

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

DATE: FRIDAY – JUNE 27, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Member Tim Johns called the meeting of the Board of Land and Natural Resources to order at 9:09 a.m. The following were in attendance:

MEMBERS

Tim Johns
Jerry Edlao
Taryn Schuman

Ron Agor
Dr. Sam Gon

STAFF

Bin Li, ADMIN
Dan Quinn, SP
Ed Underwood, DOBOR
Paul Conry, DOFAW
Athline Clark, DAR

Sam Lemmo, OCCL
Martha Yent, SP
Eric Hirano, ENG
Morris Atta, LD
Dolan Eversole, OCCL

OTHERS

Vince Kanemoto, Deputy AG
Paul Mancini, K-1
Ron Cole, K-2
Ku'umeaaloha Gomes, E-1
Keola Lindsey, E-1

Tom Rack, H-1
Calvin Choy, K-3
Clement Kanuha, E-1
Kaleo Kualii, E-1
Marti Townsend, F-5

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

Item A-1 Amended May 9, 2008 Minutes.

Approved as amended (Agor, Gon)

Item A-2 May 23, 2008 Minutes.

Member Schuman and Member Gon recused. No quorum. Need to defer.

Deferred

Item A-3 June 13, 2008 Minutes.

Approved as submitted (Schuman, Agor)

**Item H-1 Request for Approval to Appoint Mr. Thomas P. Rack as a
Departmental Administrative Hearings Officer and to Enter Into a
Memorandum of Agreement between the Department of Land and
Natural Resources and the Department of Health for the Service of
Mr. Rack**

Bin Li, DLNR Administrator Proceedings Coordinator, informed the Board that the Chair suggested hiring a permanent departmental hearing officer to speed up the process and save money from hiring outside. Also positioning an officer to the Department will help divisions conform to the officer's practice and procedures of holding contested case hearings. He has been in collaboration with some of the divisions to design contested case hearing rules. The department heads for Department of Health (DOH) and DLNR agreed to share DOH's hearing officer and will provide a Memorandum of Agreement (MOA) to achieve this. Staff recommends approval of the appointment.

Unanimously approved as submitted (Edlao, Gon)

**Item K-1 Alleged Unauthorized Construction of a Shoreline Structure (Case
No. MA-08-22) at Makena, Maui, Sara Dodge, TMK: 2-1-006:090**

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), reminded the Board that this item was deferred from the last Board meeting to give counsel time to put together his case. He gave some history background referring to photos and presenting staff's recommendations. Counsel's written testimony was distributed and he asked the Board for an after-the-fact permit.

Paul Mancini, counsel for Sara Dodge, presented his written testimony describing the property and area giving some history. They were concerned with recommendation #4 and would like to replace it with an after-the-fact permit within 60 days.

There was some discussion on the wall affected.

Mr. Lemmo stated that there is a state law that says shoreline hardening is prohibited for private erosional structures makai of the shoreline except if it has beneficial results. Mr. Mancini noted that the Dodges want the public to have full use of the shoreline. They feel bad that they got into this situation and would like to rectify it.

Mr. Lemmo asked to consider that State law prohibits these types of structures and would need a shoreline certification to apply for a CDUP. The Dodges can't because the structure is not authorized.

Mr. Lemmo didn't think an exception to State law applies here and recommended that if the Board is considering an after-the-fact permit, to impose the maximum on the fine. This could be long and expensive for Mrs. Dodge and could end today if she agrees to remove the wall.

There was discussion on whether to keep the 30 days or give 60 days. Also, what the outcome would be if deferred or to go to contested case hearing.

Member Edlao moved to approve staff's recommendation. Member Agor seconded. Member Edlao felt a lot of time has gone into this and approving it will save some money.

Mr. Mancini thought 60 days might not be enough time for the removal and it depends how important this issue is to the people concerned. He noted that there is the question on where the shoreline is.

Member Johns informed Mr. Mancini if he wants a contested case hearing to state it orally today and then in writing in 10 days.

Mr. Mancini asked for a contested case hearing where Member Johns and Mr. Lemmo explained the process involved.

Approved as submitted (Edlao, Agor)

Member Johns voted no. Rest of the Board voted yes.

