

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

DATE: FRIDAY, MAY 8, 2009
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 8:45 a.m. The following were in attendance:

MEMBERS

Laura Thielen
David Goode
Ron Agor

Rob Pacheco
Jerry Edlao
Dr. Sam Gon

STAFF

Sam Lemmo/OCCL
Morris Atta/ LAND
Dan Polhemus/DAR
Ed Underwood/ DOBOR
Dan Quinn/PARKS

Randy Kennedy/DOFAW
Barry Chueng/LAND
Danny Carter/DAR
David Gaud/DOCARE

OTHERS

Pam Matsukawa, Deputy AG
Eric Leong, M-1
Judith Earle, D-9
Faati Alatini, D-9
Kelly Gleason, F-3
Chris Winn, F-5
Mark Delventhal, K-3

Stephanie Lu Tom, K-1
David Gedeon, D-5
John Carroll, D-9
Carl Meyer, F-1
Derek Smith, F-4
Dexter Soares, D-10
Brian Taketa, K-3

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

Item A-1 ANNOUNCEMENTS

Chair Thielen announced that DLNR has their annual Employee of the Year, Manager of the Year and Team of the Year awards today, but started off by introducing the Board of Land and Natural Resources (BLNR) members. The nominees of the 2008 Team of the Year were named and the winners were the Recreational Renaissance Team where the team leaders came up to accept each of their award(s). Manager of the Year was Randy Awo, Branch Chief for DOCARE on Maui. Lance DeSilva was announced as Employee of the Year. The Chair thanked the Board members for the gifts for the employees saying that this year she wants to provide a Chair's recognition award to Personnel, Fiscal and Data Processing divisions who do a lot of work serving other divisions but never get recognized and are deserving of all of our thanks.

Item A-2 April 8 & 9, 2009 Minutes *TO BE SUBMITTED.*

The minutes were distributed to the Board and Member Pacheco recused himself.

Approved as submitted (Agor, Gon)

Item A-3 April 24, 2009 Minutes

Approved as submitted (Pacheco, Gon)

Item K-1 Conservation District Use Application (CDUA) MA-3492 for The Nature Conservancy (TNC) Kapunakea Preserve Fence Project, (Landowner Kaanapali Land Management Corp.), Lahaina, Island of Maui, TMKs: (2) 4-4-007:001, 003, 007, and 008

Member Gon recused himself.

Administrator for the Office of Conservation and Coastal Lands (OCCL), Sam Lemmo reported on background and history where staff recommended approval of the project with a couple modifications to the special conditions.

1. Staff includes a condition requiring initiation and construction in one year and completion of construction in three years and Mr. Lemmo believes it's an option for the Board to modify conditions, standard conditions or add or delete standard conditions. At the request of TNC who asked for a 20 year construction deadline which has been ongoing and depends on funding where staff decided to delete that condition in this instance and not impose any condition or with some time frame if they Board so wills it.

2. Approve an after-the-fact fence project done in the 1990s and the construction of a remote shelter.

Otherwise, staff recommends approve of the project with the standard conditions as listed in the report.

There was mention of an on-going project requiring maintenance to a fishpond which Mr. Lemmo confirmed that staff had deleted the construction deadlines and is similar to this project, but it was a private organization not working with any DLNR division which in

this case TNC is working with DOFAW and DOFAW provides funding. Staff doesn't require any further monitoring.

Stephanie Lu Tom spoke describing the NAPP program which is an integrated two to one matching program that leverages tax payer money with private money where she gave some history and said the five units to answer Member Edlao's questions regarding on-going funding and management.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-1 Kapunakea Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY 10-15

Covering for Division of Forestry and Wildlife (DOFAW) Administrator, Paul Conry, Randy Kennedy reported on background asking to renew the contract and staff recommended approval.

Unanimously approved as submitted (Edlao, Pacheco)

Item K-2 Enforcement File No. OA-06-55, Regarding Hou-wen Liang's Request for Three Year Payment Plan to Pay a Fine Formally Imposed by the Board of Land and Natural Resources, and Request to Extend the Deadline to Conduct Landscaping at Kaneohe, Koolaupoko District, Island of Oahu, TMK: (1) 4-4-013:034

Mr. Lemmo reminded the Land Board that this item is for conservation district use violations in Kaneohe which he listed and the conditions given noting that Mr. Liang requested a contested case hearing, but decided he didn't want one and to comply with the Board's orders where he wrote asking for some provisions:

1. Instead of a lump sum fine Mr. Liang asked for a three year payment plan.
2. And, for more time to implement the landscaping plan.

