

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

DATE: THURSDAY, SEPTEMBER 15, 2011  
TIME: 3:00 P.M.  
PLACE: KALANIMOKU BUILDING  
DAGS ICSD VIDEO CONFERENCE CENTER  
1151 PUNCHBOWL STREET, BASEMENT  
HONOLULU, HAWAII 96813

WAILUKU JUDICIARY BUILDING  
ICSD VIDEO CONFERENCE SITE  
2145 MAIN STREET, ROOM 120  
WAILUKU, MAUI, HAWAII 96793

KEALAKEHE ELEMENTARY SCHOOL  
ICSD VIDEO CONFERENCE SITE  
74-5118 KEALAKA'A STREET  
KAILUA-KONA, HAWAII 96740

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 3:02 p.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
John Morgan  
Rob Pacheco

Jerry Edlao  
David Goode  
Dr. Sam Gon

**STAFF**

Carty Chang/ENG  
Susan Richey/ADMIN

Roger Matsuoka/ENG

**OTHERS**

Bill Wynhoff, Deputy Attorney General

Ardalan Nikou, L-1

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

## **Item L-1**

- 1. Authorization to Enter Into a Right of Entry Agreement with the Niu Conservation Group, LLC for Niu Valley Rockfall Mitigation Project, Job No. J45CO41F, Honolulu, Oahu, Hawaii**
- 2. Declare Niu Valley Rockfall Mitigation Project, Job No. J45CO41F, Honolulu, Oahu, Hawaii Exempt from Requirements of Hawaii Revised Statutes (HRS), Chapter 343, and Hawaii Administrative Rules (HAR) Title 11, Chapter 200**
- 3. And Authorize the Chairperson to take any other Appropriate Action needed to Address the Situation**

Chair Aila opened this meeting by checking whether each of the neighbor island Board members were on-line.

Carty Chang representing Engineering Division briefed the Board that item L-1 is to authorize the Chairperson to enter into a right-of-entry agreement with a new conservation group for the construction and declare the project exempt from an EA under Chapter 343. For the background, in around August 2008 there were two boulders that had fallen from this same location and no one was injured, but did cause some property damage. Money was appropriated this past session to do a mitigation project. Our consultant, AECOM made a site assessment last week Friday and over the weekend comparing the situation back in 2008 to its current condition and they deemed that the rock has shifted and was in a more precarious situation. It's a more imminent chance that the rock would fall. And, that is why staff is moving quickly to mitigate this. We recognize under Chapter 92 that based on the circumstances the Board was informed of this hazard, finds that there was imminent peril to public health, safety, and welfare that exists and that was the basis for the calling of this emergency meeting.

Mr. Carty said that staff did include in Exhibit A on some of the findings that justify why this was warranted as imminent peril. The Board secretary noted that not all the Board members got Exhibit A (because it was not attached to the e-mail) and the Chair suggested he read it and asked whether he was referring to the text or the map. Mr. Chang said he is referring to the findings which he read.

Mr. Carty said that staff also conducted a 343 analysis and this project is exempt under exemption class #1 of DLNR's exemption list and that exemption item reads "Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare or to protect public trust resources." That Exemption Notification analysis is exhibit B.

Mr. Carty said that Exhibit C is an agreement between DLNR and the private property owner called the "Niu Valley Rockfall Remediation Project Agreement". The Board members didn't have that. Mr. Carty read Exhibit C where the Chair interrupted saying it's a standard agreement that the Deputy Attorney General has reviewed and we have verbal approval from all the property owners in the area and staff plans to proceed with

the action. Member Goode said that was fine with him. Member Edlao said he talked to Carty about that verbal agreement and asked whether they should at least make note that staff is pursuing verbal agreement. Mr. Chang agreed and said the boulder is right along the border of two properties and staff believes it's on conservation lands, but it's so much on the border that they decided to look at the adjacent property owner. Also, the access to this rock is going to be through that adjacent property owner who is the Hawaii Humane Society as well as Tiana Partners. The Humane Society has given staff a verbal to go ahead and staff will follow-up with an agreement similar to this new conservation agreement. Staff did talk to parties of the Niu Conservation Group and they had given us a verbal okay as well to move forward. I would like to amend this agreement somewhere in the recommendations that this agreement will be applicable to not only to the Niu Conservation Group, but similarly to the Hawaii Humane Society as well as Tiana Partners who are the adjacent property owners.

Chair Aila noted in addition we have statutory authority should the property owners not give us their permission. Deputy Attorney General Bill Wynhoff said potentially. Member Gon asked from whom would we get that from. Mr. Wynhoff said the statute gives us the opportunity to provide 10 days written notice to the land owners and if they say no then we can go to court and force them to give us that, but because of the extenuating circumstances we have not given the 10 days and we are proceeding on the basis of the verbal okays. Yes, the statute would be a potential ace in the hole should we need it. Member Edlao asked since these two land owners gave verbal and pursuing that are we okay. Mr. Wynhoff said yes.

