

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

DATE: FRIDAY, OCTOBER 12, 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 9:07 a.m. The following were in attendance:

MEMBERS

Ms. Laura Thielen
Mr. Ron Agor
Mr. Samuel Gon III
Ms. Taryn Schuman

Mr. Timothy Johns
Mr. Jerry Edlao
Mr. Robert Pacheco

STAFF

Mr. Russell Tsuji, Land
Mr. Edwin Matsuda, Engineering
Mr. Dan Polhemus, DAR
Ms. Kimberly Mills

Mr. Sam Lemmo, OCCL
Mr. Paul Conry, DOFAW
Mr. Wade Ishikawa, DAR

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General
Mr. Jeff Morrell, L-4
Pat McHenry, K-1, 5 & 6
Mr. Grant Arnold, K-3
Ms. Meredith Ching, L-4

Ms. Lynn McCrory, D-1
Mr. Glenn Taga, D-2
Mr. Phil Leas, K-2
Ms. Murial Leary K-3

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

Item A-1 Minutes of September 28, 2007

Mr. Russell Tsuji, Administrator for the Land Division requested that the board defer action on the minutes to allow him additional time to review as well as the Attorney General's office.

**The Board:
Move to Defer**

Unanimously approved as deferred (Johns, Agor)

Item D-1 Withdrawal from Governor's Executive Order No. 1967 and Reset Aside to the Department of Land and Natural Resources, Division of Aquatic Resources for the Wailua Public Fishing Area, Educational, and Recreational Project Purposes; Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-01: Portion 05.

Mr. Tsuji reported that the land currently belongs to the University of Hawaii College of Tropical Agriculture and Human Resources (CTAHR) and will be transferred over to the Division of Aquatic Resources (DAR). An amendment to recommendation 2 was required due to a typographical error; the acreage should be listed as 11.698 acres. A 5th recommendation was also included to grant the immediate management and construction right-of-entry to DAR pending the formal documentation of the executive order.

Mr. Dan Polhemus, Administrator for the Division of Aquatic Resources (DAR), gave some background information on the project. Last year DAR established a new public fishing area (PFA) at the Wailua Reservoir. When this was established, there was a parallel initiative to construct an environmental education center adjacent to the lake. This was approved and funded by the Legislature in a pair of appropriations of \$500,000 each in 2006 and 2007. However, for the money to be released and the center to be constructed, it was necessary for CTAHR to transfer an unused parcel of lakeside land, under their control to DLNR. There were previous negotiations with UH, starting in 2002, prior to the new PFA, however when they attempted to bring it before the Board of Regents, they were met with some hesitation because the Board wanted "assurances" about the land.

Lynn McCrory (also provided written testimony), the former Kauai Land Board member, testified that they have been working on this project for about 8 years and it will be the only year-round public fishing area on Kauai. They looked at having the environmental education as a part of this area because it is located in Kapa`a, which is one of the centrally located areas. She asks for the Board's support on this project.

Member Gon inquired if she was happy with the recommendations. She responded that she was.

Wade Ishikawa, DAR employee on Kauai, stated that DLNR looked at this project being similar to Koke`e where the area has different types of family activities such as hunting, fishing, hiking, etc. This is possible to do at Wailua because the Division of Forestry and Wildlife has already established hunting, off road driving, an arboretum, and hiking and horseback trails in the area. The two missing elements are the public fishing area (that was just recently established) and an education center.

The Board:

Amendment to recommendation 2:

“2. Approve and recommend to the Governor issuance of an executive order withdrawing [25.451] 11,698 acres from the Governor’s Executive Order No. 1967...”

Addition of recommendation 5 to read:

“5. Approve the granting of an immediate management and construction Right-of-Entry to the Division of Aquatic Resources, DLNR.”

Unanimously approved as amended (Agor, Gon)

Item L-3 Request for Authorization for the Chairperson to Negotiate and Execute Agreements with the U.S. Army Corps of Engineers to Undertake the Kahuku/Malaekahana Flood Study, Oahu.