Item K-3 Conservation District Use Application No. OA-3451 Regarding the Proposed Installation of Five New Utility Poles in a New Alignment by Hawaiian Telcom, Inc. on James Campbell Estate Lands in the Resource Subzone, at Palehua, Honouliuli, Ewa District, Oahu, TMK (1) 9-2-05:13

Sam Lemmo reported background and recommended approval.

Member Gon asked for clarification of the project location on the map because he wasn't sure if it was close to The Nature Conservancy preserve and it was not.

Calvin Choy representing Hawaiian Telcom agrees with staff's recommendations and conditions. They will be using wood poles which are hidden by the trees.

Unanimously approved as submitted (Schuman, Gon)

Item K-2 Conservation District Use Application No. ST-3000 for Small-Scale Beach Nourishment (SSBN- MA-08-01) by the Stables Road Beach Restoration Foundation, Inc., Stables Rd., Spreckelsville, Maui, TMKs: (2) 3-8-002:65, 94, 71, 77, 74 & 78

Mr. Lemmo informed the Board on the background. He asked for consent that the Chairperson approve this. He described the process.

Ron Cole, Planning Consultant from Maui representing the applicant, felt this is a positive program and distributed photos and written testimony on the project. He described the before and after photos.

Unanimously approved as submitted (Edlao, Agor)

Item E-1 Establishment of Volunteer Kahu Agreement for 12-acre Portion of Keolonahihi State Historical Park, North Kona, Island of Hawai'i
Submittal to be distributed.

Written testimony was received from Clement Kanuha, Jr.; Ku'umeealoha Gomes, Phyllis Coochie Cayan and Roy A. Vitousek, III.

Dan Quinn, Administrator for State Parks, introduced Martha Yent who is the State Park's Interpretive Program Director. He amended page 2, last sentence before recommendation to read "the Board is being requested to approve the agreement in concept."

Martha Yent summarized that the Kona area families approached State Parks to be involved in the removal of overgrown vegetation and restore Keolonahihi State Historical Park for educational programs. She gave the history on the curator/kahu agreement. The Kanuha family wanted to see the Betty Kanuha Foundation as the sole party in the curator/kahu agreement. Some family members were uncomfortable with the agreement and State Parks is compromising to involve all the families. A co-curator agreement was met with concerns by the families. Chair Thielen will meet with the families on July 10, 2008 with the intention of offering this agreement with the Board's approval of the concept.

Member Johns referred to the 4 written testimonies noting a concern with the description and typographical error.

Ms. Yent has no problem amending the typo. She explained during research the name "Ka Lua O Ka Lani" was found which is stated in the agreement as requested. The Kanuha family is asking for one site of the area, Keolanahihi Heiau.

Clement Kanuha, Jr. is a Kanuha family member and one of the caretakers of Keolanahihi Heiau. He clarified the pronunciation as Ke-olo-nahihi and proceeded to

read his written testimony. His family supports this with 3 amendments: 1. Strike individual names or families and replace with The Betty Kanuha Foundation. Delete from page 9, #1 to 6 and replace with Debra Kanuha, President, The Betty Kanuha Foundation.; 2. Delete “Ka Lua o Ka Lani” and insert “Keolanahihi Heiau.;;” 3. Correct page 2, paragraph 3 in the italicized section the word “mo’I” should be “Mo’i.”

Member Gon asked if the family is interested in caring for only the heiau portion or the entire complex. Mr. Kanuha replied the entire complex starting with the heiau.

Member Johns said that the Board supports this with the Kanuha family’s involvement and will have staff work on the amendments. He suggested adding “and/or The Betty Kanuha Foundation” because Chair Thielen and Big Island Board Member, Rob Pacheco isn’t here and Member Johns would prefer they meet with the families before finalizing this.

Mr. Kanuha clarified that there are no “families” only the volunteers working on the heiau every Sunday. There are people involved out there only by talking. This is a community effort in pushing this forward and they would like to move on.

Ku’umeaaloha Gomes read her written testimony in support. She suggested amending throughout the agreement from “kahu” to “kanaka lawlawe” or steward. Instead of “Kahu Agreement” amend to read: “Stewardship Agreement.” She concerned with the terminology “cultural and lineal descendants” and asked it be defined as those connected to Keakealaniwahine and/or Keolanahihi.