Staff recommends granting these amendments. The three year payment plan would be contingent upon Mr. Liang paying in lump sum if he failed to pay make any one payment within five days. Mr. Liang also asked for an extra 10 months to complete the landscaping.

Upon Member Gon's query about recommendation #2, Mr. Lemmo clarified that the intent was not to submit within 10 months, but to give Mr. Liang 10 months rather than 10 days as shown in the original conditions to complete the planting. Also, Mr. Lemmo recommended a condition that Mr. Liang submits a follow-up report with pictures to staff by March 27, 2010 indicating the work he had done complied with the Board's orders.

Member Goode said he was amicable to the client's request, but asked what assurances does this Board have that these will be paid like a mortgage, a lien in addition to Mr. Lemmo's request for a report. Mr. Lemmo said and noted if somebody doesn't pay a fine as ordered by the Land Board then there is a condition of these actions and read Exhibit

1, condition #13 – failure of the landowner to comply with this order will cause this to turn over to the Attorney General’s (AG) Office or staff could talk to the landowner or the Land Board. If no compliance staff will talk to the AG’s Office about what the options are. Chair Thielen said that is what the intent behind the condition is if the Board is willing to accept monthly payments, but she said does the Department have the resources to chase down those past due payments if they are not paid regularly under this condition then the person would owe the entire amount at one time whether it is enough of an incentive.

There was some discussion whether the violation attaches to the person or the property that typically the permit and the violation is attached to the property where this is not recorded. The Chair suggested adding an amended condition requiring this to be recorded on the property.

Deputy Attorney General Pam Matsukawa mentioned that the Board will use their judgment on the statutory provision for the fine itself. Chair Thielen gave the example of the Molokini fine, but asked Ms. Matsukawa a lien may need a judgment for is there something that could be recorded to say there is an obligation to pay the fine that is attached where Ms. Matsukawa said that you may record it whether it was encumbered is a legal question. Chair said that the fine won’t necessarily attach to the property where the next owner would have to pay it. Member Pacheco asked whether to fine the parcel or the individual. Chair Thielen said usually, the fine goes in and it’s paid at one time that the person pays it or not where staff goes after them, but because this is being extended to three years if the property was sold and the person left it would be difficult to correct. In past history, the Land Board has nailed new owners of past violations of previous owners which Member Agor said he was comfortable with. Mr. Lemmo explained if Mr. Liang goes and sells the property the new buyer purchases this property with all the blemishes on the property and they are not going anywhere with the property until somebody comes forward and resolves the situation. Chair Thielen clarified that what Ms. Matsukawa is saying is the Department would not have the ability to enforce the remaining debt on that new buyer and the Department would have to go through a whole new violation and bring that against them and that maybe confusing. Where the Chair suggested we need an agreement with the landowner that if we are going to do this payment over time that they must sign a contract that this is how they are going to pay the fine so it is something that stays with that person. Mr. Lemmo said that if the Board approves this staff will send a letter to Mr. Liang which he will sign agreeing to this. Chair Thielen recommended something more and for Mr. Lemmo to work with the Deputy AG to draft a document.

Member Edlao suggested where it says the fine is delinquent to add or when the property is sold that the owner would pay in full. Chair Thielen said if the Board comes to a decision today suggested part of the order could be to craft an agreement with the assistance of the Attorney General’s Office if the property were transferred.

Hou-wen Liang asked whether the Board could extend the landscaping plan period to be submitted one month more that 10% of the walls has to be built and until they level the

land they can't figure out where they will plant plus California grass has grown over the graded area, but they will implement all the planting of the trees within the time frame recommended and because its been 30 days since the last time they met.

Member Agor said that the 60 days would start from today. There was some discussion whether to go 60 days from today or from the last meeting.

Chair Thielen asked Mr. Liang whether he understood the discussion on the payment plan that one of the Board members is recommending a condition be amended to say that it would be paid in a lump sum if you're late or if the house is sold.