Mr. Edwin Matsuda, from the Engineering Division, reported that this project is a continuation of an existing project that started in 2001. The 2001 Legislature awarded up to \$500,000 for the Kahuku flood control project to investigate some of the chronic flooding on the North Shore. The Army Corps has been working on the project and have completed the hydrology and hydrolic calculation studies of the area and evaluated alternatives for improvements to the flooding conditions. Unfortunately, the alternatives failed to meet their required cost/benefit ratio so it had to be terminated. All of the findings from that project remain in draft form and will not be utilized in future studies or projects. The Engineering Division is asking the Board to initiate a continuation of the project under a different program that the Army Corps has, which would finalize the findings from the Kahuku flood control project. The new name of the project would be Kahuku Town and Malaekahana Stream Flood Hazard Evaluation. This project would evaluate the neighboring watershed that is tied together with Kahuku and provide documentation of findings which can be used to re-map FEMA's flood insurance rate maps. Hopefully the findings will be used to remove residents from the special flood hazard areas as well as provide documentation of the initial findings for future projects.

Unanimously approved as submitted (Schuman, Gon)

Item L-4 Request Approval of DLNR Dam Permit No. 20 Alexander Dam (HI-98) Emergency Repairs to Spillway.

Mr. Matsuda reported that due to the floods of last March, it was discovered that the downstream of the spillway for Alexander Dam was severely damaged and eroding from the flooding that occurred. The owners, Alexander and Baldwin, have taken steps and have been working closely with DLNR staff to remediate the problems and expedite the repairs so that it will be in working condition in time for the next rainy season. A siphon has been installed to allow the water level to remain low while the construction work is occurring and have been conferring with the Engineering Division on their design plans.

The division has been working with consultants to evaluate their proposals and feels that these alternatives are needed and will be an improvement to what is currently out there.

Member Johns inquired if there were any other permits needed for the work because it is located within the conservation district. Mr. Matsuda responded that because most of the damage occurred during the floods of 2006, the emergency proclamation that the Governor provided alleviated them, predominantly of all permits required, but they have been in contact with the Office of Conservation and Coastal Lands (OCCL) on their proposals even though they are not required to obtain a permit from them.

Meredith Ching, Senior Vice President with Alexander and Baldwin, stated that their engineer is present to answer any questions as well as Mike Bott who is the operations manager for EMI and is also head of their dam safety team and Jeff Morrell who is their consulting engineer on the project.

Handouts were provided about the project and described to the Board.

Jeff Morrell, a civil environmental engineer, has been working on the project since 2006. He reported that during the floods of 2006, the flood waters reached the probable maximum flood level resulting in severe damage to the spill way. The dam was in immediate jeopardy when this damage occurred and needed to be fixed quickly. Last winter a siphon was installed 2000 tons of basalt rock was placed in the canyon to stabilize the spillway. The basalt has also formed the foundation for the permanent spillway. The next step is to pour the concrete in hopes of completing the project by December.

Member Johns inquired about the condition of the rest of the dam, assuming that it was covered by the statewide dam reviews done last year. Mr. Morrell stated that it was covered and phase 1 has been completed. There are some maintenance and repairs that still need to be completed.

Chairperson Thielen questioned Mr. Morrell's statement about the dam being in "good" condition. Have they gone through and made all off the recommended improvements as stated in the inspection reports? Mr. Morrell responded that not all of them have been completed.

Member Gon inquired whether or not Mr. Morrell anticipates any problems with the stabilization of the spillway before the rainy season. Mr. Morrell responded that they will be able to complete the project as well as determine if there are any problems before December.

Unanimously approved as submitted (Agor, Gon)

Item K-1 Conservation District Use Application (CDUA) KA-3379 for a Single Family Residence & Related Improvements Located at Haena, Halelea, Kauai, TMK (4) 5-9-002:059

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL), reported they have received a request for a contested case hearing from Cades and Schutte on behalf of their client, therefore, he recommends deferring this item.

The Board:
Move to defer

Unanimously approved as deferred (Agor, Schuman)

Item D-2 Consent to Assign General Lease No. S-5233, Dianna Healani Paulo Kekela, Successor Trustee of the 2004 Paulo Family Revocable Living Trust, Assignor, to Jenny Lou Iwalani Paulo-Figueroa, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: 3rd/8-9-14:55.

Mr. Tsuji reported that there are no changes to the submittal.

Glenn Taga, council representing Frank Paulo, one of the siblings, reported that Mr. Paulo has been trying to fulfill the wishes of his parents, who are deceased, to convey the lease to one of the 5 siblings of the family, Jenny Lou Paulo-Figueroa. They are asking for the Board's consent for the two conveyances and all of the siblings have consented to the assignment.

