division will be working closely with the community and partners in developing management strategies. Concern with Hawaiian gathering rights which DOFAW supports.

Member Gon expressed his approval. Member Johns was impressed by the acreage addition. Chairperson Thielen stated there is potential for OHA to becoming land managers and look forward to that.

**Unanimously approved as submitted. (Johns, Gon)**

**Item C-3      Annual Progress Briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu**

Mr. Michael Constantinides representing Division Forestry & Wildlife (DOFAW) noted no report was given last year and apologized. This report is covering two years. He was assured by the Oahu and Big Island offices that this won't happen again.

Mr. Mike Donoho, coordinator for Pu'u Wa'awa'a, reported status of the Pu'u Wa'awa'a Advisory Council with one vacancy. Staff underwent a strategic planning exercise and will present the management plan to the Board. A three person field crew will be established to further the objectives of the management plan. This will be achieved through State watershed and Dept. of Interior grants. Three additional staff will be sought in the next year. There are partnerships with 501C3 organizations and U.S. Army Pohakuloa to assist with endangered species plantings and enclosures. He explained highlights of the objectives. The budget is over 1.2 million dollars over the last 2 years. Projected over \$500,000 for the coming year.

Member John stated staff did a good job, but a million dollars is not enough to manage. Mr. Donoho agreed and he believes the stewardship will get them through.

**No action taken on this briefing.**

**Item D-2      Reconsideration of Rent under General Lease No. S-5223 to Coalition for Specialized Housing, for Low or Moderate Income Housing for the Elderly and Disabled Purposes, Pearl City, Oahu, Tax Map Key: (1) 9-7-19:49.**

Mr. Russell Tsuji of Land Division this matter involves the rent reopening set to occur in 2009. Staff is recommending that the reopened rent be set in accordance with the Board's minimum rent policy (\$480/yr.).

Mr. Wally Inglis, president of the Coalition for Specialized Housing (CSH), came forward and testified on the history of the property when Hansen's disease patients were living there and the contentious issue when patients were forcibly evicted from the land. A 210 unit senior citizen housing was built. He explained the coalition is a small non-profit organization paying \$20,000 a year lease rent. Mr. Inglis indicated it would help them if the Board reduced their rent.

Member Johns asked whether in the past a prior request for a rent reduction was ever denied. Mr. Tsuji indicated yes, and briefly went into the history. The Board had approved a lease for the entire site (currently 2 different parcels) to a youth a soccer group. The predecessor to CSH had filed a lawsuit claiming to be entitled to lease a portion of the property. Ultimately the case was settled; and part of the settlement allowed CSH's predecessor to lease a portion of the entire property by subdividing out the former Hale Mohalu. Under the settlement agreement, CSH's predecessor agreed to pay fair market rent (not nominal rent). Subsequently, the Board allowed CSH to be substituted as the lessee for a project involving low to moderate income rental housing for the elderly and disabled. The Board also denied a prior request to reduce the rent to nominal because of the fair market rent condition in the settlement agreement, but indicated that at the time of rent reopening, the Board could consider a rent reduction.

As such, staff believes this project benefits the public (low to moderate income rental housing for the elderly and disabled), and recommends that upon the rent being reopened in 2009, that the rent be set in accordance with the Board's minimum rent policy (currently at \$480/yr.).

**Unanimously approved as submitted. (Schuman, Gon)**

**Item D-5      Termination of Revocable Permit No. S-6240, Kilauea Irrigation Co., Inc., Permittee, Hanalei, Kauai, Tax Map Key: (4) 5-1-1:2.**

Written testimony from the following organizations, businesses or individuals was received via fax or e-mail: Kauai Sunrise Farms, Sandra Lee Kunimoto – Chairperson,

Board of Agriculture, Kauai County Farm Service Agency, U.S. Dept. of Agriculture – Natural Resources Conservation Service, Kauai Organic Farms, Kilauea Town Market & Deli, Healthy Hut Natural Food Store, Red Hot Mama’s Restaurant, Princeville Hotel, Lex Riggle, Ferris Family Farm, David Whatmore, Gordon L. Furze, Daniel E. Saindon, Margaret M. Furze, Namahana Farms, Jeff Larkey, Senator Gary L. Hooser, Christopher Riemer, Steve & Janine Hunt, Kilauea Management Company, Tom Hitch, Ming Fang, Bill & Margo Flaherty, Jack & Bev Harter, and Kauai Office of Economic Development.

Member Schuman recused herself.

Mr. Russell Tsuji representing the Land Division informed the Board about the default by Kilauea Irrigation Co. (KIC) under the Revocable Permit for failing to procure the required liability insurance coverage. Mr. Tsuji also summarized the information provided in staff’s written submittal. A large map of the area was also placed on an easel for the Board and audience to view.

Member Johns inquired whether KIC is still a valid corporation. Mr. Tsuji indicated that as far as he knows, KIC as an entity is still legally in existence and has not been dissolved. As a practical matter, Tom Hitch, the owner and operator of KIC has left the Country; and there does not appear to be any reasonable chance that KIC will procure the required liability insurance anytime in the near future. Staff recently did a helicopter tour of the area and the terrain appeared rugged and heavily vegetated, and Kilauea Ditch did not appear to be well maintained.

Chairperson Thielen expressed her concern about the lack of liability insurance, and the fact that the rainy season will be soon approaching. DLNR staff has spoken to the Chairperson of the Department of Agriculture (DOA), Sandra Kunimoto, about setting up a meeting on Kauai with the affected farmers to explore alternative water sources that may be available in the region to assist the farmers.