Member Goode asked whether Mr. Liang has a grading plan and wall plan where Mr. Liang said everything has been submitted to the City and State which the City has approved 100%, but is waiting for the State to sign off and then they will issue a permit. Mr. Liang has hired an engineer and is in the process of hiring a landscape architect and selecting the plants. Mr. Lemmo said there are as built plans in OCCL's office.

Member Pacheco moved to approve with amendments to recommendation one, condition #4, ".....payment is due in one lump sum or if the property is sold." and for recommendation two, condition #6 to read "within sixty days from today...within 10 [~~days~~]months of approval from the Department." Member Edlao seconded it.

There was a question regarding the agreement where the Chair said that if the property is sold it takes care of that. The Chair told Mr. Liang to talk to Mr. Lemmo to understand the conditions and encouraged Mr. Liang to work on the landscaping plan because of the concern with run-off going into Kaneohe Bay and that the property has very steep slopes.

The Board:

Moved to approve with amendments by adding to recommendation one, condition #4, ".....payment is due in one lump sum or if the property is sold." and for recommendation two, condition #6 adding from today, deleting days and adding month to read "within sixty days from today...within 10 [~~days~~]months of approval from the Department."

Unanimously approved as amended (Pacheco, Edlao)

Item M-1 Rescind Prior Board Action of April 28, 2006, Agenda Item M-4, Issuance of Lease by Direct Negotiation, DCL, Inc., Units FV7E, FV7F and FV7H, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu

DOT - Harbors Property Manager, Eric Leong presented this agenda item.

Unanimously approved as submitted (Pacheco, Gon)

Item M-2 Consent to Assignment of State Lease No. DOT-A-06-0011 Mokulele Flight Service, Inc. to Republic Airways Holdings, Inc. Honolulu International Airport

Item M-3 Amendment No. 2 to State Lease No. DOT-A-79-0010 Extension of Original Lease Term Resort Air, LLC., Honolulu International Airport

Unanimously approved as submitted (Agor, Goode)

Item D-5 Withdrawal from Governor's Proclamation dated January 3, 1923, and Reset-Aside to the Department of Transportation for Public Highway Purposes; Issuance of Immediate Construction and Management Special Use Permit, Piihonua, South Hilo, Hawaii; TMK: (3) 2-6-18:04 por. and 2-6-18:10 por.

Morris Atta, Administrator for Land Division, reported on the request background where Member Pacheco asked about DOFAW's concerns which were incorporated into the submittal Mr. Atta assured.

Dave Gedeon from FHWA was present to answer questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-9 Resubmittal - Consent to Assign General Lease No. S-3856, (1) Hemaloto Alatini and Leona Alatini, Assignor; Hemaloto Alatini, Assignee; (2) Hemaloto Alatini, Assignor, to Aisea Vulangi, Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-024:023.

Mr. Atta reminded the Board that this is a resubmittal that came before the Board at the last BLNR meeting where there were possible allegations that the Board allowed more time to obtain new information pertinent to this consent request. The Department hasn't received anything in writing, although staff has been in communication with the AG's Office and Barry Chueng has been in contact with the two parties related to this case.

Chair Thielen said that the claims that were raised by the interveners at the last meeting is something that they will need to address in another forum and Mr. Atta recommended the Board approve staff's recommendation. Mr. Atta confirmed that and reported as of this date staff has no solid evidence that the allegations have a specific bearing on the Board action because it is between private parties and should be addressed in the proper forum – the courts. The only reason Mr. Atta recommend the delay was to ensure with all the knowledge given that the Department wasn't acting on the possibility of wrongdoing. And given that staff hasn't received anything his recommendation is to proceed, but provide the parties an opportunity to present.

Judith Earle, a tax preparer, representing Faati Alatini testified saying that they are in the process of getting written information on the original sale of the property waiting for a record of withdrawal from Bank of Hawaii recounting what happened that Hemoloto Alatini was the English translator who was trusted. There is documentation of how these people were victimized by Hemoloto and his wife, that there is a possible criminal case, and that they need more time waiting for an appointed attorney.

