

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

DATE: FRIDAY, SEPTEMBER 12, 2008
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 9:04 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Robert Pacheco
Taryn Schuman
Dr. Sam Gon

Timothy Johns
Jerry Edlao
Ron Agor

STAFF

Michael Constantinides, DOFAW
Eric Hirano, ENG
Scott Fretz, DOFAW
Lisa Ferentinos, DOFAW

Dan Polhemus, DAR
Morris Atta, LD
Gary Moniz, DOCARE

OTHERS

Julie China, Deputy Attorney General
Jim Quinn, Item C-2
Tom McCabe, Item L-5

Bill Wynhoff, Deputy Attorney General
Jeff Strahn, Item F-4
Kaeo Duarte, Item L-4

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

Item A-1 August 22, 2008 Minutes.

Member Gon recused himself.

Unanimously approved as submitted (Pacheco, Johns)

**Item C-2 Amendment No. 1 of Timber and Land License No. 2007-H-01 Held
by Hawaii Island Hardwoods, LLC**

Representing Division of Forestry and Wildlife (DOFAW), Michael Constantinides is filling in for Paul Conry who is traveling to a conference. Mr. Constantinides reported on the background and staff is satisfied that Hawaii Island Hardwoods (HIH) complying with terms of their license.

Member Edlao asked whether HIH is required to produce 5,000,000 board feet per year. Mr. Constantinides said that it's important that the equipment capacity be in place to produce 5,000,000 as a maximum amount. Staff is flexible with the production amount with the understanding that market demand will drive production, and hopes to see more.

Jim Quinn for Hawaii Island Hardwoods, LLC indicated that they are comfortable with the amendments to their application. He gave more background about their company and distributed some statistics about HIH. They are fine with the maximum mill capacity of 5,000,000 board feet per year. The equipment has not been purchased, yet.

Member Pacheco moved to approve and Member Gon second.

Unanimously approved as submitted (Pacheco, Gon)

**Item F-4 Resubmittal -Enforcement Action Against Maui Snorkel Charters,
Inc. for Damaging Coral within the Molokini Shoal Marine Life
Conservation District - Final Settlement Offer for Consideration**

Dan Polhemus, Administrator for Division of Aquatic Resources, summarized history background and previous Board actions at its January 25, 2008 and April 11, 2008 Board meetings. Staff believes a final settlement was accomplished. He asked to amend the Proposed Settlement Offer (page 2, paragraph 2) from two and one half month suspension to three months which is reflected in the Agreement (Exhibit A).

Deputy Attorney General, Bill Wynhoff, said the suspension is two weeks. Payment is \$250,000 forthwith plus \$10,618 in costs, \$50,000 next year, \$50,000 year after with a balance of \$46,296 the year after that. It works out to \$500,000 that was initially discussed with a value at 7%. With any kind of payment in the future it would be nice to have some assurances to be paid. They attempted to address that by getting paid next week which MSC is going to pay the first payment. After that, the principals are guaranteeing the remaining payments in addition. If Maui Snorkel Charters (MSC) fails to make any payments their license will be subject to suspension.

Member Edlao asked whether this action is only to just one license because MSC has several licenses. Mr. Wynhoff said that this offending entity has one license. Member Edlao asked how MSC would guarantee all the payments. Mr. Wynhoff replied the principal guarantees itself. Any future payments not made the business will be shut

down. Number 1 and number 2 will sue the principals for the balance and if they don't have any money staff won't collect it which was Member Edlao's concern. Or as suggested by Member Johns, go after all their assets.

Jeff Strahn representing Maui Snorkel Charters asked whether the \$250,000 is executed today and that this is the first time he is hearing about the suspension time. Mr. Wynhoff clarified that MSC has one week from today if the Board approves this, but he'll work with Mr. Strahn after today's decision.