Mr. Quinn explained that this is a stewardship agreement and the name is not critical. It is the action. The reference to cultural or lineal descendants is intended for those associated with the site to have the ability to participate.

The Board members clarified that term was meant to be inclusive which includes everyone actively involved. Mr. Quinn added it was not to deny anyone. Mr. Kanuha reported they include everyone following the management plan. All visitors including children sign waivers to participate.

Ms. Gomes felt sometimes a process changes the meaning of Hawaiian words.

Kaleo Kualii representing the Hawaii Burial Council and one of the family members reiterated that the heiau is open to all. Everyone agreed to move forward although everyone wasn’t happy with it. He gave some background history reiterating the lineal descendent concern. He asked the Board to look at what they are asking for which is caring for their kupuna and for all to work together. They are not asking for money, only for the Board’s support.

Mr. Kanuha updated the Board on what is finished on the map.

Keola Lindsey representing the Office of Hawaiian Affairs (OHA) explained what kuleana is which is responsibility. It is important that people have first hand knowledge of this heiau. He hopes this will perpetuate cultural practices. Mr. Lindsey also concerned that it is open on who decides on education which should be specific in details.

Member Gon reiterated the amendments brought forth, but Member Johns alerted that this is the Chair's submittal. Mr. Quinn reminded that this is an approval in concept.

Member Johns suggested amending recommendation to say in concept to kahu or stewardship agreement subject to approval by the deputy attorney general and chairperson. Change the nameplate to Betty Kanuha Foundation and others as appropriate. Have staff work on the language changes as described today when they finalize this agreement. The Board should embrace the curatorship, but what to do next.

The Board concerned and hesitated on the name details because the Chair wasn't there and whether to have the Chair or the Board finalize it. Member Schuman felt it should come back to the Board.

Member Gon moved to approve as amended subject to approval by the deputy attorney general and the chairperson and to come back to the Board for final approval. Member Agor seconded.

Mr. Quinn re-stated that the recommendation would continue on from "the Department of Attorney General and the Chairperson and final approval by the Board. It's the Board's desire to include the specific amendment to add the signature line for the Betty Kanuha Foundation.

The Board:

Amended staff's recommendation by adding "and the Chairperson with final approval by the Board. And if it's the Board's decision, to include the specific amendment to add the signature line for the Betty Kanuha Foundation."

Unanimously approved as amended (Gon, Agor)

Item J-1 Approval for Award of Contract - IFB No. 08-001-H, Guard Services for Parking Control and Security for Kailua-Kona Pier

Ed Underwood, Administrator for Division of Boating & Ocean Recreation (DOBOR) gave background and recommended approval.

Unanimously approved as submitted (Edlao, Gon)

- Item L-1** **Approval for Award of Construction Contract - Job No. H92C835A, Park Improvements, Kalihi Valley Nature Park, Honolulu, Hawaii**
- Item L-2** **Approval for Award of Construction Contract - Job No. B71D071D, Ala Wai Small Boat Harbor Floating Docks B, C, & D Replacement Honolulu, Hawaii**
- Item L-3** **Approval for Award of Construction Contract - Job No. B71AO83A, Ala Wai Small Boat Harbor Plumbing Improvements Honolulu, Hawaii**
- Item L-4** **Approval to Enter Memorandum of Agreement with Department of Defense Civil Defense Division for Kilauea River/Wailapa Stream Debris and Sediment Removal Project, Kauai and Makaua Stream Restoration and Debris Removal Project, Oahu**

Eric Hirano representing Engineering reported no changes and recommended approval for Items L-1 to L-4. He gave some background on Item L-1 and Item L-4.

Unanimously approved as submitted (Agor, Edlao)

- Item C-1** **Renewal of Special Use Permit to Mid Pacific Communications, Inc. for Use of a Telecommunications Site on Lands within Lihue-Koloa Forest Reserve, Kawaihao District, Kaua'i, Tax Map Key: (4) 4-2-001: por. 2.**

Paul Conry, Administrator for Division of Forestry & Wildlife (DOFAW), spoke on the background and that the permittee is cooperating.