John Carroll, Attorney representing Hemoloto and Leona Alatini and Mr. Vulangi (hopeful assignee), said that what Ms. Earle and relatives has a claim it has been long past the time they could insert that claim in circuit court and the Prosecutor's Office. As for Leona Alatini, they have submitted her discharge as to deter from her bankruptcy. If the relatives had an action against Leona Alatini they would have had to brought it before this has been finalized. The statute of limitations on fraud is two years and statute on contract is six years and this occurred in 2000. This is a miscarriage of justice for Mr. Vulangi, that the relatives had time to get an attorney, but there is a legal process and further delaying this would not be right.

Ms. Earle reiterated her previous testimony.

Mr. Atta reported that there was no definitive determination on the statute of limitations issue. If there are allegations of fraud the statute of limitations can be extended, but he wasn't told for how long. He hasn't received word from the AG's Office if the statute has run out. And, agreed with the Chairperson that this would have to be taken up in a judicial session.

Member Pacheco moved to go into an executive session to consult with the Board's attorney on the Board's rights, duties, privileges, immunities and liabilities. Member Gon second it.

10:05 am EXECUTIVE SESSION

10:20 am RECONVENED

Chair Thielen said that if the parties want action they must go through the circuit court to substantiate fraud.

Faati Alatini spoke saying that they are trying to help the family and that everything was done through Hemoloto reiterating Ms. Earle's testimony regarding compiling information asking for more time. Hemoloto had promised that this land was to transfer to an Uncle, but Mr. Vulangi took over the land which hurt the family.

Chair Thielen said that if the Board consents to the assignment you can pursue your claims in other venues and if a court decides that part of the remedy involves the lease it will be brought forward at the appropriate time if it involves the Department. The Land Board will not decide this claim between the parties. All they are looking at is the matter on the agenda which is the assignment.

Member Agor moved to approve the recommendation as submitted and Member Pacheco seconded it. Member Gon abstained. Chair Thielen said the motion passes.

Chair Thielen summarized that the Board has approved the assignment. If Ms. Earle and the relatives want to pursue their claim to find an attorney and that this will be determined by a judge outside of this Department then they could bring forward the information.

Approved as submitted (Agor, Pacheco)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Carl Meyer, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Top Predator Movement Research Activities

Written testimony from KAHEA was received by e-mail and distributed to the Board.

Division of Aquatic Resources (DAR) Administrator, Dan Polhemus conveyed background that involves sharks and ulua.

Member Gon asked whether staff has seen any negative impacts on tagged animals where Carl Meyer UH, HIMB said that long term survival is close to or at 100% with normal behavior after tagging.

Unanimously approved as submitted (Pacheco, Gon)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Ryan Nichols, NOAA Fisheries, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Fish Growth Study Research Activities

Mr. Polhemus briefed the Board on the background explaining that Carl Meyer is the field PI where Ryan Nichols is doing the actual research.

There was a question whether we should be permitting the person who is going there to do the activity or the person conducting the research here in the main islands. Danny Carter, DAR Permit Coordinator said she understood that this is not the first case and why there is an applicant and field PI listed on the application.

There was some discussion between the Board, Danny Carter, and Mr. Polhemus over who gets the penalty if there is a violation of the condition of the permit or of the rules. How will it affect the research? If there is a violation by the PI the permittee is responsible where the Greta Aeby permit was referenced and the situation was described. There was concern over the PI getting away with the violation because he is not the

permittee. There was a suggestion to add Dr. Meyer as a co-permittee, but rather than that, take it back to the permit review board and have them address this issue. There was a question whether the rule would apply to Dr. Meyer as a co-permittee where staff went to get a copy of the permit rules and the Board continued to the next agenda item until staff returned.

Item F-3 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Conservation and Management Permit to Kelly Gleason, National Oceanic and Atmospheric Administration, Papahanaumokuakea Marine National Monument, for Access to State Waters to Conduct Maritime Heritage Activities

Mr. Polhemus communicated background where Chairperson Thielen suggested sharing this with State Historic Preservation Division (SHPD) where Kelly Gleason said there were no comments and agreed to share her information with SHPD.

**Unanimously approved as amended (Gon, Edlao)
Kelly Gleason will share her information with SHPD.**

Item F-4 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Derek Smith, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Biological Studies on Maritime Heritage Sites

Mr. Polhemus described permit background and that Derek Smith was present.