There were discussions over the amount of suspension time, the two months that was done in 2006, and the confusion over the two weeks in Sept. 2008. Mr. Strahn explained MSC was out of service between the end of October to December 15th for 2-1/2 months. They voluntarily went out of service for 2 weeks in June which wasn't accepted during the negotiations. Now in two days they will go out of service for 2 more weeks. Mr. Wynhoff wasn't aware of these dates and it wasn't the deal he had struck with Tom Cole. Mr. Wynhoff has no objection to the suspension dates already served which is up to the Chairperson.

It is not a problem for Mr. Strahn to meet the 7 day execution date.

Member Edlao agreed with the financial settlement, but was concerned with the guarantee because there needs to be some assurance. He is ok with going after other assets. And, is confused whether there is another two weeks required for the suspension time, but it doesn't matter and he wants to move on. Chair Thielen noted that the guarantee was important because staff had concerns with extending the payment plan over a period of 8 years originally offered by MSC. Per the Department's perspective that was too long. What would be feasible knowing that the company could pay up front? The parties agreed to a shorter period, but staff insisted on the guarantee to provide security to the Department. Also, if the payments were not made to immediately terminate the permit.

Board members Pacheco and Edlao agreed with the two weeks to fulfill the three months. There was discussion over changing the language in the settlement and recommendation. Mr. Wynhoff recommended not changing anything because it is signed. Simply advise the responsible party that their suspension has been fulfilled. He is sure that will be acceptable. Chair Thielen asked for clarity because some Board members are saying the time out of service satisfies the three month suspension completely, but other Board members are saying an additional two weeks needs to be served. Member Johns said in his perspective, the time MSC was out and the additional two weeks in September satisfies the three months. The rest of the Board agreed. That was clear to Mr. Wynhoff and no changes will be made.

Chair Thielen asked Mr. Wynhoff to work with Mr. Strahn regarding the timing, execution, how to make the payment, and to get him an unsigned copy.

Member Edlao commented he was pleased that they came to a settlement agreement and to learn from this experience so that in the future situations like this could be avoided.

Unanimously approved as submitted (Edlao, Johns)

Item L-5 Approval for Award of Construction Contracts - Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements and Job No. B45DM73A, Maalaea Small Boat Harbor Sewage Pump-out Facilities, Electrical and Other Harbor Improvements, Maalaea, Maui, Hawaii

Eric Hirano, Chief Engineer for DLNR, informed the Board that open bids were done. Federal and State are funding this. He asked that the two lowest bidders be rejected because they did not fill out the required Federal forms and as a result was deemed non-responsive. Staff recommended accepting Parsons RCI Inc. There were bid protests filed which went into a procurement stay, but the bid protest was denied and the appeal period has expired. Staff asked the Board's approval.

The Board asked whether the rejected bidders lost because they did not file the forms correctly and the Federal funds would affect the State's funding. Mr. Hirano explained that \$3.8 million State funds would lapse if staff went out to re-bid. If staff did not meet the Federal requirements they would jeopardize \$13 million in Federal moneys for the project. It would not be in the public's best interest. He detailed the project itself. Delaying the project could put staff in hot water with the EPA.

Member Agor said that not filling out forms could cost tax payers millions of dollars. Mr. Hirano explained that staff held a voluntary pre-bid meeting and site visit. Bidders were reminded to fill out the Federal forms. Out of 42 prospective bidders only two dealt with the forms. He agreed with Member Agor.

Tom McCabe representing Parsons RCI Inc. sympathized with the comments that the forms are costing the State \$3 million. He understands government considers the time a bid is submitted or when it is open a key milestone to the procurement process. It is clearly defined in bid construction on what must be included in the bid at the time it is submitted. These Federal certifications were required to be submitted and it is clearly stated that if it is not submitted the bid must be considered non-responsive. He read every form and instruction because he knows how important it is to government. It is not only a form, it is a certification. If you don't have that certification then you aren't certifying you are going to follow those rules. His company agrees with staff and asked to go ahead with the project.