Unanimously approved as deferred (Pacheco, Johns)

Item K-5 Request to Extend the Processing Period in Order to Process Contested Case Hearing KA-08-01 on Conservation District Use Application (CDUA) KA-3399 for the Consolidation of Two Parcels and the Construction a Single Family Residence (SFR), at Haena, Hanalei District, Kauai - TMKs: (4) 5-9-03:10, 45, for the Morrow Living Trust.

Member Agor recused himself.

Mr. Lemmo stated that there are no changes to the submittal.

Member Johns asked whether or not that was enough time. Mr. Lemmo responded no, but that was what the applicant was asking for.

Pat McHenry, on behalf of Cades Schutte and the applicant, is asking the Board for the extension.

Unanimously approved as submitted (Johns, Edlao)

Item K-6 Request to Extend the Processing Period in Order to Process Contested Case Hearing HA-06-03 on Conservation District Use

Application (CDUA) HA-3269 for a Single Family Residence (SFR), at Pao`o, North Kohala, Island of Hawaii - TMK (3) 5-7-001:005, for Jonathan Cohen.

Mr. Lemmo reported that this submittal is seeking an extension up to May 6, 2008.

Pat McHenry, on behalf of Cades Schutte and the applicant, is asking the Board to approve staff's recommendation.

Unanimously approved as submitted (Johns, Edlao)

Item K-2 Conservation District Enforcement File No. KA-06-78 Regarding Alleged Unauthorized Construction of Tension Wire Fence Within the Conservation District Located at Wainiha, Hanalei, Kauai - TMK (4) 5-9-02:32, by John Steelquist (Haena Point Trust).

Written testimony provided by Mr. Steelquist

Mr. Lemmo reported that this is an enforcement case and is asking to defer this matter. While there has not been a request for a contested case hearing yet, he received a letter from Mr. Steelquist on October 10th claiming that the fence is an existing use. Mr. Lemmo did some extensive research on this and found a photograph from the 1990s showing a fence in front of the Steelquist property.

Philip Leas, attorney for Mr. Steelquist, acknowledges that there has been a lack of communication between his client and OCCL. He believes there is enough information in Mr. Steelquist's letter to dismiss this matter, but doesn't see any problem in allowing more time for OCCL to establish adequate communication with his client. He also states that within Mr. Steelquist's letter, it is mentioned that his father built a home on the property in 1953 and installed a fence; it is essentially a pasture fence that is on private property, serves a valid purpose, and predates any sort of regulation. Mr. Leas reiterates that deferring this matter is not an issue and perhaps this can be sorted out with Mr. Lemmo. However, they believe there is no violation and unfortunately his client did not communicate the facts effectively to Mr. Lemmo earlier.

Chair Thielen stated that there is not enough evidence in the letter to dismiss this case and recommends Mr. Leas' client to have more communication with OCCL.

**The Board:
Move to Defer**

Unanimously approved as deferred (Agor, Johns)

Item K-3 Conservation District Use Application (CDUA) OA-3417 for a recreational pier at Wailupe, Honolulu, Oahu – offshore of TMK: (1) 3-6-01:21, by Kenton Eldridge.

Member Gon recused himself.

Mr. Lemmo gave some background information on the area and stated that this owner is proposing to build a pier similar to the others found in the area. The pier would be a 207 square foot, private, recreational pier that would lie makai of the shoreline on submerged land and made from wood fiber reinforced plastic material supported on concrete pile-ons.

Member Johns inquired if it was required for the owners to put up a sign indicating public use is allowed. Mr. Lemmo responded that is what has been instructed.

There was some discussion on the law that mandates the sign.

Grant Arnold, representing the Office of Hawaiian Affairs (OHA), testified that they are in opposition to this project because it is a private pier being used strictly for recreational purposes. They feel that there are enough recreational piers in the area.

Muriel Leary, senior planner at Belt Collins, testified on behalf of Mr. Eldridge that he accepts all of the conditions in the Staff report and is familiar with the condition referring to the posting of the sign.

Unanimously approved as submitted (Schuman, Johns)

Item K-4 Second Time Extension Request to Extend the Processing Period for Conservation District Use Application (CDUA) HA-3405 to Develop a Sustainable Commercial Koa Timber Forestry Operation Located at Makahanaloa, Papaikou and Paukaa, South Hilo, Island of Hawaii - TMKs: (3) 2-7-001:001 & (3) 2-8-001:002, for David De Luz Jr.

Member Schuman recused herself.

Mr. Lemmo explained that because an EIS is required for this project, the applicant may extend the processing period. The applicant has requested an extension until January 28, 2008.