Unanimously approved as submitted (Pacheco, Gon)

Item F-2 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Ryan Nichols, NOAA Fisheries, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Fish Growth Study Research Activities

Ms. Carter said anyone under the permit where the Chair asked whether the people on the voyages know that where Ms. Carter confirmed it's the general conditions of the permit.

Unanimously approved as submitted (Pacheco, Gon)

Item F-5 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Christopher Winn, Hawaii Pacific University, Oceanic Institute, for Access to State Waters to Conduct Water Analysis Research Activities

Mr. Polhemus reported on the permit background noting that this is just a beginning.

Chris Winn described some research in Kaneohe Bay to measure the alkalinity and temperature where Member Gon asked whether this was done before where Mr. Winn replied saying 15 to 20 years ago and that this will show the extent of the changes although some methods have changed since then.

Unanimously approved as submitted (Gon, Edlao)

Item D-10 Consent to Assign Homestead Lease No. 54, Lulu Enos Namaka and Hattie Enos Kalama, Assignors, to Thomas Kalama, Sharon Nonenohealani Enos Kalama, Muriel Puninani Enos Ioane, Julia Kauai Yukie Enos Hanson, William Pali Enos, Jr., Assignees; Waianae, Oahu; TMK: (1) 8-5-4:3 & 61.

Mr. Atta gave background history leading up to the transfer of the lease and based on the statutory requirements regarding qualification of heirs they meet all the qualifications where staff recommends consent to this assignment.

Member Goode was intrigued with the 999 year lease term and asked for history where Mr. Atta related that Hawaiian homestead land is statute which is a unique creation by the legislature which there are about 50 now.

Dexter Soares, trustee of Ke Ala Mamo Board explained the history as related to his cousin's property having to pay taxes on land that they cannot farm, problems with people dumping cars, and also asked to find a way to market the kiawe on the property to help pay for the taxes, but that can be later.

Chair Thielen asked whether Mr. Soares was ok with the assignment which he was. Also the issue regarding permissible uses on the property, staff will discuss with the assignees. The Board under the Sunshine Law can only addresses or discuss items that are on the agenda which is the assignment.

Unanimously approved as submitted (Gon, Pacheco)

Item K-3 Conservation District Use Application (CDUA) OA-3494 for the Honolulu Marine Shipyard at Keehi Lagoon by Honolulu Marine, LLC. Located on Submerged Lands of Kapalama, Oahu, TMK: (1) 1-2-025:024

Mr. Lemmo gave background history and use referring to the exhibits relating concerns with impacts to the coral and sea level rise, OHA reminded about the ceded lands and payments, that no one attended the public hearing except for the consultants, an environmental assessment was accepted in February 2009 and published, and staff recommends approval. There was a lot of heavy industrial use in the past in the area and a lot of permits will be needed which Mr. Lemmo detailed. Staff feels that the impacts of

this project can be mitigated sufficiently and asked to approve the project allowing public access on either side of the project and the applicant submit a coral protection plan which they will run by DAR.

There was some discussion regarding Exhibit 5 and canoes, but it is a restricted area.

Board member Gon asked who detects whether or not interference of harm is occurring which is OCCL per Mr. Lemmo. If staff receives a complaint, they do a site inspection and address it.

When Member Goode questioned about the number of public access, Mark Delventhal, General Manager for Honolulu Marine, explained that the west side is part of the small boat harbor which has public access as before. The concern is the east side near Tesoro where they are keeping access open.

A Board member asked about the sub-division where Mr. Delventhal clarified to obtain the lease it is a requirement to get a sub-division survey.

Member Goode asked whether it was realistic to get all the permits and start construction in within one year referring to condition six. Brian Taketa with RM Towill Corporation representing Honolulu Marine reported they have most of the permits and outstanding permits involve the Department of the Army, the Section 401 Water Quality Certification, and the Cecian Federal Consistency Determination. Mr. Delventhal clarified that they read that as within one year from the plans being approved pursuant to item five. There were discussions about condition six referring to five where Mr. Lemmo said the two are not related and it's whether or not they will put a shovel in the ground within one year or seek a time extension cautioning that the permit is voidable. It was suggested to change item six from one year to 18 months instead.

Chair Thielen asked Mr. Underwood whether this is part of the harbor which it is referring to the bill that failed this session for having the commercial use where he said there will be no vessels operating. Honolulu Marine is working on vessels.