The Board asked about bidders' mistakes whether they were curable or incurable. Mr. Hirano said prior to the bid protests it was worked out with the Attorney General's Office and in line with the procurement code. The Department of Transportation and Federal Transit Authority agreed with staff's recommendation. In answer to Member Edlao's question, Chair Thielen said there are two classifications of errors and to find the best interest to the State and Federal. She asked if there are steps Engineering Division could

take for future bids to make this information clearer. Mr. Hirano replied that he is working with staff on this. Staff thought they pointed these things out, but are looking at what more could be done.

Mr. McCabe indicated that the contractors were down to the wire, it was very hectic and some got bids in after the 2:00pm deadline. He was shocked that the lowest bidders did not fill out the forms.

Member Johns didn't like the result of this bid because it doesn't sound right to have to pay \$3 million more.

Member Edlao concerned with spending more than they should, but in the interest of moving the project forward he moved to approve and Member Agor second.

Unanimously approved as submitted (Edlao, Agor)

Item L-4 Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 31 - Lalakea Reservoir (HI00026) Dam Removal, Kukuiahaele, Hawaii

Mr. Hirano reported that Kamehameha Schools is looking to decommission the Lalakea Reservoir and asked the Board to approve their application.

Member Johns asked whether there is still a need for irrigation and do the farmers agree with this. Mr. Hirano explained this area was before the Water Commission and there were no additional users.

Kaéo Duarte representing Kamehameha Schools explained that Lalakea intake which is off of the stream was legally abandoned in 2000 by the Water Commission. The source was gone from the reservoir. The Lalakea Ditch System was separate from the Hamakua Ditch System.

Unanimously approved as submitted (Pacheco, Gon)

Item D-5 Approval of License Agreement of Federal Property with the Department of the Navy on behalf of the Department of Education for Vehicular Access Purposes, Waipio, Ewa, Oahu, TMK: (1) 9-4-08:24 (Portion).

Land Division Administrator, Morris Atta, reminded the Board that this matter was before them in 1998 when the Board approved the license agreement for the access, but was never finalized. The Department of Education (DOE) asked to reintroduce this for a 1 year period. The Navy has been cooperative with DOE on the access, but had concerns with liability. This is a temporary solution. The DOE intends to find an alternative permanent solution to this issue. This request is for a 1 year period commencing September 1, 2008 to August 31, 2009. The Attorney General's office amended his

recommendation to add approval by the Governor which is required on all indemnification issue

Member Johns asked whether the DOE needs the Board to approve any acquisition of property interest. Mr. Atta explained that the DOE requested the legislature to do all their property disposition issues, but they lack the expertise. Traditionally, DOE has been coming to Land Division on these and come to the Land Board for approval.

The Board questioned whether it should be a lease or a license. Mr. Atta said it should be a license and the recommendation would need to be amended.

The Board:

Amended staff's recommendation by correcting a typographical error in the first line of the recommendation – replacing “lease” with “license agreement,” and by adding the Governor's approval as an additional condition in item number 2. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Schuman, Agor)

Item C-11 Approval of Habitat Conservation Plan for the Construction and Operation of the Lana'i Meteorological Towers, Lana'i, Hawai'i, and Incidental Take License

Member Johns recused himself.

Michael Constantinides representing DOFAW described background. Staff recommends approval.

Member Gon wondered why under the habitat restoration recommendation that there was no ungulate control as a means to stabilize. Scott Fretz from DOFAW explained that the area being worked on is already fenced. Staff is working on getting the last of the animals out.

The representative for Castle and Cooke was here to answer any questions.

Unanimously approved as submitted (Edlao, Gon)

Item C-10 Approval to Release for Public Review the Proposed Amendment to Kaheawa Wind Power Habitat Conservation Plan and Incidental Take License for Additional Meteorological Systems, Maui, Hawaii

Member Johns recused.