Unanimously approved as amended (Pacheco, Edlao)

Item C-1 Request for Amendment of the Hawaii Invasive Species Contract 54961 so that a Time Extension to 6/30/08 may be Pursued.

Mr. Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW), reported that C-1 and C-2 are routine contract extensions of time and contract amendments and are asking for Board approval.

Unanimously approved as submitted (Agor, Johns)

Item C-2 Request for Amendment of the Hawaii Invasive Species Contract 53599 so That a Time Extension to 5/30/08 may be Pursued.

Member Johns recused himself.

Unanimously approved as submitted (Gon, Edlao)

Item C-3 Request for Approval to Enter into Contracts to Implement the FY08 Watershed Partnership Program Grants.

Member Gon recused himself.

Mr. Conry stated they are awarding roughly \$2.6 million dollars this year and needs the board's approval to execute contracts for those projects that require a state contract. Mr. Conry handed out a letter of support from OHA, which also included comments such as reminding the Department about native Hawaiian gathering rights and to make certain that the Department takes action to ensure greater consultation with native Hawaiians in the process. Mr. Conry stated that they would greatly welcome OHA to participate in watershed partnerships especially since they are now becoming one of the landowners.

Unanimously approved as submitted (Pacheco, Johns)

Item D-3 Request for the Land Board's Consent to a Mortgage and the Issuance of a Estoppel Certificate using the State's Standard Forms as Approved by the Department of the Attorney General, with respect to General Lease No. S-5862, Global Resort Partners/ BH Hotels, Lessee, Hilton Waikoloa Village, Anaeoomalu, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-07: 14.

Mr. Tsuji reported there will be two types of lending; one is going to be secured by the leasehold in the ground lease for the submerged lands for the restaurant at Waikaloa and the second is through mezzanine financing.

Unanimously approved as submitted (Pacheco, Johns)

Item D-4 Grant of Term, Non-Exclusive Easement to Chantee Shiroma, Glenn Shiroma & Samuel Alameda for Access and Utility Purposes, Kulaimano Homesteads, South Hilo, Hawaii, Tax Map Key: 3rd/2-8-06:06.

Item D-5 Amend Prior Board Action of June 9, 2006 (Agenda Item D-8) for Sale of Reclaimed (Filled) Land to Jane N. Ueyama, as Trustee of the Jane N. Ueyama Revocable Living Trust dated July 10, 2001, and Lynn Wong, Wailupe, Honolulu, Oahu TMK (1) 3-6-003:015 seaward.

Unanimously approved as submitted (Johns, Pacheco)

Item D-6 Issuance of Right-of-Entry Permit to Hawaiian Electric Company, Inc. on Lands Encumbered by General Lease No. S-3850, United States of America by the Department of Army, Kahuku, Koolauloa, Oahu, Map Key: (1) 5-9-006:026.

Mr. Tsuji reported that Hawaiian Electric Company (HECO) requested that the item be withdrawn.

Letter provided from HECO with the request.

**The Board:
Move to withdraw**

Unanimously approved as withdrawn (Edlao, Schuman)

Item L-1 Rescind Prior Board Action of Sept. 8, 2006 (Item L-1), Award of Construction Contract – Job No. J00CF34A, Lava Tree State Monument, ADA Barrier Removal, Hilo, Hawaii

and

Approve Award of Construction Contract – Job No. J00CF34A Lava Tree State Monument, ADA Barrier removal, Hilo, Hawaii.

Item L-2 Approval for Award of Construction Contract - Job No. B00DB94A, Sewer Connection for Port Allen Small Boat Harbor, Eleele, Koloa Kauai, Hawaii.

Item L-5 Appointment of Kona Soil and Water Conservation District Director.

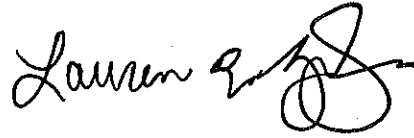
Unanimously approved as submitted (Johns, Gon)

Item M-1 Consent to Sublease of Lease No. DOT-A-05-0007 Air Molokai, Inc. to Heli-USA Airways, Inc. Honolulu International Airport.

Unanimously approved as submitted (Johns, Edlao)


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,

A handwritten signature in black ink, appearing to read "Lauren Yasaka", with a stylized, circular flourish at the end.

Lauren Yasaka

Approved for submittal:

A handwritten signature in black ink, appearing to read "Laura Thielen", written over a horizontal line.

Laura Thielen
Chairperson
Department of Land and Natural Resources