Unanimously approved as submitted (Gon, Edlao)

- Item D-1** **Issuance of a Month-to-Month Revocable Permit to State Historic Preservation Division, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-50:81**
- Item D-2** **Rescind Prior Board Action of February 22, 2008, Item D-9, Authorize the Sale of Remnant by Sealed Bid, Niu, Honolulu, Oahu; TMK: (1) 3-1-011: 003.**
- Item D-3** **Issuance of Right-of-Entry Permit to Department of Land and Natural Resources, Engineering Division on Lands Encumbered by General Lease No. S-5851, Kaaawa, Koolauloa, Oahu, TMK: (1) 5-1-014: 047 por.**

Item D-4 Set Aside to Department of Transportation for Access Easement for Highway Maintenance Purposes and Issuance of Construction and Management Right-of-Entry, Punaluu, Koolauloa, Oahu, TMK: (1) 5-3-003:001 seaward.

Item D-5 Rescind Prior Board Action of October 22, 1999, Agenda Item D-24, Direct Sale of Grant of Perpetual, Non-Exclusive Easement to City and County of Honolulu for Underground Utility Purposes, Haleiwa, Oahu, TMK: (1) 6-2-03: 10, 6-6-01: 25 and 6-6-02: 05.

Unanimously approved as submitted (Agor, Schuman)

Item D-6 Grant of Perpetual, Non-Exclusive Easement to Jessica Haumea for Access and Utility Purposes, Paea, Waianae, Oahu, TMK: (1) 8-5-005:009 por.

Morris Atta, Administrator for Land Division, amended and distributed exhibit A. Staff added an amendment that the applicant provide survey maps and process the subdivision at the applicant's own cost.

The Board:

Amended staff's recommendation by adding the following to the Applicant's Requirement: 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and 2) Process and obtain subdivision at Applicant's own cost (for City & County of Honolulu only), and requiring the applicant to submit the map and description for such subdivision. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Schuman, Gon)

Item M-1 Issuance of a Supplemental Lease Agreement No. 01 Extension of Lease No. DOT-A-03-0003 [GSA Lease No. GS-09B-10003 (LHI10003)] Honolulu International Airport

Item M-2 Issuance of a Lease for Office Space Federal Aviation Administration, United States of America, Honolulu International Airport

Item M-3 Consent to Renew Lease of Lands Under Governor's Executive Order No. 3736 to the Hawaii State Federal Credit Union, Kapolei, Ewa, Oahu, Tax Map Key: (1) 9-1-088:005 (por)

Item M-4 Issuance of a Direct Lease Land Lease on Airport to the Federal Aviation Administration (FAA) United States of America (USA) Honolulu International Airport

No one from DOT and the public was here to testify.

Unanimously approved as submitted (Agor, Schuman)

Item F-1 Briefing on Papahānaumokuākea Marine National Monument Management Plan and Summary of Public Input

Athline Clark representing Division of Aquatic Resources (DAR) distributed briefing folders to the Board and the Draft Management Monument Plan. She noted that tab 2 has documents from the public meetings. She reminded the Board that last April staff would come back to the Board near the end of the public comment period to seek any input from the Board and to report on the public hearing process. She presented each slide.

- I. Management of the Monument
 - A. Proclamation – Co-trustees
 - B. Monument Management Structure
 - 1. Senior Executive Board
 - 2. Monument Management Board
- II. Overview of Draft Monument Management Plan
 - A. Volume I
 - 1. Introduction & Management Setting
 - 2. Management Framework
 - 3. 22 Action Plans to address Priority Management Needs
 - B. Volume II
 - 1. Environmental Assessment
 - 2. NEPA and HRS Chapter 343, USFWS' CCP
- III. Appendices and Supporting Documents
 - A. Volume III
 - 1. Reference documents
 - 2. Public review
 - a. Permit Notification Policy
 - b. Visitor Plan for Midway
 - c. FWS Compatibility Determinations
 - B. Volume IV
 - 1. Public review requested
 - a. Midway Atoll NWR Draft Conceptual Site Plan
- IV. Draft Monument Management Plan
 - A. Six Priority Management Needs
 - 1. Understanding and interpreting NWHI
 - 2. Conserving wildlife and habitat
 - 3. Reducing threats to resources
 - 4. Managing human uses
 - 5. Coordinating conservation and management activities
 - 6. Achieving effective monument operations
- V. Public Involvement in Plan Review
- VI. Additional Meetings

VII. Soliciting Public Comments

- A. Public Meeting Process
- B. Written comments due

VIII. Land Board Comments

- A. Today's briefing – Top 10 comments based on Athline's notes.