Member Pacheco moved to approved as amended and member Edlao seconded it.

Unanimously approved as amended (Pacheco, Edlao)

Approved with amendment to condition six by deleting [one year] and replacing it with 18 months.

Item J-1 Request for a One Year Extension to an Approval in Principle for a Direct Lease to Honolulu Marine LLC for Construction of a Shipyard and Limited Right-of-Entry at Keehi Small Boat Harbor, Oahu, Tax Map Key: (1) 1-2-025:por.024

Ed Underwood, Division of Boating and Ocean Recreation Administrator, reminded the Board about an approval of a direct lease to Honolulu Marine relating more history and

details seeking a time extension asking whether or not it should be timed with OCCL's permit.

Mr. Delventhal said it was his understanding that this extension is to hold off until there was a lease negotiated between the State and Honolulu Marine and they hoped to have it completed by this time frame.

Chair Thielen said Mr. Delventhal is looking at having the negotiations completed, come back to BLNR by Jan. 13, 2010, and if successful that would include processing of the entry plus they will be working on the permits, too.

Unanimously approved as submitted (Pacheco, Goode)

Item J-2 Approval for Extension of Contract 57512, Refuse Collection Service for Small Boat Harbors on the Island of Maui

Mr. Underwood said he had no changes.

Unanimously approved as submitted (Pacheco, Gon)

Item C-2 Approval of Agreement with the Outdoor Circle for Waikoloa Village Outdoor Circle to Participate in the State Forest Stewardship Program

Mr. Kennedy from DOFAW reported on background introducing the Outdoor Circle and staff where Member Gon spoke saying how excited he was with this agreement.

Unanimously approved as amended (Pacheco, Gon)

Item C-3 Approval for Award of Construction Contract - IFB-09-0440-M1, Culvert Replacement & Road Resurfacing of Waipoli Road in the Kula Forest Reserve, Kula, Maui, HI

Mr. Kennedy described background and that there were no questions.

Unanimously approved as submitted (Edlao, Goode)

Item B-1 Request Board Approval to Renew a Cooperative Enforcement Agreement (CEA) between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries (NMFS), Office of Law Enforcement (OLE)

David Gaud representing Division of Conservation Enforcement (DOCARE) spoke giving background.

Unanimously approved as submitted (Edlao, Gon)

Item B-2 Permission to Provide Additional Officer Training for DOCARE's Enforcement Management System (EMIS). Statewide Funded by DOCARE Operating Funds

Mr. Gaud asked to pull this by deferring.

Deferred (Agor, Gon)

Item E-1 Requesting the Approval to Enter into a Memorandum of Understanding (MOU) Between the United States Department of the Interior, National Park Service, the State of Hawaii, Department of Land and Natural Resources, and the County of Hawaii for the Purpose of Management of the Ala Kahakai National Historic Trail

Dan Quinn and Curt Cottrell from State Parks came up where Mr. Cottrell gave some background history that this is the first National Historic Trail in the State describing its uniqueness because of its traditional and recreational purposes that the MOU will enable the National Park Service (NPS), the Department and the County of Hawaii to use a template to guide how to implement this project. The MOU orchestrates the hand-off of various parts of the trail to the NPS to manage. Mr. Cottrell gave more details.

Chair Thielen noted Mr. Cottrell's background with DOFAW and suggested sending a letter to Senator Akaka which Mr. Cottrell agreed to do.

Member Pacheco said he had walked sections of this trail and is excited about this project. He moved to approve and Member Gon seconded it.

Unanimously approved as submitted (Pacheco, Gon)

Item D-4 Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:25.

Mr. Atta requested a deferral to the June 12, 2009 BLNR meeting because the Lessees were not present and requested an opportunity to attend.

The Board members expressed not deferring this matter because of the record where Mr. Atta explained the reason was for a commencement at Washington State where Ms. Keaulana-Dyball called and earlier wrote saying she was waiting for the Hawaii District Land Office to get back to her on the removal of cars issue which was not accurate, but staff didn't have anything to counter that. It was because of a pending issue.

The Board members expressed not entertaining a deferral and wondered whether they are denying the Lessees any due process for denying it, but Mr. Morris told them he would

recommend a deferral.