Mr. Constantinides reported on background

Unanimously approved as submitted (Edlao, Pacheco)

Item B-1 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu Department of Parks and Recreation for the Use of the Koko Head Shooting Complex on September 20 & 21, 2008 for National Hunting and Fishing Day Celebration

Gary Moniz, Chief of Enforcement for DLNR, summarized that the City and County needs an indemnification whenever the State uses their facilities. Staff is asking indemnification through the Governor for approval. He asked the Board's approval and read the recommendations.

Unanimously approved as submitted (Schuman, Gon)

Item C-1 Acceptance of Hearing Master's Report, Designate by Resolution, Withdrawal from Governor's Proclamation Dated June 12, 1097 and Reset Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife, Natural Area Reserve System for Addition to the Hono O Na Pali Natural Area Reserve, Waimea, Kauai, Tax Map Key: (4) 1-4-001: Portion of 3

Mr. Constantinides of DOFAW reported on the background.

Member Gon commented that he appreciated the strategic location of this area.

Unanimously approved as submitted (Agor, Gon)

Item C-3 Request for Authorization to Negotiate and Sign Contracts for Helicopter Transportation Services for the Division of Forestry and Wildlife, Maui and Kauai Districts

Mr. Constantinides explained that these contracts terminated March 15, 2008 for Maui and June 30, 2008 for Kauai. Staff is evaluating the bids and asked for approval. Also, to add a recommendation "subject to the availability of funds."

Unanimously approved as amended (Johns, Edlao)

Add to Recommendation "And subject to the availability of funds."

Item C-4 Request for Approval to Revise Two (2) Hawai'i Invasive Species Council (HISC) Projects Previously Approved by the land Board on January 11, 2008

Mr. Constantinides reported on background.

Member Gon commented he was happy to see impacts of ohia rust in this package because ohia is the dominant tree in the forest and if it goes down we are all in a world of hurt. We must find out what is going on and do something about it.

Unanimously approved as submitted (Johns, Gon)

Item C-5 Contract for the Delivery of Four Remote Area Weather Stations (RAWS) Between the Department of Land and Natural Resources and FTS Forest Technology Systems Ltd. - Goods or Services Based Upon Competitive Sealed Bids, No. IFB-DOFAW-08-K4

Mr. Constantinides explained that staff uses RAWS on their daily operations and is key for public safety and fire management issues. There was bidding and FTS had the lowest bid. He asked to add the recommendation "subject to the availability of funds."

Member Gon asked whether this will come back to the Board later which it could per Mr. Constantinides.

Unanimously approved as amended (Pacheco, Edlao)

Add to recommendation "And subject to the availability of funds."

Item C-6 Request to Amend Prior Board Action of February 22, 2008 Under Item C-3: "Request to Amend Prior Board Actions of May 14, 2004 Under Item D-7 and January 14, 2005 Under Item D-23, Sale of Land License at Public Auction for Removal of Sand from Kawaiie Wild Bird Sanctuary, Covered by Executive Order No. 3685 Kawaiie, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001."

This used to be Kawaiie Wild Bird Sanctuary and is now Mana Plains Forestry Reserve as described by Mr. Constantinides. He recommended that the bid be on the sand and not on the license itself. He described the discussion and distributed highlighted amendments to page 2.

The Board:

Amended staff's Discussion (page 2, 2nd paragraph, 4th sentence) by deleting [Rate] from "Effective Royalty Rate" and the same to the 3rd paragraph, 1st and 2nd sentences. Under recommendation #1, replace [February 22, 2008, Item C-3] with January 14, 2005, Item D-23. Recommendation #2, replace [foot] with yards. Recommendation #3, delete [Rate]. Add – described in its action of January 14, 2005, Item 23.

Unanimously approved as amended (Johns, Edlao)

Item C-7 Request for Approval of Expenditure of Funds and Authorization to Negotiate and Sign Contracts to Implement the FY09 Watershed Partnerships Program Grants

Member Gon recused himself.

Mr. Constantinides briefed the Board on the background. Upon the Board's approval staff will move forward with the contracts. Lisa Ferentinos was here to answer any questions.