Mr. David Whatmore, a Kauai farmer and director of Kilauea Agricultural Water Association (KAWA), came forward and testified that the farmers rely on KIC for their water and had no problems with them. Although Mr. Tom Hitch may have left the country, he believed KIC has two employees handling the business. Mr. Whatmore walked the entire Kaloko ditch and thought it was in good condition. His farmer’s association was **unable to obtain liability insurance** for their Waiakalua Reservoir. He spoke to a Jerry Ornellas of East Kauai Water Cooperative and learned how long it would take to create a Co-op. **The farmers in his neighborhood are not interested in organizing a Co-op.** The other alternative he thought was to dig wells. Mr. Whatmore and KAWA respectfully opposes this termination of the Revocable Permit to KIC, and asked the Board to defer action. He explained the importance of surface water and described the current situation due to the drought. Mr. Whatmore continued by reading his written testimony.

Member Agor asked whether the farmers receive their water solely from the privately owned Kaloko Reservoir, and about other water sources that may feed the privately owned Kaloko Reservoir. Mr. Whatmore affirmed that they receive their water from

Kaloko Reservoir through KIC; but did not know about the availability other water sources in the area.

Member Johns noted that Mr. Hitch had submitted a letter claiming the PUC has chosen not to enforce the liability insurance. He asked whether the PUC has taken any formal action to waive the insurance requirement, and whether has DLNR waived insurance requirements for other permits in the past. Mr. Tsuji replied that he is unfamiliar with whatever the PUC may have required or waived; and as far as DLNR, he said he could not recall any specific situation where the Board actually waived the liability insurance requirement for a permittee or lessee. Mr. Tsuji pointed out that he would not recommend waiving the liability insurance requirement in this situation.

Member Johns expressed his concern about a permittee operating without liability insurance. Member Johns asked whether the insurance is mandated by law. Mr. Tsuji replied that although there is no statute that requires it, it is BLNR's/DLNR's policy to require all lessees and permittees to procure required amount of liability insurance for the protection of the State. Chairperson Thielen stated that DOA and DLNR is planning to meet with the affected farmers in hopes to find a solution. Mr. Philip Davies a Kilauea organic farmer requested to defer the permit to allow time to come up with the insurance money. He referred to the farmers' written testimony. Mr. Davies stated that the water flowing into the ditch is controlled and monitored. The farmers are committed to obtaining this insurance. He asked the Board for more time.

Member Gon asked whether the farmers have been consistently receiving water from the Kaloko Reservoir even after the disaster. Mr. Davies replied in the affirmative, but indicated there was a break in service when the ditch needed to be repaired. There have been times when no water reached the farmers.

Mr. Earl Yamamoto, a planner from Department of Agriculture (DOA), stated no changes to DOA's written testimony. Member Johns asked how an irrigation district program is set-up. Mr. Yamamoto explained it requires legislation with special funds and cited some examples.

Ms. Christina Lucas, a beneficiary of the Lucas Trust, stated she is here as a beneficiary and not representing the Lucas Trust. She indicated the plantation solution is simple and disclosed the Moloa'a ditch was illegally diverted years ago and suggested it could flow into the Kaloko reservoir.

Member Johns wondered whether there are alternatives available, such as directing the water in the ditch away from where it physically flows today (i.e., away from Kaloko Reservoir). The Chair asked whether it was possible for the Board to grant the termination of the Revocable Permit today, but also add language stating that if the deficiencies under the Permit were cured within a 90-day period, then the termination would not go into effect. Mr. Tsuji suggested an Executive Session.

Mr. Whatmore stated he believed it was safe to allow water to continue to flow into the Kaloko Reservoir.

**10:59am. The Board recessed for an executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities related to this matter. (Johns, Gon)**

**11:14am. The Board reconvened.**

Member Agor stated he felt comfortable with staffs' recommendation as submitted. He felt it protects the State and the people of Hawaii, and also provides for an adequate amount of time for the farmers to get together to come up with a solution. He is from Kauai and believes the Kauai people are resourceful and will come up with a solution.

Chairperson Thielen again stated that Sandra Kunimoto of DOA and DLNR staff are planning to meet with the affected farmers in the area in hopes to help find possible solutions to their water needs.

**Unanimously approved as submitted. (Agor, Johns)**

**Item D-4 Set Aside to the Department of Agriculture for Waimanalo Reservoir and Issuance of a Right-of-Entry Permit to Department of Agriculture, Waimanalo, Oahu, Tax Map Key: (1) 4-1-10:2 and 92.**

Mr. Russell Tsuji of Land Division this is a housekeeping measure. The Waimanalo Reservoir has been managed and operated by DOA for many years; unfortunately staff inadvertently did not follow-up and obtain the Land Board's formal approval for the set aside of the land and reservoir to DOA.

**Unanimously approved as submitted. (Johns, Gon)**

**Item C-4 Request for Approval to Issue a Request for Proposal and Execute a Contract with the Selected Offeror for Coordination of DLNR Youth Conservation Corps/Americorps Program**

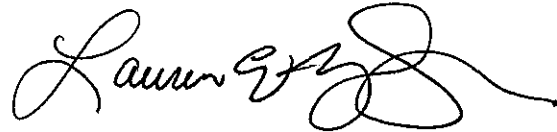
Mr. Curt Cottrell representing DOFAW requested for approval and to execute the contract. Member Johns asked does this need to be RFP every year. Mr. Cottrell replied yes they must go through the process. Chairperson Thielen asked is mentoring involved or is it all physical. Mr. Cottrell explained it is mentoring and the program has expanded. He gave history of current coordinator coming out of YCC. Member Gon added his approval and experience with the people and the program.

**Unanimously approved as submitted. (Johns, Gon)**



There being no further business, Chairperson Thielen adjourned the meeting at 10:25 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,



Lauren Yasaka

Approved for submittal:



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Laura Thielen  
Chairperson  
Department of Land and Natural Resources