- 1. Military presence
 - Mitigate or ban any military activity. Monitoring.
- 2. Access and Native Hawaiian issues
 - More involvement in decisions, bringing in a 4th co-trustee (OHA), specifics to access and gathering rights.
- 3. Midway Tourism
 - cruise ships
 - limiting
- 4. Public Involvement
 - Establishment for a Monument Advisory Council.
- 5. Permits
 - number of
 - cumulative impacts
 - need more public involvement
- 6. Threats and Impacts
 - vessel impacts
 - alien species
 - pollution and marine debris
- 7. Research
 - management driven
 - need to prioritize research
- 8. Enforcement
 - adequate
- 9. Budget
 - overall
 - prioritize for conservation
- 10. Education
 - more education
 - some said it should be less priority

- B. Follow-up

VIII. Understanding and Interpreting the NWHI

- A. Marine Conservation Science
- B. Native Hawaiian Culture and History
- C. Historic Resources
- D. Maritime Heritage

X. Conserving Wildlife and Habitats

- A. Threatened and Endangered Species
- B. Migratory Birds
- C. Habitat Management and Conservation

XI. Reducing Threats to Monument Resources

- A. Marine Debris

- B. Alien Species
- C. Maritime Transportation and Aviation
- D. Emergency Repose and Natural Resource Damage Assessment
- XII. Managing Human Uses
 - A. Permitting
 - B. Enforcement
 - C. Midway Atoll Visitor Services
- XIII. Coordinating Conservation and Management Activities
 - A. Agency Coordination
 - B. Constituency Building and Outreach
 - C. Native Hawaiian Community Involvement
 - D. Ocean Ecosystems Literacy
- XIII. Achieving Effective Monument Operations
 - A. Central Operations
 - B. Information Management
 - C. Coordinated Field Operations
 - D. Evaluation
- XV. Review of Public Involvement in Draft Plan
 - There was a request to extend the public comment period, but DOH (Department of Health) – Office of Environmental Quality Control is strict about the 30 day comment period. The Federal agencies are checking on whether they can extend and if they do staff will consider those comments.
- XVI. Next Steps
 - A. Summarize public comments.
 - B. Will provide overview of final plan.
 - C. Forward final plan to Chairperson and Governor for approval.

Ms. Clark, referring to the public comments, was surprised by the military comments, that fishing did not make the top 10 and that education was higher on the list.

There was discussion regarding having a 2 or 3 year permit process for certain permits like ship operations, but the Board would have to re-do the Administrative Rules to reflect that.

Marti Townsend representing KAHEA was disappointed that a lot of concerns brought to the Board are not addressed in the Management Plan. She suggested the Land Board write a letter to the Monument Management staff on fixing items that came up repeatedly. She had submitted written testimony with guidelines on this.

Member Johns said that the Board works with staff because they are not a public advisory council and can only act on what their statutory authority is. The Land Board can't write letters for this.

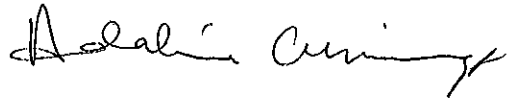
Ms. Townsend felt there are fewer public comments because the Draft Monument Management Plan has a lot of documents and it has been 2 years since the last public meeting. She asked to refer to her attached guidelines.

Ms. Clark suggested if the Board wants to comment with staff to please work with the Board Secretary to schedule it.

Adjourned. (Edlao, Gon)

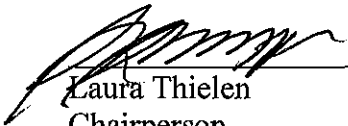
There being no further business, Member Tim Johns adjourned the meeting at 11:37 a.m. Recordings and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura Thielen
Chairperson
Department of Land and Natural Resources