Unanimously approved as amended (Johns, Agor)

Add recommendation #3 "subject to the availability of funds."

Item C-8 Request Approval to Contract with Ms. Teresa Trueman-Madriaga to Coordinate the Federally Funded Urban and Community Forestry Program for the Division of Forestry and Wildlife

Item C-9 Request Approval to Contract with Ms. Jacqueline Kim Yuk Ralya to Coordinate the Federally Funded Volunteer/Technical Assistance Function of the Urban & Community Forestry Program for the Division of Forestry and Wildlife

Chair Thielen asked whether Mr. Constantinides needed to add anything and he did not.

Unanimously approved as submitted (Johns, Pacheco)

Item D-1 After-the-Fact, Lease Extension of General Lease No. S-4881 to County of Hawaii for Recreational and Community Center Purposes, South Hilo, Hawaii, TMK: (3) 2-8-06:12.

Item D-2 Amend Prior Board Action of January 22, 1999 (Agenda Item D-21), Set Aside to the University of Hawaii for the West Hawaii Campus, North Kona, Hawaii, TMK: (3) 7-3-10: 42.

Item D-3 Consent to Assign Sublease K-5, under General Lease No. S-5619, Natural Energy Laboratory of Hawaii, Lessee, by Uwajima Fisheries, Inc., Sublessee/Assignor, to King Ocean Farm, Inc., Assignee, Kalaoa 1st-4th and Ooma 1st, North Kona, Hawaii, TMK: (3) 7-3-43: portion of 42.

Item D-4 Amendment to Prior Board Action of November 18, 1977, Agenda Item F-12, Issuance of a Perpetual Easement for Maintenance Purposes to the City and County of Honolulu at Pauoa Stream Footbridge, Pauoa, Honolulu, TMK: (1) 2-2-12:102; 2-2-14.

Morris Atta for Land Division didn't have any changes.

There was no public testimony.

Unanimously approved as submitted (Johns, Schuman)

Item F-1 Request for Final Approval for Amendments to Hawaii Administrative Rules, Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area

Dan Polhemus for DAR described this was used to resolve user conflicts in Kahului Harbor. Netting akule rather than catching them by pole. This is the first time staff created a fish check-in station. Bait fish on Maui is another contentious issue which will be addressed in subsequent rule amendments.

Unanimously approved as submitted (Edlao, Pacheco)

Item F-2 Request for Approval of a Special Activity Permit for Mr. Kanekoa Kukea Shultz of The Nature Conservancy, and Designated Assistants to Conduct Alien Limu Species Removal From the Waters of Kaneohe Bay, Oahu

Member Gon recused himself.

Mr. Polhemus reported on background.

Unanimously approved as submitted (Schuman, Johns)

Item F-3 Request for Approval of a Special Activity Permit for Dr. Thierry M. Work of The US Geological Survey, Biological Resources Division, and Designated Assistants

Mr. Polhemus said this is to allow the permittee to collect coral in State waters in the Main Hawaiian Islands.

Unanimously approved as submitted (Pacheco, Gon)

Item L-1 Appointment of Central Maui Soil and Water Conservation District Director

Item L-2 Approval for Award of Construction Contract - Job No. 500BK41B Hanapepe Rockfall Mitigation, Kauai

Item L-3 Permission to Hire Land Surveyor for Boundary Survey and Staking at Manuka Natural Area Reserve, Island of Hawaii, DOFAW Natural Area Reserves Special Fund

Chair Thielen asked if there were any questions on these which there were none.

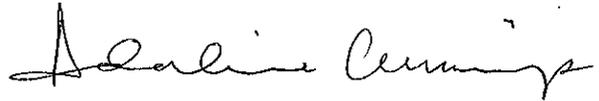
No public comment.

Unanimously approved as submitted (Pacheco, Edlao)

Adjourned. (Gon, Agor)

There being no further business, Chairperson Thielen adjourned the meeting at 10:32 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:



Laura H. Thielen
Chairperson
Department of Land and Natural Resources