There were discussions whether or not the Keaulana-Dyball's are committed to being here on the June 12th meeting, but Mr. Atta and some of the Board members had reservations about that. Mr. Atta said the husband is on the mainland and noted that a friend of the wife is storing the cars on the property which is illegal sub-letting and the reason those cars are still there is because the friend is looking for another site which is another violation. Staff didn't know the nature of the relationships where they couldn't verify whether they were subletting at all.

Member Agor made a motion to defer and Member Goode seconded it for discussion.

Our Big Island member described previous meetings noting violations that the Keaulana-Dyballs are always late on payments and he felt it should be three strikes and you're out. Chair Thielen said that if the husband is not here and the wife won't be back until June there will be no change to the circumstances to the property. As far as the development and following through it won't happen. Member Pacheco noted the difficulty of finding a place to store that many vehicles because of County zoning.

Member Agor agreed and suggested terminating this, but preferred doing it before them.

There was a motion to defer which the Chair amended until the June 12th meeting and to notify the tenant which Member Agor and Member Goode agreed.

Ayes: Members Agor, Goode, and Chair Thielen.

Nays: Members Gon, Edlao and Pacheco.

Chair Thielen said no deferral.

Member Pacheco moved to approve staff's written recommendation and Member Edlao seconded it. All approved except for Member Agor who opposed.

Member Goode asked as part of their lease the cars must be removed where Mr. Atta said they have to and there maybe possible contamination, but it is within the lease.

There was a vote to terminate which was five to one.

Approved as submitted (Pacheco, Edlao)

Staff recommended deferring this matter to the June 12, 2009 meeting pursuant to a request by the lessees to have an opportunity to be present at the meeting. After the Board discussed the lessees' history of poor performance under the lease and repeated delays in the case, Staff's verbal recommendation failed to receive a majority vote to approve a deferral (vote was 3 ayes and 3 noes). The Land Board then approved Staff's written recommendations as submitted by a vote of 5 ayes and 1 no.

- Item D-1** **Sale of Lease at Public Auction for Pasture Purposes and Issuance of Revocable Permit to William J. Sanchez, Sr., Wailua, Lihue (Puna), Kauai, TMK: (4) 3-9-5:19 and 20.**

- Item D-2** **Sale of Lease at Public Auction for Pasture Purposes and Issuance of Revocable Permit to William J. Sanchez, Sr., Wailua House Lots, 4th Series, Wailua, Kawaihau (Puna), Kauai, TMK: (4) 4-1-9:17.**

- Item D-3** **Grant of Perpetual, Non-Exclusive Easement to County of Kauai for Bike/Pedestrian Purposes, and Issuance of a Right-of-Entry Permit, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-14:portion of 30.**

- Item D-6** **Termination of Revocable Permit No. S-5110 to Hawaii County Economic Opportunity Council; After-the-fact, Issuance of Revocable Permit to the Community Development Institute Head Start, Inc., for Day Care Purposes, Keauhou 1st, North Kona, Hawaii, TMK: (3) 7-8-07: portion of 28.**

- Item D-7** **Rescind Prior Board Action of July 27, 2007 (Item D-5), Consent to Revocable Permit of Lands under Governor's Executive Order No. 3283 to George S. Lavenson Jr., M.D., R.V.T., Lahaina, Maui TMK: (2) 4-5-21:portion 16.**

- Item D-8** **Surrender Portion of Leased Premises from General Lease No. 5261, Sand Island Business Association, Lessee; Set Aside to City and County of Honolulu for Wastewater Pump Station; Rescind Prior Board Action of June 13, 1997, Item D-23; Sand Island, Honolulu, Oahu, TMK: (1) 1-5-041:093.**

- Item D-11** **Consent to Lease of Lands under Governor's Executive Order No. 2649 to Hawaii Public Housing Authority, Waianae-Kai, Waianae, Oahu, TMK: (1) 8-5-028:041.**

Mr. Atta said he had no changes and there was no one present for public testimony.

Unanimously approved as submitted (Pacheco, Edlao)

- Item L-1** **Appointment of West Oahu Soil and Water Conservation District Director**


No DOT staff was present or anyone from the public to testify.

Unanimously approved as submitted (Edlao, Gon)

Adjourned (Edlao, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 11:45 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 Thielen
Chairperson
Department of Land and Natural Resources