Mr. Chang referred to Exhibit A maps, but not all the Board members had it. The Board secretary placed the maps up on the camera. Board member Gon said the last map shows the boulder precariously perched on the edge with the plans to put a net over it and anchor it into the ground, a steel ring net.

Mr. Chang said the methodology is they are going to secure the rock first because any vibration could cut it lose. The first step is to cover it with a net and anchor it down. He believes they will use a chopper to pull it back. Ardalan Nikou representing the consultant, AECOM said no that it will be done manually with winches, steel cable and pulleys. It has to be done tenderly and carefully. Member Edlao asked whether it was possible for a complete removal of that rock. Mr. Nikou said this is the complete removal that you cannot touch that particular rock with the way its sitting and the position it's in without first containing it. Once that's done you have a number of options and one of them that they plan to pursue is to pull it back to a flat spot behind it and get it away from the edge of the cliff where it will be broken down and removed from the site.

Member Goode asked whether the land owners below were notified of this and to take precautions to vacate. Mr. Chang said absolutely, in partnership with State Civil Defense under their authority staff had a letter drafted, signed by Ed Texeira yesterday and we hand delivered the letter to 28 of the homeowners below. The letter explains that staff will be doing some work this weekend and would want them to evacuate the premises from Saturday morning to Sunday evening.

Member Edlao asked whether there were any previous incidences there and Mr. Chang confirmed that in 2008 two boulders came down and damaged some property. Member Gon asked whether it was from the same place. Mr. Chang said he believes it was from the same rock and fractured off. Member Pacheco asked whether that was the one where it went through a bed room, but no one was there. Mr. Nikou said it went through two residences and crashed through a retaining wall and onto the street.

Chair Aila said we are going to show you a picture of the boulder where the Chair's secretary displayed a photo on the camera. Mr. Chang said it's estimated to be 7 to 10 tons.

Member Pacheco wondered if we do this work and something goes wrong and our work dislodges the rock what kind of exposure does the State have in the case. Mr. Wynhoff said that the AECOM people have insurance for that and that certainly is a possibility. Mr. Chang said the contractor has its policy and the Chair said the State will be additionally insured. Mr. Wynhoff said not admitting it, but if something went wrong during the process then the people doing it would have some liability, but that is certainly an issue. Chair Aila said we possibly have liability because we are aware of the situation and to not take any corrective action, you know. Mr. Wynhoff said we deny that and the Chair thanked him.

Mr. Chang said as far as staff's recommendation to the Board the only change is to recommendation 1 to broaden that agreement so its noted that this agreement is not only applicable to Niu Conservation Group, but to Hawaiian Humane Society as well as Tiana Partners. Mr. Wynhoff asked the Chair that may he also ask that the Board specifically adopt the findings so that it's a predicate for under holding this emergency meeting. It would be best that this Board informally agree to these findings and the Chair acknowledged that.

Mr. Chang said that the project is scheduled this week and staff will work with State Civil Defense and the City and County to ensure logistically that this project will go as smoothly as possible. Member Morgan asked when might we expect to initiate construction. Mr. Chang said we'll start Saturday morning and hope to be completed by Sunday afternoon or earlier. Chair Aila said the goal is to get the boulder secured and get the safety hazard eliminated first and then deal with the disposition of the boulder.

Member Gon asked Mr. Wynhoff that he recommended that the Board adjust the staff recommendation to have the Board acknowledge the briefing. What is the term he used? Mr. Wynhoff said the exact term is the finding Exhibit A. Member Morgan wondered whether to make it recommendation #3. Member Gon said he would adjust #1 and say the Board acknowledge and adopt the findings as presented by staff and authorize the Chairperson to sign the agreement for it.

Chair Aila noted that there was no public testimony. The folks who are normally notified for Land Board meetings have been notified via e-mail and we have staff up stairs in case

anybody showed up to testify, but as of right now there is no one here to give public testimony.

Member Gon moved as he had stated the amended recommendation. Member Morgan seconded it. All voted in favor.

Mr. Wynhoff said to add the following to the recommendation: "The Board finds imminent peril to the public health, safety or welfare requires a meeting in less time than is provided for in Section 92-7. The reasons for this finding are as stated in Exhibit A which was read by Carty Chang during the emergency meeting."

**Unanimously approved as amended (Gon, Morgan)**

There being no further business, Chairperson Aila adjourned the meeting at 3:25 p.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:



William J. Aila, Jr.  
Chairperson  
Department of Land and Natural Resources